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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANGEL DE JESUS ZEPEDA RIVAS,
BRENDA RUIZ TOVAR, LAWRENCE
MWAURA, LUCIANO GONZALO
MENDOZA JERONIMO, CORAIMA
YARITZA SANCHEZ NUÑEZ, JAVIER
ALFARO, DUNG TUAN DANG,

Petitioners-Plaintiffs,

v.

DAVID JENNINGS, Acting Director of the
San Francisco Field Office of U.S. Immigration
and Customs Enforcement; MATTHEW T.
ALBENCE, Deputy Director and Senior
Official Performing the Duties of the Director
of the U.S. Immigration and Customs
Enforcement; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; GEO GROUP,
INC.; NATHAN ALLEN, Warden of Mesa
Verde Detention Facility,

Respondents-Defendants.

**DECLARATION OF SEAN
RIORDAN IN SUPPORT OF
PETITIONERS-PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER**

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Attorneys for Petitioners-Plaintiffs

*Motion for Admission *Pro Hac Vice* Forthcoming

1 I, Sean Riordan, declare as follows:

2 1. I am an attorney admitted to practice in California. I am a senior staff attorney at
3 the American Civil Liberties Union Foundation of Northern California and counsel for Petitioners-
4 Plaintiffs in this action. I submit this declaration in support of Petitioners-Plaintiffs' Motion for
5 Temporary Restraining Order. I have personal knowledge of the facts stated in this declaration.

6 2. Attached as Exhibit A to this declaration is a true and correct redacted copy of a
7 report prepared by corrections expert Michael A. Berg after inspecting Mesa Verde ICE
8 Processing Facility ("MV") and Yuba County Jail ("YCJ") in 2015 in *Lyon v. ICE*, 3:13-cv-05878-
9 EMC (N.D. Cal.) ("*Lyon*"), a class action concerning access to legal telephone calls at ICE
10 detention centers in Northern California. Mr. Berg's report was filed, as redacted, during the
11 summary judgment proceedings in *Lyon* as ECF Document Number 197-1.

12 3. Attached as Exhibit B to this declaration is a true and correct copy of a declaration
13 filed by attorney Carl Takei ("Takei") in *Lyon* as ECF Document Number 119-20. Takei's
14 declaration lays the foundation for the photographs included in Exhibits C and D of this
15 declaration.

16 4. Attached as Exhibit C to this declaration is a true and correct copy of photographs
17 taken by Takei during an inspection of YCJ in 2015 and filed in *Lyon* as ECF Document Number
18 197-17. The photograph marked as DSC 198 is of housing unit "C."

19 5. Attached as Exhibit D to this declaration is a true and correct copy of photographs
20 taken by Takei during an inspection of YCJ in 2015 and filed in *Lyon* as ECF Document Number
21 197-15. The photograph marked as DSC 105 is of housing unit "I" while the photographs marked
22 as DSC 112 and DSC 114 are of housing unit "R."

23 6. Attached as Exhibit E to this declaration is a true and correct copy of the
24 Department of Homeland Security ("DHS") Audit Report under the Prison Rape Elimination Act
25 (2018) for MV, as redacted by DHS pursuant to the Freedom of Information Act.

Exhibit A

EXHIBIT A
from Decl. of M. Berg ISO
Plaintiffs' MSJ

[Redacted per 3/31/16 Order - Dkt 182; Dkt 166, Section C.2]

First Amended

EXPERT WITNESS REPORT
OF
MICHAEL A. BERG

LYON v. ICE
CASE NO.: 3:13-cv-05878-EMC, N.D. CAL
CLASS ACTION

November 16, 2015

Amended December 2, 2015

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AUDLEY BARRINGTON LYON, JR.,
EDGAR CORNELIO, JOSE ELIZANDRO
ASTORGA-CERVANTES, and LOURDES
HERNANDEZ-TRUJILLO, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

Case No.: 3:13-cv-05878-EMC, N.D. CAL.

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

CLASS ACTION

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT; JOHN
SANDWEG, Acting Director of U.S.
Immigration and Customs Enforcement,
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; JEH JOHNSON,
Secretary of Homeland Security; and
TIMOTHY AITKEN, Director of the San
Francisco Field Office of U.S. Immigration and
Customs Enforcement,

Defendants.

EXPERT REPORT of MICHAEL A. BERG

I. Introduction and Qualifications of the Expert

1. I, Michael Berg, am an independent consultant in the field of corrections with over forty years of experience in criminal justice management, primarily in the area of corrections.

2. My general qualifications as an expert in the field of corrections are set forth in my Professional Profile and Resume, attached hereto as "Berg Exhibit B." In addition to these general qualifications, I have direct experience with management and security at the Jacksonville, Florida, Department of Corrections and The Florida Department of Corrections.

3. I began my corrections career in 1972 as a Correctional Officer with the Office of the Sheriff, Jacksonville, Florida. From that position, I quickly advanced to become a Work Release Counselor and on to the Facility Supervisor of the Fairfield Correctional Facility and Work Release Center. I was again promoted in 1977 and 1987 as Chief of Jails and Deputy Director of Jails and Prison respectively. The position of Deputy Director was the chief administrative officer in charge of the Sheriff's Correctional Divisions. As Deputy Director of the Jacksonville Sheriff's Office Jails and Prisons Division, I assumed total responsibility for the daily operation of the Sheriff's Correctional Divisions to include the Duval County Jail and the Duval County Jail Annex, later to become the Pretrial Detention Facility, the Community Corrections Division and the Montgomery Correctional Institution. Included with this appointment was the administrative and operational responsibility of three corrections divisions, seven hundred fifty (750) employees and approximately three thousand (3,000) inmates and an annual budget of nearly forty one million (41,000,000) dollars. In 1997, I retired from the Office of the Sheriff after twenty five (25) years of service. Later in 1997, I joined the Florida Department of Corrections as Chief of Staff to the Department Secretary. I served in this capacity under two Secretaries. While with the Florida Department of Corrections, I served as Bureau Chief of Staff Development overseeing all department education and training as well as all curriculum and policy development and implementation. I also served as Executive Assistant to the Assistant Deputy Secretary of Institutions. In this capacity, I served under four Assistant Deputy Secretaries. In 2010, I retired from the Florida Department of Corrections after twelve and a half (12 ½) years of service.

4. During my career, I also served as a Commissioner for the Governor's State of Florida Criminal Justice Standards and Training Commission for twenty five (25) years under five (5) governors.

5. I have experience in the administrative and operational management of small, medium, and large jails and prisons. My experience includes all areas of correctional and police-related administrative issues from arrest to release. I am also experienced in correctional budget management, correctional housing and service contracts, criminal justice training, correctional litigation, jail and prison design, inmate work and treatment programs, jail and prison staffing plans and correctional operational policy and procedure development. This includes decisions about housing assignments in institutional populations. I have provided technical assistance to both large and small correctional departments. I have performed as a consultant, technical assistance provider, expert witness and criminal justice equipment representative. Of special relevance to this case, I am directly familiar with federal prison contracts, housing and care for federal prisoners, legal rights of federal prisoners, criminal and illegal alien/detainee contracts and housing, jails and prisoner phone contracts, phone systems, phone management and phone privacy requirements that pertain to legal and consulate communications. Furthermore, I have extensive experience, in all respects, working with the special management issues that are specific to federal prisoners and detainees. I am also very familiar with working with the Federal Officials of the United States Marshals Service and the Federal Bureau of Prisons.

6. These experiences qualify me to understand, review, and assess programs, training, and compliance within secure institutions at all levels of development and implementation.

II. Testimony as an Expert Witness at Trial or Deposition

7. I have been qualified as an expert in the field of corrections and have testified as such on thirty-two occasions in state and federal courts, including providing opinions on numerous aspects of correctional administration and management. A list of cases in which I have testified at deposition within the preceding four years is attached hereto as "Berg Exhibit" "C". I also served as the court appointed monitor in the Nassau County, Florida jail case in 1997 through 2001.

III. Compensation

8. I am being compensated at a rate of \$1500.00 for the initial review of a case, \$150.00 per hour for in-office work and for work performed for travel, tours, inspections and interviews. I am also being compensated at a rate of \$1500.00 a day for deposition and court days.

IV. Opinion

I have been asked to give an opinion on two broad questions about the telephone policies and practices challenged in this case. First, I have been asked to evaluate the challenged policies and practices and opine on the relationship of these policies and practices to legitimate correctional management interests. Second, I have been asked to evaluate the fiscal and administrative burdens that additional or substitute procedures would entail.

When I first began my involvement with the Lyon v. ICE matter, I speculated on the many complexities that could possibly encompass this issue, and what factors the government might have to consider in relation to the expanded telephone access the Plaintiffs are seeking. I also recalled my own experiences caring for federal criminal detainees and the procedures involved with same. However, the more I reviewed the provided material and depositions, and completed the facility inspections and detainee interviews, the more disturbing this matter became. By the end of my review of materials, depositions, facility inspections and detainee interviews, I was appalled at the lack of focus afforded to this matter by ICE officials and the counties/corporation involved. Although the Lyon v. ICE case, in part, involves the simplest of electronic devices (the telephone), those involved haven't made that device work to facilitate access to attorneys and evidence. The United States Immigration and Customs Enforcement agency (ICE) and the counties/corporation involved here have not taken easy steps to fix and improve this issue, despite the serious impact that limited telephone access has on detainees' ability to communicate with counsel and gather evidence for their immigration cases. Furthermore, as I gained more and more knowledge of this matter, I gained a real sense that the authorities involved here didn't care and/or took the position that it wasn't their job to do more than fix broken telephones. As one jail officer put it, he sees his jail's responsibility under the ICE telephone access standards to be "I would say just to – you know, confirming that they [detainees] have access and that the phones are working."¹ Meanwhile, ICE oversight is dysfunctional and performed by individuals who have never even received training on the standards they are supposedly enforcing. One ICE assistant field office director reviews the facility checklists of detainee complaints produced twice a week by ICE officers not to actually follow up on the substantive complaints described in these checklists, but "[j]ust to make sure it's

¹ Butler dep. 32:5-8, 86:22-23.

[i.e., the checklist] getting done.”² In my opinion as a jail practitioner with over forty years of experience in criminal justice management, the telephone issues raised in the Lyon v. ICE matter are easy to correct. It would be easy to implement alternative policies that would provide suitable phone access to detainees without harming jail security and without imposing a significant administrative or financial burden on ICE. Of course, the most important failure of responsibility is ICE’s, since that is the agency that sets the requirements that the counties/corporation must meet in their detention contracts.

Based on my review of the listed materials and carrying out the facility inspections and detainee interviews and my many years of experience, I conclude that in my professional opinion (1) the telephone policies and practices challenged in this case significantly limit the ability of detainees to retain and communicate with counsel and gather evidence for their cases; (2) these restrictions do not reasonably relate to legitimate correctional management objectives, and are arbitrary and excessive in relation to the purposes they purportedly serve; (3) the Governmental interest in maintaining the current policies and practices is insubstantial; and (4) the fiscal and administrative burden on ICE to adopt additional or substitute procedures would be minimal.

A. Restrictions on detainee telephone access at the Facilities limit their ability to retain and communicate with counsel and gather evidence for their immigration cases

This case involves four detention facilities: West County Detention Facility in Richmond, California (“Contra Costa”); Rio Costumes Correctional Center in Elk Grove, California (“RCCC”); Yuba County Jail in Marysville, California (“Yuba”); and Mesa Verde Detention Facility in Bakersfield, California (“Mesa Verde”). I conducted inspections of each facility, interviewed detainees at each facility, and reviewed a range of documents including depositions of both ICE officials and facility officials. (A full list is contained in Exhibit A.)

1. Housing Units and Housing Unit Telephones

a. Contra Costa

Contra Costa holds ICE detainees in Units 7A and 8B, with males in Unit 7A and females in Unit 8B. Both units are essentially identical pod-style housing units, with a double tier of individual cells on each side of the unit. The cells face into small common areas on each tier. Multiple telephones are located in the dayrooms on each tier of the housing units; typically, a tier contains three or four phone installations at each end, with the installations set up near the common areas at the end of the tier. Most telephones are equipped with a metal semi-circular divider extending out from the rear of the phone, but these do not prevent conversations from being overheard by those using adjacent phones or by those standing or sitting nearby. The phone installations are typically set up in pairs facing each other, and are often located only a few feet from the door of the nearest cell. They are also located within auditory range of the common-area tables and televisions.

The facility was clean, quiet, and orderly. ICE instructions for phone use and the free call platform were posted on bulletin boards a significant distance away from the telephones, and the free call

² Meyer dep 162:4-6.

platform speed-dial lists were out of date (last updated December 2012). During my inspection, one telephone in Unit 7A was malfunctioning.

In my opinion, the housing unit phones are not private. The housing unit phones also have significant technical limitations:

- There is no ability to navigate voice mail systems or phone tree answering systems.
- There is no ability for a detainee to make a phone call that is billed to him/herself rather than the recipient. As a result, detainees can only call individuals or offices that agree to accept collect calls or that already have a prepaid Global Tel*Link account for communicating with detainees.
- The free call platform system is difficult to navigate, and the instructions are placed too far from the telephones to be able to consult the instructions while using the phone.
- Phones are monitored and recorded.
- Language access is inadequate for detainees who are not fluent in English or Spanish.

Detainees receive severely limited out-of-cell time in a manner that appears inconsistent with the nature of the population. Detainees are required to remain in their cells except during “free time” hours. Lt. Bonthron of Contra Costa testified that on weekdays, “free time” is from 3:30 p.m. to 5:00 p.m. and 6:30 p.m. to 9:00 p.m., except on Thursdays, when “free time” is only from 6:30 p.m. to 9:00 p.m.³ Additionally, various incidents can interrupt “free time” by triggering a facility-wide lockdown.⁴ According to staff, the facility’s policies permit detainees to exit their cells to use phones during both “free time” and non-“free time” hours. However, in interviews and declarations, detainees state that in practice, they are generally not permitted to use the housing unit phones except during the limited “free time” hours when they are not required to remain in their cells. This negatively impacts their access to telephones.

b. RCCC

At the time of my inspection tour, RCCC held ICE detainees almost exclusively in the RBF area of the jail, although detainees who are classified for administrative or disciplinary segregation may be placed in cells in CBF. It is my understanding that at various prior times, ICE detainees have also been held in SBF and KBF.

CBF and SBF consist of pod-style celled housing units, with two tiers of cells facing into a central common area with tables, one or more televisions, and banks of telephones mounted on the walls with no barriers between them. Both operate as segregation units, with severely limited out-of-cell time for detainees housed in these units. There are yellow “privacy lines” painted on the floor near the telephones but these do not actually provide the necessary privacy.

KBF consists of pod-style dormitory-style housing units, with two tiers of bunk beds and common areas with tables, one or more televisions, and telephones mounted on the walls with no barriers between them. The telephones are located within auditory range of the stairwells and other areas where detainees are likely to congregate. There are yellow “privacy lines” painted on the floor near

³ Bonthron dep. 60:1-4. Detainees report that “free time” hours are often about 30 minutes shorter than the standard times that Lt. Bonthron reported.

⁴ Bonthron dep. 60:12-61:3.

the telephones but these do not actually provide the necessary privacy. The television above the phones was kept at a loud volume, which would have made it extremely difficult to carry on a telephone conversation using these phones. It is so loud that staff instruct detainees to shut off the television for safety reasons whenever they enter the unit.

Apart from four “core” cells that are off the main hallway and each hold a single detainee in segregation (termed “total separation” by facility staff), RBF is a series of congregate cells facing into a central hallway, separated from the hallway by bars. Each congregate cell contains 5 double bunks and a single telephone that is attached to the hallway bars. In almost all of the cells, the telephone is located very near to the toilet and separated from the toilet by only a thin, half-height partition. This physical setup is severely outdated and provides no privacy. During my inspection, RBF was dirty and noise levels were extremely high. In my opinion, the conditions in the RBF cells are deplorable, primitive, and not humane.

In my opinion, the housing unit phones are not private. In addition, the housing unit phones have significant technical limitations:

- There is no ability to navigate voice mail systems or phone tree answering systems.
- The free call platform system is extremely difficult to navigate (see further discussion below).
- Phone time cutoff period is too short.
- Phones are monitored and recorded.
- Language access is inadequate for detainees who are not fluent in English or Spanish.

I attempted to test telephone operability in each housing unit. However, the housing unit telephones were entirely inoperable/malfunctioning during most of my inspection of RCCC. The fact that this happened during my inspection is surprising, given that Plaintiffs’ counsel gave ICE advance notice of my inspection and notified them well in advance that I would be conducting operability testing of the telephone systems. Indeed, although detainees I interviewed earlier that day stated that the phones had been inoperable since sometime that morning, the ICE staff and facility staff accompanying me on the tour stated that they were not aware of the telephone outage until I began my operability testing, which was at some point after 7:30 pm. There is no excuse for this. Also, it is stunning that ICE and facility staff could be unaware of a daylong telephone outage even on a day when ICE was aware that I would be conducting operability testing.

Once the telephones were back online, I tested the phones in RBF. ICE instructions for phone use and the free call platform were placed in laminated packets below the phones. The free call platform speed-dial lists were out of date (last updated December 2014). I attempted to follow the instructions multiple times to dial the free call platform, but the posted instructions were confusing and incorrect. Neither the county deputy present for the inspection nor the sergeant in charge were able to assist because neither knew how to operate the phone system. I asked the detainees in one cell how to dial the free call platform, but none of them knew how to operate the phone system. I was only able to eventually dial the free call platform because a detainee in another cell knew how to operate the phone system. This detainee stated that when ICE staff conducts operability testing, he dials the phones for them and conducts the actual testing. If true, this is an inappropriate delegation of monitoring responsibilities to a detainee.

c. Yuba

Yuba holds ICE detainees in Units A, B, C, D, E, F, G, H, I, J, K, L, P, Q1 and Q2, R, S, and T. The housing is a mixture of pod-style units, dorm-style units, and congregate cells. The original facility was built in 1962 and an addition was constructed in 1994. Units G, H, I, J, K, and L are referred to as the “old side” and were part of the original construction.⁵ The “old side” units are congregate cells in a linear arrangement, separated from the hallway by bars. There are no cells on the opposite side of the hallway, which is a solid wall. The telephones are attached to the bars, near to tables and some bunks, in a manner that provides no privacy.

P and R are dorm-style units with multiple double bunks; in each, telephones are mounted on a wall next to one of these bunk beds.

Q1 and Q2 are 2-person cells with no telephone access inside. To make a telephone call, a detainee housed in Q1 or Q2 must exit the cell, which requires that she be accompanied by a deputy.

T consists of two interconnected small rooms with multiple bunks lining the walls. The telephone is located on one wall above a desk that has a television on top of it.

S1, S2, S3, S4, S5, and S6 are two-bed cells used for segregation. There are no in-cell telephones, so detainees housed in S tank cells must use the hallway telephone during their limited out-of-cell time. To use the telephone, detainees must be released by a deputy.

Unit A is an administrative segregation unit, with a double tier of cells arranged around a common area in a pod. The telephones are located outside the cells. By policy, ICE detainees housed in that unit receive one hour of out-of-cell time per day, which is when they are permitted to access the telephones in the hallway outside.⁶ However, lockdowns and other emergencies can reduce this out-of-cell time.⁷

Units B and C are dorm-style units with two tiers of bunks and common areas. There are two telephones on the lower tier, below the television set, and one telephone near the bunks on the upper tier.

Units D, E, and F are celled units that hold about fifty inmates each. In Unit E, by policy, each tier in the unit receives four hours of time in the dayroom per day, during which they are able to access the phones. Each tier receives morning dayroom time and afternoon dayroom time on alternate days.⁸ During my inspection of D and F pods, only two detainees were outside of their cells. Through my interview of detainees I learned that one of the two telephones in the common area of Unit D has a lot of static.

The physical plant at Yuba is outdated but clean. However, the ICE instructions for phone use and free call platform are tattered and disorganized. Speed-dial directories and inmate handbooks

⁵ Gil dep. 24:13-17 (describing chronology of construction), 41:7-13 (calling units G-L the “old side”).

⁶ Gil dep. 22:9-15.

⁷ Gil dep. 55:12-21.

⁸ Gil dep. 60:14-19.

containing these directories were updated in March 2015 in some units, but February 2014 in others. Some handbooks do not have dates listed and it is not clear when they were last updated.

In my opinion, the housing unit phones are not private. Additionally, the housing unit phones have significant technical limitations:

- There is no ability to navigate voice mail systems or phone tree answering systems.
- The free call platform system is extremely difficult to navigate (see further discussion below).
- Phone time cutoff period is too short.
- Phones are monitored and recorded.
- Language access is inadequate for detainees who are not fluent in English or Spanish.

During my inspection, one telephone in Dorm H was inoperable. The other housing unit telephones were in good working order. The phone system was difficult to navigate, and phone calls were expensive. I was unable to connect with call recipients who were not expecting my call because the outgoing recording required them to press certain number to accept a call "from an inmate at the Yuba County Jail," and they consistently declined to do so.

d. Mesa Verde

Mesa Verde was completely renovated by GEO Group in preparation for its activation as an ICE detention facility earlier this year. It holds a population of entirely ICE detainees, with females in Unit B, and males in units A, C, and D.

Units A, B, C, and D are each equipped with about ten phones, although many of these phones are placed in large banks of telephone installations immediately adjacent to each other. Since each telephone installation is about 18 inches across, and the telephones are placed immediately adjacent to each other, there is only about a foot of space from one phone receiver to the next. There are plexiglass partitions between the phones, but these do not prevent conversations from being overheard by those using adjacent phones or by those standing or sitting nearby. Many phones are placed in close proximity to LexisNexis computer terminals, chairs, tables, bunk beds, and other spaces that are likely to be occupied by fellow detainees. The holding cells are equipped with a single telephone unit on wheels that can be rolled up to the cell door. To use this telephone, an officer dials the telephone and passes the handset through the tray slot of the cell door to the detainee inside the cell.

The facility was clean but noisy. ICE instructions for phone call use and the free call platform were current and well-maintained.

In my opinion, the housing unit phones are not private. Additionally, the housing unit phones have significant technical limitations:

- There is no ability to navigate voice mail systems or phone tree answering systems.
- The free call platform system is difficult to navigate.
- Phones are monitored and recorded.
- Language access is inadequate for detainees who are not fluent in English or Spanish.

During interviews, detainees indicated that the voice recognition system used to authenticate their phone accounts was unreliable and difficult to use. However, I was unable to test this functionality because the account number provided to me for testing did not actually require voice recognition to successfully connect calls.

e. General Observations Regarding Housing Unit Phones

In all four facilities, the housing unit phones are not private and have significant technical limitations that limit all detainees from having private and easy access to counsel, government offices with evidence relevant to their cases, and other sources of evidence.

In Yuba, Contra Costa, and RCCC, high telephone rates and fees make calls prohibitively expensive. Calling costs at Mesa Verde are more affordable.

In all four facilities, facility staff and ICE officials do not consider it their job to assist detainees with how to use the phone system and access the free call platform. In my interviews with detainees, they consistently stated that no member of the staff helped them with these issues. Staff testimony was generally consistent with these reports. For example, Lt. Butler of RCCC testified, “I don’t have any independent knowledge of how they physical go about accessing” the free call platform, and stated that if detainees have questions about it, they can ask ICE agent McDaniel.⁹ Meanwhile, ICE agent McDaniel testified that he is not aware of any training given to detainees about the free call platform, and said that when detainees don’t know how to use the phones, he will direct them to a “house guy” who is another detainee.¹⁰ Similarly, ICE agent Trinidad testified she was unaware of any training or other effort to help detainees learn how to use the telephone systems at the facility, and that her solution was to transport detainees to the field office if they had trouble with the phones at the facility.¹¹ This lack of assistance makes it especially problematic that the phone systems are difficult to navigate and that there is a widespread lack of adequate, up-to-date printed information and instructions.

All housing units at Contra Costa and certain housing units at Yuba and RCCC require detainees to exit their cells in order to make telephone calls. The out-of-cell time in these units is limited, and in many cases is not aligned with business hours. These limitations make it very difficult to reach attorneys and government offices.

In all four facilities, the free call platform is not sufficient to meet the needs of detainees to make case-related calls. Most of the speed-dial numbers on the platform are consulates. The remainder are nonprofit organizations and a small number of federal government offices in DHS and the immigration court system. The platform includes only a few of the 14 organizations and attorneys listed on the Free Legal Services Providers List that the immigration courts provide to immigrants facing removal charges, and it does not include local police, sheriff, district attorney, probation, or public defender offices, much less hospitals, churches, or community organizations that detainees might contact to obtain evidence or support.

⁹ Butler dep. 79:9-12, 79:20-80:3.

¹⁰ McDaniel dep. 122:20-22, 124:5-125:21.

¹¹ Trinidad dep. 241:21-242:10.

2. Private and Semi-Private Phone Rooms

a. Contra Costa

Units 7A and 8B each contain two attorney visitation/private phone rooms (they are utilized for both purposes). I tested the soundproofing in these rooms and concluded it is adequate. However, the system for placing calls is problematic. First, the detainee provides the phone number to the deputy who is posted in the center of the unit. Next, the detainee sits down in the phone room while the deputy dials the number from his/her post and verifies that the call is to a legal office. If so, the deputy hangs up the post phone and transfers the call into the phone room. There are four problems with this setup:

- The process can be confusing for the detainee unless the deputy is patient enough to provide detailed instructions at each step.
- The physical separation between the deputy and the detainee has led detainees to believe that the deputy is continuing to monitor their calls.
- The verification step can result in the deputy transferring the call too late for the detainee to identify whether the call was correctly dialed (for example, when I attempted to test the system by leaving a message on the ACLU of Northern California's voicemail system, the deputy did not transfer the call to the phone room until after the outgoing message had already played, so I heard only a beep and then silence).
- The verification step inappropriately prohibits calls to non-attorneys, even though such calls may be case-related.

In addition to the attorney visitation/private phone rooms inside the housing units, there are three VTC (video tele-conferencing) rooms that are also equipped with direct-dial phones. Three ICE officers and two G4S contract security staff are available to move detainees back and forth between the housing units and the VTC rooms during normal business hours. However, it is unclear how frequently these are used for telephone calls, as their primary function seems to be for use with VTC hearings with the immigration court.

Lt. Bonthron testified that detainees may use the private phone rooms at Contra Costa to call both attorneys and non-attorneys for issues relating to the detainee's immigration case, and that deputies have been instructed on this point.¹² However, these instructions are not being followed in practice. ICE Assistant Field Office Director Craig Meyer testified that based on his understanding from SDDO Trinidad and a deputy at Contra Costa, detainees are only permitted to call attorneys from the private phone rooms.¹³ Similarly, when I conducted my inspection, the deputies who demonstrated the phone system to me stated that they would disconnect the call if they determined that the call was not to an attorney's office. Detainee interviews confirmed that the phone rooms can only be used to call attorneys and only during free-time hours, with some exceptions based on the discretion of deputies.

Detainees should be permitted to make use of the free phone rooms at Contra Costa during more times of day and should be permitted to call non-attorneys. If scheduling the rooms is an issue,

¹² Bonthron dep. 122:5-15, 123:18-125:17.

¹³ Meyer dep. 98:8-24, 99:10-12, 100:2-14, 104:11-18.

additional space exists that could be used to add private phone calling capacity. For example, there is a law library room within the jail's library that could be equipped with a phone if needed.

b. RCCC

RCCC has no private phone rooms. After the *Lyon v. ICE* case was filed, ICE requested that RCCC provide the ability for detainees to make private phone calls, and RCCC responded by allowing detainees to use an office phone in the law library upon request.¹⁴ The law library phone and the housing unit phones are the only phones available to detainees in the facility. The only other way for a detainee to make a private phone call would involve being transported to the nearest ICE field office.¹⁵

The library phone offers a quieter environment than the extremely noisy environment in the housing units. However, it is not private. The library phone is located on the library officer's desk, in an open area adjacent to computer terminals that other detainees use for legal research. A conversation on this phone could be overheard by the library officer, other detainees in the law library, or staff or detainees passing by the law library.

Space is readily available for setting up a true private phone area in RCCC. For example, the law library contains ample unused floor space where telephones with desks and privacy barriers could be installed for this purpose.

c. Yuba

Phones that were said to be private at Yuba were not. Specifically, these areas were said to be in the booking area, the sergeant's office, and the free phone room.

The booking area is not private because the telephones are located on a long desk used by deputies in the booking process. In addition to this specific desk being actively used by deputies, there are deputies working on desks nearby, significant foot traffic at all times, and it is within auditory range of new inmates/detainees who are waiting for various steps in the booking process.

The sergeant's office is not private because there are deputies working on desks nearby, significant deputy foot traffic passing through the office, and the door to the office is often kept open.

The free phone room is not actually private because it contains two phones that are expected to be used simultaneously by different detainees, with no barrier between them. Each detainee is readily able to hear the other detainee's conversation. Additionally, the free phone room is not equipped with direct call phones. Based on my testing of these phones, they are subject to the same technical limitations as the housing unit phones, including the inability to navigate phone trees and leave voicemail messages. Additionally, each call from these phones is preceded by an announcement stating that the call is from an inmate at Yuba County Jail and instructing the recipient to affirmatively accept or reject the call. Although the ICE free call platform is available from the free phone room, the instructions for using the platform were in a disorganized pile of loose papers.

¹⁴ See Butler dep. 110:2-16.

¹⁵ Butler dep. 120:21-25.

Disturbingly, the ICE official responsible for day-to-day monitoring of Yuba's compliance with ICE detention standards is not aware of the technical restrictions on these telephones. In her deposition, that official unambiguously stated that a detainee can leave a voicemail from these phones.¹⁶ However, anybody who tested the functionality of the phones would be able to tell that these phones are subject to the same technical restrictions as the housing unit phones.

There is usually a one- to two-week wait before detainees can access the Yuba phone room and they are given no notice in advance of when their call can take place, so they cannot make arrangements with their counsel or other contacts to be available for the call. Additionally, Yuba imposes arbitrary restrictions limiting the use of the free phones to attorney calls, rather than all case-related calls.¹⁷

Space is readily available for setting up a true private phone area in Yuba. For example, the "private" phone room could be converted into a truly private phone room, and there is space in the law library to set up a small phone area. There is also space for these private phone calls in the department's administrative area and counselor offices.

d. Mesa Verde

Mesa Verde has four VTC/attorney visitation rooms [REDACTED] that are equipped with direct dial telephones. These rooms are frequently scheduled for VTC court hearings, in addition to being used for phone calls and in-person attorney visits. There is also an office in the intake area [REDACTED] and a [REDACTED] that are each equipped with a direct dial phone. However, these rooms are typically used for other purposes.

According to the warden, [REDACTED] are all soundproofed with fiberglass and batted insulation. However, when I tested the soundproofing of these rooms, it was inadequate for two of the four rooms. There are also problems with the door latches. During my testing of the soundproofing, one door latch repeatedly failed to latch properly. Additionally, during my interviews with detainees prior to the tour, the door latch for the interview room we were using (not the same room that had problems during the tour) spontaneously popped open and was difficult to latch securely.

[REDACTED] is not private. Although the door latches securely, the window in the room is equipped with what appears to be a speak-thru grille. Sound passes easily from inside the room to the outside.

[REDACTED] is a large room set up like a courtroom, with two tables facing toward a large teleconferencing TV and camera. There is a telephone off to the side of the room. If detainees are able to make telephone calls from this room without staff being present, then this would provide adequate privacy. However, it would not provide adequate privacy if staff are present in the room, as they would easily be able to overhear conversations.

¹⁶ Fishburn dep. 64:25-65:2.

¹⁷ Gil dep. 28:1-5; Fishburn dep. 64:2-7.

Serviceability of the phones in the VTC/attorney rooms, Interview # 146, and Large VTC room A 116 was poor. During my inspection, I (as well as attorneys on the tour from both sides) repeatedly encountered technical problems that facility staff were unable to explain or fix, and that prevented us from successfully dialing outside numbers.

In addition to the areas already equipped with direct dial phones, there are spaces (for example, in the dorms and in the law library) that could be converted into additional private phone areas. The facility is located too far from any area that would allow for normal visitation, attorney visits, or reasonable access to ICE field offices. Because of this distance, it is especially important for Mesa Verde to provide robust access to private telephone calling during normal business hours. It would require only modest, easy changes to Mesa Verde to provide this kind of access.

e. General Observations Regarding Private and Semi-Private Phone Rooms

In general, the facilities in this case have not provided private phone areas in adequate quantity or with adequate privacy to meet the case-related calling needs of detainees. Additionally, requiring that these phones be used only for calls to attorneys creates unnecessary barriers for detainees seeking to collect evidence or obtain necessary certifications from government offices and other sources. ICE itself recognizes that the absence of such free, private calling for case-related calls is a problem. Every generation of ICE's own detention standards, from the 2000 National Detention Standards (NDS) to the 2011 Performance-Based National Detention Standards (PBNDS), require free, direct calls for a range of case-related purposes and require privacy for legal calls.

With the exception of Contra Costa, the facilities are located far from the San Francisco immigration court. The distance is especially large in the case of the Mesa Verde facility in Bakersfield, California. ICE was presumably aware that these distances would make it especially difficult for detainees to maintain necessary case-related contacts with available attorneys, government offices and family. Yet ICE decided to contract with these facilities without ensuring adequate access to private phones. As Lt. Michael Butler of RCCC testified, "All I can tell you is that when we entered into our agreement with ICE, they were aware of the facility, the layout of the facility, the locations of the phones, et cetera, and entered into that agreement with us."¹⁸

The lack of adequate capacity to meet the demand for free, private calls is a serious problem. For example, Cpt. Gil testified that at Yuba, "Length of wait between putting the request in and getting the phone call" accounts for most of the telephone-related grievances at Yuba.¹⁹ As of August 2015, there was a 1 to 2-week backlog in providing these calls at Yuba.²⁰ Additionally, the failure of ICE and the facilities to meet the high demand for private phones has led to arbitrary restrictions, such as limiting detainees to only one private phone call per week.²¹ Such delays and arbitrary restrictions are not acceptable, particularly since even ICE's oldest set of detention standards (the 2000 National Detention Standards) require that when a detainee requests to make a direct, free call to a legal representative, a government office to obtain documents, or other specified categories of

¹⁸ Butler dep. 87:4-8.

¹⁹ Gil dep. 51:2-4.

²⁰ See Gil dep. 83:12-21. See also Meyer dep. 52:2-16.

²¹ See Fishburn dep. 64:2-7.

case-related calls, “Access shall always be granted within 24 hours of the request, but, ordinarily, within eight facility-established ‘waking hours.’”²²

The inability of detainees to predict when they will be able to use the phones is a significant problem. As Lt. Gil testified, “we can’t guarantee times, at this point” for when a call could take place.²³ This makes it difficult for detainees to prepare for their phone room calls or to ensure that the people they want to contact will be available when they end up being escorted to the phone room.

f. The Need for Access to Attorneys, Witnesses, and Evidence

Contra Costa provides pro per (self-represented) criminal defendants with free, unmonitored, unrecorded phone calls from the private phone rooms, priority access to legal research materials, and access to a court-authorized legal runner and licensed investigator.²⁴ RCCC provides pro per criminal defendants with unmonitored phone calls, guaranteed use of the law library, and access to a court-authorized investigator.²⁵ These tools are intended to provide pro per defendants with access to the necessary legal research and evidence to represent themselves in their criminal cases. The Eagly study discussed below found that only 14% of detained immigrants were represented by counsel.²⁶ This means that the vast majority of ICE detainees have case-related needs of similar magnitude and urgency as pro per criminal defendants. As a matter of sound correctional management, these detainees ought to be provided with tools to meet these needs.

The lack of effective communication systems has very serious consequences for detainees. Telephone systems which inhibit communications with the entities necessary to gather information relevant to a detainee’s immigration case make it much harder to collect evidence, access legal information and communicate with counsel. This prevents a detainee from adequately preparing for an effective hearing, and leads to ongoing hearing continuances that further prolong detention. A study analyzing immigration court statistics by Ingrid Eagly and Steven Shafer entitled “A National Study of Access to Counsel in Immigration Court,” scheduled to be published in the December 2015 edition of the University of Pennsylvania Law Review, provides useful data that I rely on to gauge the significance of the barriers to attorney access I describe in this report, as well as to identify how these barriers can affect lengths of stay in detention and court outcomes. The Eagly study shows that solo practitioners and small firms do the vast majority (90%) of immigrant representation. Solo practitioners and small firms cannot be expected to have full-time receptionists. So, the prevalence of solo practitioners and small firms makes the inability to leave voicemails and navigate voicemail trees, the delays and difficulties in obtaining time on private phones, and limited messaging capabilities especially significant barriers to attorney access. Additionally, the study documents that the search for counsel prolongs detention. Among detained immigrants seeking counsel, almost 51% of all court adjudication time was incurred due to time requested to find an attorney. Finally, the Eagly study describes major differences in the

²² ICE 2000 National Detention Standards, Telephone Access, Standard (E)(2).

²³ Gil dep. 68:16-17.

²⁴ Bonthron dep. 130:19-131:9; Office of the Sheriff, Contra Costa County, Pro Per Inmate Policy, CCCSO000460-72 (rev. 2/1/2011).

²⁵ Sheriff’s Department, County of Sacramento, Operations Order, In Propria Persona (Pro Per) Status Prisoners (rev. 1/2012)

²⁶ Eagly at 32.

immigration court outcomes of immigrants who are detained and non-detained, as well as between detained immigrants who are able and unable to retain counsel. In this study, it is documented that immigrants with counsel have a much higher success rate at bond hearings and removal hearings. For those detained without counsel, the Eagly study concludes the chance for success is bleak at best.²⁷ Another recent study focused on detained immigrants with cases in the San Francisco immigration court contains statistics and findings that are consistent with those in Eagly's study.²⁸ Eagly's statistics and findings are also consistent with what I observed in all four facilities. The detainees I interviewed expressed frustration, resignation, and hopelessness related to the difficulty of pursuing their cases with the limited telephone access provided to them. This situation, many times, motivates detainees to simply sign removal papers.

B. ICE's indifferent attitude toward the due process rights of detainees is troubling and out of step with correctional best practices

As I explain in the sections that follow, jail security activities may have some impact on detainees having suitable phone access but the restrictions challenged in this case go far beyond the scope of legitimate security needs.

The corrections business has long since reached the time when its administrators and personnel, at all levels, must understand the law and legal governances they operate within. Jail and prison administrators are responsible for understanding the rights of the people in their charge. These responsibilities are not just for metro areas with large populations but for small community jails as well. All individuals in custody have rights and their custodians have no excuse for ignorance of these rights. Rather, their custodians have a non-negotiable responsibility to know and operationally perform in a manner that ensures that these rights are met.

In the Lyon v. ICE case it is my emphatic opinion that detainee rights are not being met despite an ability to meet them, and that this failure stems from the indifferent and negligent attitude of both ICE and the California county and corporate officials responsible for the operations of Yuba, Sacramento, Contra Costa and Mesa Verde correctional facilities. While Lyon v. ICE is about failures to provide due process, the reasons for these failures glare of everything that makes up issues of deliberate indifference. In my opinion as a jail expert with many years of managing alien detainees, the operational decisions made by ICE and county and corporate detention facility officials challenged in this case are arbitrary, purposeless, excessive and punitive. Operationally, the telephone access restrictions placed on alien detainees are so excessive that they are not reasonably related to legitimate security concerns, nor can they be justified as a budgetary matter. The facility procedural limitations can only be viewed as either purposeless and negligent, or reflective of an attitude that is intended to make telephone access excessively difficult for detainees imprisoned there. For government officials to continue to operate under these excessive, purposeless and punitive restrictions would have no support under correctional best practices in operational strength. The arbitrary restrictions placed on detainee telephone use, if continued, are in

²⁷ Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. Law Rev. 1 (2015).

²⁸ See Northern California Collaborative for Immigrant Justice, *Access to Justice for Immigrant Families and Communities: Study of Legal Representation of Detained Immigrants in Northern California* (Oct. 2014), <https://media.law.stanford.edu/organizations/clinics/immigrant-rights-clinic/11-4-14-Access-to-Justice-Report-FINAL.pdf>.

my opinion a denial of due process, mismanaged procedures and policies that are punitive in effect or intent.

Detention administrators that take seriously the duty to know and understand the law will operate within it. These administrators will train their personnel to also know and understand the law. The policies and procedures developed by their agency will be inclusive and reflective of the law. The attitude and tone of their facilities will also reflect the law. This constitutional approach to jail management is not considered "cutting edge" - it can only be considered "bare bones" in 2015. Jail and Prison Administrators and Government Agencies such as ICE no longer have options about human rights; they all must operate within numerous constitutional, statutory, and regulatory boundaries. Furthermore, agencies have an ongoing responsibility to stay current with legal precedent. The responsibility to stay current with operational law is no longer difficult, particularly since most every county government/corporation has a general counsel assigned. Detention facility security policies that cannot be supported by law have to be changed. For example, modern correctional administrators should be expected to understand that the Eighth Amendment protects prisoners from cruel and unusual punishment and that the Fifth Amendment protects pretrial and immigration detainees from any condition or behavior amounting to punishment.

Along these lines, correctional administrators should be expected to know and appropriately safeguard the rights of people in their custody to due process. I have personally maintained an understanding of these principles from case law as well as from other sources (such as Judge Henry Friendly's article "Some Kind of Hearing", the International Covenant on Civil and Political Rights (ICCPR), The Human Rights Committee (HRC), the International Human Rights Law, and The United Nations Office of the High Commission for Human Rights). Correctional administrators with custody over alien detainees should also be expected to know that alien detainees have a constitutional right to due process and that the Immigration & Nationality Act, among other things, guarantees detainees the right to retain counsel, the right to gather and present evidence, and to talk to witnesses. They should also be aware that the U.S. Court of Appeals for the Ninth Circuit has held that conditions of confinement for civil detainees must be superior not only to convicted prisoners but also to pretrial criminal detainees, *Jones v. Blanas*, 393 F. 3rd 918, 918-922 (9th Cir., 2004) (holding that civil conditions of confinement which were the same as or similar to those for criminal prisoners or even pretrial detainees were presumptively punitive and unconstitutional).

What most disturbs me about the depositions of ICE officials and their contractors that I reviewed for this report is that instead of showing an awareness of the legal requirements that govern their operations, these officials display negligent, indifferent attitudes toward these obligations.

At the headquarters level, ICE officials consider compliance with ICE's internal detention standards to satisfy all legal obligations.²⁹ However, many of the local ICE officials responsible for enforcing ICE's own detention standards have not been trained on those standards and do not understand those standards. For example, ICE Assistant Field Office Director Meyer, who oversees the Yuba and Contra Costa facilities, testified that he could not recall ever receiving training on ICE

²⁹ See Landy dep. 136:17-22 ("[T]he agency's obligations are defined in our detention standards, which is the way that we ensure that we're adhering to applicable legal requirements. So our obligation is to seek to ensure that detention facilities are complying with those standards.").

detention standards.³⁰ John Trinidad, who is the ICE administrative supervisor assigned to the Yuba and Contra Costa facilities, testified that he could not recall whether he had been trained on ICE telephone access standards, he is not familiar with ICE telephone access standards, and he had never seen the standards before they were shown to him in his deposition.³¹ Kevin McDaniel, the ICE agent assigned to RCCC, testified that he had never been trained on ICE telephone standards and was unable to recognize the standards when they were showed to him.³² Even ICE Detention Standards Compliance Officer Dana L. Fishburn, who other local ICE officials looked to as the person most familiar with the ICE detention standards, is quite unaware of what ICE's standards for telephone access require.³³ Finally, the county officials who were responsible for direct custody of ICE detainees often showed a similar lack of knowledge of the ICE standards. In some cases, they displayed no concern at all for facilitating detainee access to telephones, despite the role such access plays in detainees' active court proceedings. For example, Lt. Butler of RCCC testified that "there's nothing we specifically do to enforce [telephone] privacy," and testified that he understood RCCC's responsibility under the ICE telephone access standards to be "I would say just to – you know, confirming that they [detainees] have access and that the phones are working. I mean other than that, that's really what the Standard is."³⁴ At each step of the chain, nobody took responsibility. This bolsters my conclusion that the telephone access restrictions found within the four detainee facilities included in *Lyon v. ICE* cannot be supported by correctional best practices standards. Rather, these restrictions can only be labeled as arbitrary, purposeless, excessive, punitive and indifferent. As a forty-nine-year jails and prisons administrator, I emphatically state: these problematic restrictions must be corrected.

ICE officials cannot credibly claim ignorance of the problem. ICE is well aware that telephone access is an issue that needs to be rectified. Across the country, immigration detainees' phone access has been an issue for many years. Many of the cases and articles I have listed in the "Facts and Data Reviewed" portion of my report support this.

C. There is no reasonable justification for the restrictions on detainee telephone access

In my opinion, the restrictions on detainee telephone access in the Facilities described above are so arbitrary, purposeless, and excessive that they cannot be said to reasonably relate to a legitimate, nonpunitive governmental objective. The more factual material I reviewed relating to the *Lyon v. ICE* case, the more amazed I became at how both immigration officials and the county and corporate officials permitted arbitrary, excessive restrictions on telephone access to persist, despite the serious impacts of these restrictions on the fairness of immigration court proceedings.

³⁰ Meyer dep. 48:9-14.

³¹ See Trinidad dep. 55:12-14, 58:20-22, 61:12-62:5.

³² McDaniel dep. 26:3-13.

³³ This official first testified that there is no standard governing how long a detainee has to wait after requesting to make a legal call. Fishburn dep. 75:8-10. She was then shown ICE NDS Standard E, which requires that direct calls be provided (among other things) "to legal service providers, in pursuit of legal representation or to engage in consultation concerning his/her expedited removal case" within 24 hours of a detainee's request. She then testified that in her opinion, this standard does not apply to requests to call attorneys who are not on the free call platform list, even though the text of the standard does not limit itself to the pro bono services on the list. Fishburn dep. 76:2-15.

³⁴ Butler dep. 32:5-8, 86:22-23.

Furthermore, as I reviewed this material, I became keenly aware that the authorities involved felt that it was someone else's responsibility to address the deficiencies. In my professional opinion, ICE's management and monitoring practices are profoundly dysfunctional in ways that undermine the credibility of their claims that the current telephone restrictions are necessary or appropriate.

First, ICE promotes significant confusion regarding telephone access at Contra Costa, RCCC, and Yuba because ICE only requires these facilities to implement the 2000 National Detention Standards (NDS), rather than the 2011 Performance-Based National Detention Standards (PBNDS). (Mesa Verde is required to adhere to the 2011 PBNDS.) Although both the 2000 NDS and 2011 PBNDS require reasonable and equitable access to telephones and prohibit facilities from unduly limiting a detainee's efforts to obtain legal representation, the newer standards are significantly more detailed, which makes expectations for detention facilities more clear. Significant areas where the 2011 PBNDS provisions on telephone access provide more detail include:

- The 2011 PBNDS explicitly require facilities to provide reasonably priced telephone services: "Each facility shall provide detainees with access to reasonably priced telephone services. Contracts for such services shall comply with all applicable state and federal regulations and be based on rates and surcharges comparable to those charged to the general public. Any variations shall reflect actual costs associated with the provision of services in a detention setting."
- The 2011 PBNDS explicitly direct facilities to "provide the broadest range of calling options including, but not limited to, international calling, calling cards and collect telephone calls, determined by the facility administrator to be consistent with the requirements of sound detention facility management."
- The 2011 PBNDS explicitly require that "Each facility shall provide detainee access to international telephone service."
- The 2011 PBNDS explicitly direct that the content and procedures of the standard be communicated to the detainee in a language or manner the detainee can understand, and include specific requirements for Spanish and other translations for limited-English populations.
- The 2011 PBNDS set specific requirements for disability access.
- The 2011 PBNDS specifically require that indigent detainees who are representing themselves pro se be permitted free calls on an as-needed basis to family or other individuals assisting with their immigration cases.
- The 2011 PBNDS provide more specific protections for legal calls and telephone contact in general for detainees in segregation units.
- The 2011 PBNDS provide more specific instructions identifying the rules, instructions, etc. that must be communicated to detainees.

No legitimate governmental interest is served by permitting Yuba, Contra Costa, and RCCC to avoid complying with the 2011 PBNDS telephone and legal access standards. As Kevin Landy of ICE's Office of Detention Policy Planning (ODPP) testified, the 2011 PBNDS are generally more rigorous than the 2000 NDS because ICE recognized that there were "opportunities for improvement" and best practices had evolved since the issuance of the 2000 NDS. The 2000 NDS are, he conceded, "in some respects out of date."³⁵ Especially given the strong overlap between the

³⁵ Landy dep. 43:10-44:1.

2000 NDS and the 2011 PBNDS, the appropriate correctional management practice would be to uniformly impose ICE's most up-to-date telephone and legal access standards across all facilities instead of continuing to employ the vague older standards in some facilities.

The real barrier to ICE implementing more specific standards for telephone access is not practicability, but a fear that requiring these standards might be more expensive. ICE Assistant Field Office Director (AFOD) Vaughn essentially admitted this when he testified that "with unlimited resources, unlimited money, unlimited staffing, I could do anything you want me to do."³⁶ As Vaughn testified, RCCC "felt that they could meet" the 2008 or 2011 PBNDS requirements, but ICE decided not to bind them to the newer standards because "it would have caused an increase, a possible increase in the bed rate or additional funding from ICE."³⁷ There were also discussions between ICE and Yuba about converting to the 2011 PBNDS, but ICE chose not to impose this requirement because Yuba requested higher compensation in exchange.³⁸ Yet there does not seem to have been a serious examination of any possible increased costs of improved telephone access and whether they would actually pose a serious problem. In fact, Yuba agreed to add a private phone room during this litigation and the costs to ICE, if any, were apparently low enough to escape Vaughn's attention.³⁹

Second, ICE's dysfunctional management practices have led to a serious gap between what ICE headquarters officials say and how local ICE officials act on the ground. At the headquarters level, ICE officials seem to recognize the importance of phone access and privacy for legal calls. For example, Nina Dozoretz, deputy division director for ICE's Office of Detention Oversight (ODO) in Washington, DC, testified that a number of the practices challenged in this case did not comply with ICE detention standards or raised serious compliance questions. For example, she testified to the following:

- Telephones in open-bay housing units and in multi-person cells do not provide privacy that would satisfy ICE detention standards for legal calls.⁴⁰
- A facility that did not provide the ability to make legal calls from a private area within 24 hours of a detainee requesting to make such a call would be considered out of compliance with ICE detention standards, and providing access to a housing unit phone is not an adequate substitute.⁴¹
- Transporting detainees from a detention facility to a field office (as ICE has done at various times for the facilities at issue in this case) is not an adequate solution; the facility must have internal infrastructure to provide adequate privacy.⁴²
- Systems that prevent detainees from being able to leave voicemails for attorneys would "be of great concern to us." Whether this would be found non-compliant would depend, in part, on what alternatives were available to detainees.⁴³
- Any system that cuts off calls after a specified duration must be justified by specific facility security issues and not be automatic or routine, even if it otherwise complies with the 20-

³⁶ Vaughn dep. 103:8-10.

³⁷ Vaughn dep. 131:13-132:1.

³⁸ Vaughn dep. 143:1-20.

³⁹ Vaughn dep. 112:6-23.

⁴⁰ Dozoretz dep. 121:21-123:6.

⁴¹ Dozoretz dep. 144:21-148:3.

⁴² Dozoretz dep. 124:16-126:1.

⁴³ Dozoretz dep. 169:9-19, 176:1-22.

minute minimum in the standards. Additionally, an automatic call cutoff of 15-minutes is per se noncompliant.⁴⁴

This awareness is not reflected at the local level. For example, AFOD Michael Vaughn testified that it would be acceptable for a facility to automatically terminate all calls that go to a voicemail system, including legal calls, because ICE has the ability to transport a detainee to a field office to leave a voicemail for their attorney.⁴⁵ Vaughn also indicated that a 15-minute call cutoff was not a problem because the detainee could pick up the phone and redial after paying a second call connection fee.⁴⁶ He freely admitted that all legal calls from RCCC are routinely recorded.⁴⁷ His acceptance of these deficiencies reflects the generally lax approach ICE takes with respect to training and enforcement of detention standards at the local level.

Third, communication between different ICE offices is limited. For example, the Office of Detention Oversight does not conduct post-inspection follow-up with Enforcement and Removal Operations and is not involved in the creation or development of corrective action plans to address deficiencies found by ODO.⁴⁸ So, for example, even though ODO found deficiencies at Yuba in 2010 that included a lack of privacy for making legal calls, a semi-private phone room was not added to Yuba until sometime after the *Lyon v. ICE* lawsuit was filed (i.e., 2013 or later).⁴⁹ ICE AFOD Meyer never even looked at an ODO inspection report for Contra Costa or Yuba, even though he is responsible for ensuring that Contra Costa and Yuba are meeting ICE detention standards.⁵⁰

Even local ICE staff do not seem to communicate with each other. For example, ICE DSCO Fishburn testified that when her supervisor makes a walk-through at Yuba (where she is stationed), he does not always talk to her about what he found and she does not see the reports he files.⁵¹ ICE AFOD Meyer testified that he “[v]ery seldom” communicates with ICE DSCO Fishburn and has “no idea” how or what she communicates to headquarters even though he is responsible for the detention facility where she is stationed.⁵² This lack of communication leads to problems and discrepancies. For example, in February 2015, ICE AFOD Vaughn testified that in response to the filing of the *Lyon v. ICE* lawsuit, ICE replaced the automatic 15-minute call cutoffs at both Yuba and RCCC with automatic 20-minute cutoffs.⁵³ But in June 2015, ICE DSCO Fishburn (who is in the Yuba facility each weekday) testified that housing unit phones at Yuba are still subject to an automatic 15-minute cutoff.⁵⁴ This is mutually inconsistent and would not happen if Vaughn and Fishburn substantively communicated with each other.

⁴⁴ Dozoretz dep. 155:5-159:18.

⁴⁵ Vaughn dep. 62:6-64:14.

⁴⁶ Vaughn dep. 176:14-24, 183:1-13.

⁴⁷ Vaughn dep. 72:5-12.

⁴⁸ Dozoretz dep. 28:10-29:9.

⁴⁹ Vaughn dep. 190:8-194:16, 197:17-22.

⁵⁰ Meyer dep. 21:3-5, 73:12-14.

⁵¹ Fishburn dep. 61:3-8.

⁵² Meyer dep. 64:12-18, 65:14-19.

⁵³ Vaughn dep. 157:21-158:2, 184:16-20.

⁵⁴ Fishburn dep. 106:2-3, 110:19-20.

This combination of ignorance and lack of communication leads to restrictions on telephone access that are not the product of considered correctional management decisions by ICE officials, and which do not make sense for the ICE detention population as a matter of correctional management.

Routine monitoring by ICE officials is characterized by a “not my problem” attitude. For example, even though ICE AFOD Meyer’s job responsibilities include making sure that Yuba and Contra Costa meet ICE standards in between the annual inspections, he testified that he believes the facilities are meeting the telephone access standards because the facilities passed the most recent annual inspections performed by an outside contractor.⁵⁵ Although he reviews the facility checklists produced twice a week by ICE officers who visit the facilities and collect complaints, his stated purpose for reviewing these forms is “[j]ust to make sure it’s getting done” and not to actually follow up on the substantive issues identified in the checklists.⁵⁶ This continual buck-passing leads to predictable results. For example, Trinidad testified that when he receives complaints from detainees about the cost of phone calls, “I bring it up to [AFOD Meyer], and I don’t know what happens after that.”⁵⁷ Meyer testified that he could not recall asking Trinidad about what the phone complaints were on the form Trinidad filled out or whether those complaints were resolved.⁵⁸ Meyer also testified that he couldn’t say whether or not telephone rates at Yuba and Contra Costa met ICE standards because he was unaware what the rates were.⁵⁹

Not surprisingly, the ICE agents responsible for day-to-day monitoring of the facilities display striking ignorance of the barriers to telephone access that exist. For example, McDaniel incorrectly assumes that detainees can leave voicemails from the housing unit phones.⁶⁰ Meyer testified that he has had no role in overseeing how the private phone rooms at Contra Costa are used by detainees and is unaware of whether any other ICE officers have had such a role.⁶¹ He has never even looked at the handbooks that Yuba and Contra Costa provide to his detainees.⁶² Trinidad testified that he does not know how much access detainees have to the private phone room at Yuba, how long detainees have to wait to get a call in the room, or whether detainees are given notice to schedule a call with their attorney, and he has not taken any steps to find out whether the private phone room is meeting the needs of the detainees.⁶³ Meyer testified that detainees at Yuba and Contra Costa can access housing unit phones when they are out of their cells, but he does not know whether limitations on out-of-cell time create barriers to telephone access because he does not know how much out-of-cell time detainees receive and has never inquired about it during his visits to the facilities.⁶⁴

The deficiencies created by the inadequate telephone systems made available to detainees are numerous and must be corrected. To name some:

⁵⁵ Meyer dep. 78:21-79:12.

⁵⁶ Meyer dep. 162:4-6.

⁵⁷ Trinidad dep. 148:3-10.

⁵⁸ Meyer dep. 161:12-17.

⁵⁹ Meyer dep. 149:18-23.

⁶⁰ McDaniel dep. 95:11-14.

⁶¹ Meyer dep. 107:21-108:1.

⁶² Meyer dep. 95:1-11.

⁶³ Trinidad dep. 126:23-127:16.

⁶⁴ Meyer dep. 81:19-83:3.

- Legal issues
- Jail management issues
- Economic issues for detainees and government, as well as detainee families
- Disciplinary issues
- Security issues
- Detainee health issues
- Detainee mental health issues
- Humanitarian issues
- Sociological issues
- Restorative issues
- Family unit issues
- Multiple hearing continuance issues
- Excessive detention stays
- Due process issues
- Punitive issues
- And on and on.....

To this forty plus years jail practitioner, these problems and deficiencies are tragically unacceptable and unnecessary. Even more absolute to me is that the immediate fix for these problems and deficiencies is so simple and obtainable. No one involved in Lyon v. ICE has any legitimate excuse.

The stress and frustration created by the inability of detainees to adequately prepare for their removal hearing and/or secure a bond and consequently extend their detention indefinitely can create jail management issues that can affect jail security in a significant manner. These security issues include but are not limited to disciplinary problems, altercations, refusal to follow staff orders, escape planning or actual escapes, detainee illness, suicide attempts and actual suicides, and so forth. All of the aforementioned require more staff attention and time and therefore costs contract agencies more money.

Immigration and Customs Enforcement officials know the problems and deficiencies, have known so for years, and have done nothing significant to correct them. For example, Contra Costa and Yuba did not even have spaces available for detainees to make private, unmonitored phone calls until a significant time after this lawsuit was filed. RCCC still has not made any space available for making private calls.

The restrictions on phone access continue to be arbitrary and excessive. Examples of how these restrictions are arbitrary and excessive are policies that limit out of cell time, limited number of phones, lack of privacy with housing unit phone locations, call monitoring, restrictive access to private phone location, the lack of private phone areas, the length of time to receive a private phone call, limitations on the number of private phone calls that can be made, and so forth.

The depositions of ICE officials reinforce my conclusion that the restrictions on phone access are arbitrary and excessive, and lead me to conclude they are maintained because of institutional inertia rather than based on any determination that they serve specific legitimate, nonpunitive purposes.

The phrase that applies to ICE's work seems to be, "Everyone inspects and no one corrects." For example, when ICE AFOD Meyer received a facility inspection that resulted in a finding that the facility's handling of legal mail violated ICE standards, he marked the corrective action plan as having been completed based on the jail's response that they would modify the mail policy – without ever seeing the revised policy.⁶⁵ As a result, he indicated that the deficiency had been fully resolved based only on the facility's word, without reviewing the new policy to independently confirm that it had made the right changes, and without any proof that jail staff had been instructed or trained on this policy.

These ICE officials have far too many layers of bureaucracy that rarely communicate with one another about the problems or reasonable solutions thereof. These officials appear clueless to the capacities of their colleagues and their involvement with detainee contracts. Further, from depositions which I have read, it would appear that many of them don't really care, and treat key responsibilities as someone else's job.

ICE officials don't address telephone access problems and deficiencies with county/corporate officials; nor do they address solutions to the problems with said officials in a sustained manner.

In depositions, some ICE officials admit that they believe that the telephone system mechanics can limit achievement of the desired goal for a detainee to prepare for a removal hearing or maintain family ties.⁶⁶ Officials also admitted they feel that the response time for detainee requests takes too long,⁶⁷ and yet the issues continue and no one corrects it; not the U.S. Government or the contracted California counties/corporation. The whole matter is attributable to ICE officials failing to hold their contractors accountable for providing adequate telephone access.

D. The government's interest in maintaining current policies is insubstantial

ICE's interest in maintaining the current policies and practices is weak or nonexistent. The current situation creates restrictions on detainee telephone access that are arbitrary and excessive, and which seem to stem from institutional inertia instead of being reasonably related to legitimate, nonpunitive governmental objectives.

For example, no government interest is accomplished by the facilities' severe restrictions on access to day room phones nor is there any logical explanation for the placement location of these day room phones that provide no privacy.⁶⁸ Additionally, many times phones are inoperative for long periods of time without repair. The navigational process of phones is difficult and extremely hard to use. Instructions for phone use and free call platforms are, in some cases, tattered, missing and/or out of date. These instructions are also confusing and hard to understand. Also, facilities involved in Lyon v. ICE lack methods for detainees to overcome language barriers and physical disabilities. Phones cannot navigate voice mail or office phone tree systems. Detainees cannot

⁶⁵ Meyer dep. 183:12-187:8.

⁶⁶ See Landy dep. 148:5-149:16.

⁶⁷ See Fishburn dep. 85:25-104:11.

⁶⁸ Security concerns cannot justify limiting access to dayroom phones at Contra Costa to one hour during business hours per day, when detainees there are considered low security and are housed together in general population. I also spoke to detainees at both Yuba and RCCC who had been in extremely limited segregation units for some their time, only to be housed with the general population at other times.

receive incoming calls on any type of phone. The high price of making a call is also extremely restrictive to many detainees – something that ICE's Office of Detention Policy Planning has conceded is a problem.⁶⁹ Requests to use private location phones take excessive periods of time ranging anywhere from three days to over two weeks and in some instances, only one private call per week can be made. Almost all telephone calls are announced to be monitored and recorded, the ability to make helpful three way calls is prohibited and there is no way to leave a voicemail from housing unit phones. An even more restrictive practice by facility officials and ICE authorities is that no assistance is provided to alien detainees. None of these practices are reasonably related to any government interest or any logical correctional security issue.

The barriers to attorney access created by the current policies actually work against ICE's financial and correctional management interests. As the Eagly study documented, for detained immigrants who sought counsel, almost 51% of all court adjudication time was incurred due to time requested to find an attorney. If ICE required its detention contractors to facilitate access to counsel instead of impeding it, less time could be consumed in the search for counsel, resulting in shorter detention times and faster adjudications. Additionally, the Eagly study documented that represented detainees are more likely to receive a custody hearing before a judge and more likely to be released after a custody hearing than their non-represented counterparts. This means that facilitating access to counsel could result in more detainees being released on bond after a custody hearing, resulting in shorter detention times. Overall, shorter detention times serve ICE's financial and correctional management interests: supervision and other alternatives to incarceration are much less expensive than detention, and a smaller detention population is, all other things being equal, easier to manage than a larger detention population.

E. The fiscal and administrative burden on ICE to adopt additional or substitute procedures would be minimal

During my multiple decades as a jail administrator, I frequently had to make adjustments to operations in order to facilitate court access, attorney access, and other legal obligations related to detainees. I also frequently had to make adjustments to operations in order to accommodate specific requests from the federal agencies that compensated my agency to care for their detainees, and to accommodate specific needs related to these federal detainees. In my professional opinion, providing the telephone access sought by Plaintiffs in this case can be accomplished through solutions that are not difficult nor are they costly, and that would not endanger the security of the facilities involved. They are, in fact, very doable. For any agency that contracts out their detainees and for any agency that accepts contract detainees, it is their responsibility to ensure that all policies and prevailing standards are met at all times and if they are not, then to correct same. If these agencies are unwilling to provide sufficient telephone access to protect detainees' due process rights, then ICE should not be contracting with them.

In my professional opinion, the failure of ICE to ensure adequate telephone access in these four facilities is a failure of correctional administration. Based on my knowledge and experience managing and operating correctional institutions, better alternatives to ICE's current practices are

⁶⁹ Landy dep. 148:9-11.

achievable and cost effective. This is not necessarily an exhaustive list of the possible solutions, but the alternative policies and practices I would propose if given control of ICE's policies are:

- All agency authorities need to be on the same page of required responsibilities and standards with open and effective communication about same. In particular, ICE should instruct its local monitoring staff to actually enforce ICE telephone standards as they are interpreted by ICE's Office of Detention Oversight in Washington, DC, instead of having local ICE staff operate without any authoritative interpretation of the standards.
- All contract facilities should use the same set of PBNDS standards. Even if not all of the standards are financially feasible within the PBNDS 2011 version, modified 2013, then all facilities should be operating under the same telephone access and legal access standards. ICE officials agree with this but have done very little to ensure that it happens.
- Every contracted facility should hire sufficient staff to directly coordinate telephone access for detainees, to include scheduling private calls, dialing numbers if necessary, taking incoming calls, delivering messages, assisting handicapped detainees, assisting detainees with language barriers, keeping appropriate records, keeping schedules for hearing dates and attorney appointments and visits, monitoring privacy for phone calls, providing needed serviceability for telephones, keeping all applicable handbooks and posted information accurate and updated, monitoring law libraries, understanding the law, ensuring due process and ensuring that policies are constitutional, and addressing detainee special needs.
- Every contract facility should develop an adequate number of areas within the facility where telephone calls can be made in an unquestionable private, unmonitored setting. Each of these areas should be equipped with open line free calling telephones, adequate lighting, a writing surface and writing materials. These cubicles are to be free from monitoring and recording equipment.
- Assigned telephone access staff should work with chosen telephone providers to enhance telephone technology that will ease the navigation of using phones as it pertains to free call platform, open line use, collect call phone use, time cut offs, voice mail systems, phone trees and international calling.
- Assigned telephone access staff should know and understand the individual needs and hearing schedules of their housed detainees.
- ICE and contracted counties/corporation should develop and institute as many alternative programs to incarceration as are legally possible. Alternative programs such as electronic monitoring, house detention, work release, and/or probation are far less expensive than traditional detention. Alternative programs also reduce the negative impact on the family unit and where applicable, to employment. In fact, alternative programs represent only 10% of the cost of traditional detention.

The benefits of instituting these solutions positively impact agencies and the community in a multitude of ways. To mention some of the positive impacts, I'll submit that they lessen security issues, reduce disciplinary action, improve medical and mental health of detainees, expedite removal hearings, maintains community ties, stabilize the family unit and maintains employment as well as ensuring the safe and constitutional operation of a contract facility and/or an alternative program.

Money or the lack thereof is no excuse for not instituting these solutions or providing constitutional care, custody and control for alien detainees. As I stated above, unnecessary barriers to attorney access actually lead to unnecessarily long detention stays, which leads to higher detention costs for ICE. The interest of ICE is to carry out its detention responsibilities efficiently and constitutionally, not to engage in penny-wise, pound-foolish practices that delay adjudication and unnecessarily prolong detention. Additionally, given the income received, per day, by detainee contract agencies, they can well afford to hire necessary personnel to facilitate any of the aforementioned solutions and create an exceptional constitutionally sound and effective telephone program.

In support of its affordability, allow me to point out as best as I can determine, the financial numbers surrounding this endeavor:

- Sacramento County houses an average of 147 detainees each day at \$100.00 per detainee per day thus procuring a daily income of \$14,700 dollars per day.
- Contra Costa County houses an average of 156 detainees each day at \$82.00 per detainee per day thus procuring a daily income of \$12,792 dollars per day.
- Yuba County houses an average of 225 detainees each day at \$71.58 per detainee per day thus procuring a daily income of \$16,105 dollars per day.

The average starting annual salary for a sworn correctional officer for these counties is as follows:

- Sacramento County - \$63,350.00*
- Contra Costa County - \$46,000.00*
- Yuba County - \$44,718.00*

*These salaries were obtained from the Human Resources web pages from the counties of Sacramento, Contra Costa and Yuba.

At the current daily income for housing detainees, it would take Sacramento County 4.3 contract days to pay for one correctional officer, it would take Contra Costa County 3.6 contract days to pay for one correctional officer, and it would take Yuba County 2.7 contract days to pay for one correctional officer.

Given the one addressed solution of assigning designated staff to manage the telephone needs of detainees, how long can it take to pay these salaries? It can also be said that civilian employees can also perform these tasks and their incomes are normally less than correctional officers.

In addition to the daily income that is generated by the contract facilities named in this Class, there is also the profit that these agencies make from their percentage of profit made by contract telephone carriers that service these facilities and are utilized by detainees. These profits make the affordability of hiring staff even more achievable.

The addition of the county/corporate facility alien detainee coordinator can easily be made without ICE officials having to increase the cost for contractors as the funds are readily available. Any argument by ICE officials that this needed staff will substantially increase the cost of contracts is without merit or financial fact.

I would also point out that, following my inspections of the four named facilities of this Class, there are no physical plant limitations in any of these facilities that would pose any serious limitation to implementing adequate telephone access throughout these units. This position is inclusive of housing unit phones and private phone rooms, areas and/or cubicles. Adequate space was readily available in each of these facilities.

To any thinking and knowledgeable person who takes a close look, this is not a highly scientific problem that is beyond the scope of our intelligence. It is not a problem that requires compromising security or seriously increasing the costs to ICE. It is basic and straightforward, but very much constitutional. The United States Immigration and Customs Enforcement Office and their contract agencies must immediately recognize this in Northern California as well as nationwide. Failure to do so can only represent a governance that ignores the law and cares even less about the statutory, if not moral, obligation they have undertaken to ensure that care, custody and control of those in their charge is accomplished in a legal and humanitarian manner.

V. Conclusion

In conclusion, it is my emphatic and professional opinion that the United States Immigration and Customs Enforcement Office and the Northern California Counties of Yuba, Sacramento, Contra Costa and the GEO Corporation failed to ensure case-related phone access to alien detainees despite the availability of easy, cost-effective alternatives and the fact that the current practices violate some of ICE's own detention standards. The attention afforded these matters by the agencies here named was basically non-existent, as if it did not rise to any level of Constitutional concern. Their failures, in my opinion, represent objectively unreasonable management practices and oversight that are arbitrary, purposeless, and excessive in relation to any legitimate, nonpunitive governmental objective. These same failures cast an embarrassing shadow on this country - where life, liberty and property are to be free from harm.

The United States is paying an enormous price to ensure that illegal aliens are detained and provided a removal hearing but we are doing so in an awkward, clumsy and mismanaged manner that imposes needless barriers to contacting attorneys, collecting evidence, and other important case-related tasks. These discrepancies must be immediately corrected.

The solutions offered in this report are achievable and affordable and must be considered for all parties concerned.

The United States Immigration and Customs Enforcement agency needs an overhaul and the contract agencies that they conduct business with need to do so under close scrutiny and regular monitoring from ICE authorities. As a professional correctional administrator, I believe there is no excuse for ICE's current indifferent approach to the issues raised in this lawsuit.

I respectfully reserve the right to amend, add to and/or delete from this report as additional information is made available to me or as new opinions are formulated.

Respectfully submitted this, the 2nd day of December, 2015.

/s/ Michael A. Berg
Michael A. Berg

**“BERG EXHIBIT” “A”
First Amended**

Basis for Opinion

My opinion is based on the factual material I have reviewed that is directly related to the Lyon v. ICE Class Action suit and multiple other case law findings and articles having to do with detainee telephone access and due process

Furthermore, I base my opinion on the constitutional directives governing detainee due process within the United States as set forth by acceptable correctional administrative practices and legal precedent.

My expressed opinion is also based upon sound, acceptable and proven correctional management practices.

My opinion, most importantly, is based on my forty plus years of experience in professional correctional management and practices.

Facts and Data Reviewed in Formulating Opinion

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 - Nina Dozoretz
 - Dana L. Fishburn
 - Kevin Landy
 - Kevin McDaniel
 - Brian Bonthron
 - John Trinidad
 - Damon Gil

Michael Butler

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- ACLU, Article, ACLU Sues ICE Over Unfair Telephone Policy
- 34th Annual Conference on Immigration and Nationality Law, Oct 20-22, 2010 Austin Texas. Removal Proceedings; Selected Types of Relief from Removal, Jeffery N. Brannerman
- U.S. Government Accountability Office Testimony before the Sub Committee on Immigration, Alien Detention Standards, Observations on the Adherence to ICE's Medical Standards in Detention Facilities, GAO-08-869T, June 4, 2008
- U.S. Department of Justice, Executive Office for Immigration Review, FY2013 Statistics Yearbook, April 2014
- ACLU, Article, Adding It Up, The Financial Realities of Ohio's Pay-To-Stay Jail Policies
- Center For Economic and Policy Research, The High Budgetary Cost of Incarceration, June 2010
- 109th Congress Report, House of Representatives 1st Session, 109-359, December 18th, 2005, Matters Relating to Detainees
- International Review of the Red Cross, Volume 87, Number 857, March, 2005, Human Rights and Indefinite Detention, Alfred de Zayas
- Voices for Detention: A Report on Human Rights Violations at the Northwest Detention Center in Tacoma, Washington, Seattle University School of Law, International Human Rights Clinic in collaboration with OneAmerica, Jun, 2008

- Inside the Shadowy Business of Prison Phone Calls, An IBTimes investigation into the secretive world of selling phone calls to prisoners and their families, by Eric Markowitz
- A National Study of Access to Counsel in Immigration Court; University of California; School of Law; Ingrid Eagly and Steven Shafer, 2015; University of Pennsylvania Law Review
- University of Pennsylvania Law Review Article, A National Study of Access to Counsel In Immigration Court, by Ingrid V. Eagly and Steven Shafer as published December 2015
- Northern California Collaborative for Immigrant Justice, Access to Justice for Immigrant Families and Communities: Study of Legal Representation of Detained Immigrants in Northern California, Oct. 2014
- Prison Legal News; Prisoners Pay Millions to Call Loved Ones Every Year. Now This Company Wants Even More. Ben Walsh, Huntington Post, September 2015
- Prison Legal News; Washington Prison Phone Justice; State of Washington Prison Phone Justice Campaign – Fighting the High Cost of Prison and Jail Phone Calls; September 2015
- Prison Legal News; Mississippi Indictments Illustrate Prison Phone Corruption by Derek Gilner, October 2015.

D. Facility Inspections and Detainee Interviews

Between October 12, 2015 and October 16, 2015, I had the opportunity to inspect the facilities named in this class – Yuba, RCCC, Contra Costa and Bakersfield. I also had the opportunity to interview nineteen detainees held in these facilities. From these inspection and interviews, I was able to gain firsthand knowledge of the glaring deficiencies of these facilities as it relates to due process, telephone access and compliance of the law. I also became aware of numerous issues that simply go against what is considered acceptable correctional practices for this day and time. While these issues are not part of this litigation, they were so significant to me that I had to stop and wonder how these conditions could exist.

Detainee Interviews

As pointed out earlier, I interviewed nineteen detainees held in the aforementioned facilities. From these interviews, I was able to gain firsthand knowledge as to the expressed deficiencies that detainees felt were dramatically restricting their access to due process, telephone capabilities, and their entitlement to established law. In general, these interviews revealed the same deficiencies throughout each of the named facilities. However, to simplify the recording of these expressed statements of deficiencies I will list the generalized statement made, followed by the initial of the facility wherein it was made; Y-being Yuba, R-being RCCC, C-being Contra Costa and B- being Bakersfield.

- Bonds are too high – YRCB
- No facility orientation – YRCB
- Facility staff not helpful – YRCB
- ICE staff not helpful – YRCB
- Not enough phones – YR
- No privacy on housing unit phones – YRCB
- No privacy on private phones – YRC
- Calls are too short in duration – YRCB
- Not enough out of cell time – YRC
- Private areas are limited to weekly frequency – YR
- Calling cards are too expensive – YRCB
- Indigent calls are hard to get – YRCB
- Calls are monitored and recorded – YRCB
- Messages from family and attorneys are hard to get and not timely – YRC
- Requests to use private phones take extensive periods of time to be approved and scheduled – YRCB
- Grievances get no response -- YRCB
- Pro Bono platform difficult to navigate and doesn't work well – YRCB
- Pro Bono attorneys are limited at best and difficult to obtain -- YRCB

- Calls are often dropped – YRCB
- No refund for dropped calls – YRCB
- Only limited amount of out of cell time to use any type of phone -- YRC
- Noise level in cell loud and hard to hear on phone – YRB
- Broken phones are not repaired in a timely manner – YRCB
- Voice recognition is hard to use – B
- Phone use times are not conducive too attorney office hours – YRCB
- World time realities and phone use times and scheduling are not conducive to reaching other nations – YRCB
- Three Way calling would be helpful for detainees to gather information, speak to witnesses, request documentation and make calls. – YRCB
- Free call phone numbers are out of date – YR
- Frustration with due process matters creates security issues with detainees through fights and disruptive behavior – YRCB
- Detainees are frustrated, resigned and hopeless – YRCB
- Frustration causes many detainees to just sign removal papers – YRCB
- Access to law library is limited – YRCB
- Only detainees with families assisting on the outside have any hope of being prepared for a removal hearing or securing any type of release -- YRCB

By the end of these interviews, I felt nearly as frustrated as the detainees to which I spoke. It is hard to understand how, in this day and time, we as a country could treat a group of human beings with such neglect and disdain. Years of litigation and resolutions have directed us to do otherwise. We have a constitutional, if not moral, obligation to do so. Yet, we do not and the class members of *Lyon v. ICE* suffer and are denied communication and resources that they need for their immigration cases. This opinion was substantiated to the fullest during my on-site inspections and through my discussion with detainees. The expressed deficiencies listed above by detainees clearly support the claims made in the *Lyon v. ICE* complaint.

There is no justifiable reason for these deficiencies to exist; not security issues, not monitoring issues, not personnel issues, not equipment issues, and certainly not humanitarian issues. The facilitation of complete and fair access to attorneys, legal resources, witnesses, information and evidence can only enhance and support the required objectives of acceptable facility management and our nation's objectives regarding immigration law.

EXHIBIT "B"

RESUME

MICHAEL A. BERG

16148 Sunray Road
Tallahassee, FL 32309
(850) 894-9407

EDUCATION

High School: Garrett High School, Garrett, Indiana 1968

Undergraduate: University of Evansville, Evansville, Indiana
1968-1972

Bachelor of Arts Degree

Major Course Work: Criminology

Sociology

Psychology

Political Science

Minor Course Work: Biology

Education

Other Criminal Justice

Graduate Course Work: University of Colorado
Michigan State University
University of Georgia
Florida State University

Other Correctional Training: Only selected training is listed here. A multitude of other training events have been attended but for brevity are not listed here.

National Institute of Corrections Jail Center, Institute for Managers of Large Jail Systems, University of Colorado, Michigan State University, School of Criminal Justice, February 26 - March 10, 1978.

United States Department of Justice, National Institute of Corrections, Planning on New Jails Training, Jacksonville, Florida, February 17 - 18, 1982.

United States Department of Justice, National Institute of Corrections, Law Enforcement Training and Research Associates, Inc., Institute for Correctional Management Skills, Jacksonville, Florida, May 13 - 20, 1982.

United States Department of Justice, National Institute of Corrections, National Academy of Corrections, Institute of Facility Planning and Plan Review, Boulder, Colorado, January 31 - February 4, 1983.

Institute of Police Technology and Management, University of North Florida, Police Executive Development, Jacksonville, Florida, April 24 - 28, 1989.

Florida Criminal Justice Executive Institute, Florida Department of Law Enforcement, Bureau of Criminal Justice Standards and Training, Florida State University, Chief Executive Seminar-Charter Class, Wakulla Springs, Florida, 1990 - 1991.

Florida Criminal Justice Executive Institute, The Center for Executive Studies, Contemporary Issues in Corrections, Jacksonville, Florida, June 16 - 18, 1992.

Florida Sheriff's Association, Diversified Training Program, Jail Management Issues in Florida, Tampa, Florida, February 22 - 24, 1993.

PROFESSIONAL EMPLOYMENT

07/07/10	Retired from Florida Department of Corrections
06/07 - 07/10	Correctional Programs Consultant State and Contract Work Release Florida Department of Corrections Tallahassee, Florida
06/06 - 06/07	Assistant to the Deputy Assistant Secretary of Institutions Florida Department of Corrections Tallahassee, Florida
02/03 - 06/06	Assistant to the Assistant Secretary of Institutions Florida Department of Corrections Tallahassee, Florida
10/01 - 02/03	Assistant to the Director of Institutions Florida Department of Corrections Tallahassee, Florida
06/99 - 10/01	Bureau Chief Staff Development Florida Department of Corrections Tallahassee, Florida

11/97 - 06/99	Executive Assistant to the Secretary Florida Department of Corrections Tallahassee, Florida
07/95 - Present	Michael A Berg & Associates Tallahassee, Florida
09/16/97	Retired Jacksonville Sheriff's Office 25 Years
07/95 - 09/97	Professional Standards Sections Inspections Unit Office of the Sheriff Jacksonville, Florida
02/87 - 07/95	Deputy Director Jails and Prisons Division Office of the Sheriff Jacksonville, Florida
04/77 - 02/87	Chief of Jails Jails and Prisons Division Office of the Sheriff Jacksonville, Florida
11/74 - 04/77	Facility Supervisor Fairfield Correctional Institution Jails and Prisons Division Office of the Sheriff Jacksonville, Florida
05/76 - 08/76	Adjunct Instructor Psychology Department University of North Florida State of Florida Jacksonville, Florida
11/72 - 11/74	Work Furlough Counselor Work Furlough Program Jails and Prisons Division Office of the Sheriff Jacksonville, Florida

10/72 - 11/72	Work Furlough Investigator Work Furlough Program Jails and Prisons Division Office of the Sheriff Jacksonville, Florida
09/72 - 10/72	Correctional Officer Jails and Prisons Division Office of the Sheriff Jacksonville, Florida

PROFESSIONAL AWARDS AND APPOINTMENTS

Florida Council on Crime and Delinquency, 47th Annual Criminal Justice Institute, Recipient of the Statewide Distinguished Service Award in the area of Corrections, Orlando, Florida, 1976. Also elected to statewide offices as follows: State Treasurer 1977 - 78, State Secretary 1978 - 79, State President Elect 1979 - 80, State President 1980 - 81.

Appointed by Governor Rubin Askew, Governor of the State of Florida, to serve as a member of the Corrections Task Force of the Governor's Commission on Criminal Justice Standards and Goals, 1978.

Appointed by Governor Rubin Askew, Governor of the State of Florida, to serve as a member of the Correctional Standards Council for the State of Florida, 1978.

Appointed by Governor Bob Graham, Governor of the State of Florida, to serve as a member of the Corrections Task Force of the Governor's Commission on Criminal Justice Standards and Goals, 1979.

Appointed by Governor Bob Graham, Governor of the State of Florida, to serve as a member of the Correctional Standards Council for the State of Florida, 1981.

Appointed by Governor Bob Graham, Governor of the State of Florida, to serve as a member of the Criminal Justice Standards and Training Commission for the State of Florida, 1981 and re-appointed in 1983.

Elected Vice Chairman of the Criminal Justice Standards and Training Commission in 1982, 1984 and 1986.

Appointed by Governor Bob Martinez, Governor of the State of Florida, to serve as a member of the Criminal Justice Standards and Training Commission for the State of Florida, 1987.

Elected Chairman of the Criminal Justice Standards and Training Commission in 1988 and 1989.

Recipient of the American Jail Association Golden Key Award, April 26, 1988.

Appointed by Governor Lawton Chiles, Governor of the State of Florida, to serve as a member of the Criminal Justice Standards and Training Commission for the State of Florida, 1991.

Recipient of the Florida Council on Crime and Delinquency's Louie L. Wainwright Award, July 1992.

Designated by Secretary Harry K. Singletary, Jr., Florida Department of Corrections, as proxy to the Criminal Justice Standards and Training Commission, State of Florida, 1997.

Designated by Secretary Michael W. Moore, Florida Department of Corrections, as proxy to the Criminal Justice Standards and Training Commission, State of Florida, 1999.

PROFESSIONAL CERTIFICATIONS

Certified by the State of Florida, Council of Correctional Standards, as a certified instructor in the field of Criminal Justice Training, January 4, 1977. Active May 2012

Certified by the State of Florida, Council of Correctional Standards, as proficient in the Corrections Area, July 1, 1974. Active May 2012

Certified by the State of Florida, Criminal Justice Standards and Training Commission, as proficient in the Law Enforcement Area, July 1986. Active May 2012

PROFESSIONAL AFFILIATIONS

American Correctional Association

Florida Council on Crime and Delinquency

National Sheriffs Association

Florida Sheriffs Association

National Institute of Corrections, Longmont, Colorado (Registered Consultant)

American Jail Association

University of Evansville Alumni Association

The National Student Register

Who's Who Among Students in American Universities and Colleges

Who's Who Among Greek Fraternities in American Universities and Colleges

Steven's Who's Who in Law Enforcement

SPECIALIZED KNOWLEDGE AND EXPERIENCE

- Jails and Prison Administration and Management
- Budgeting and Budget Development
- Staffing
- Policy and Procedure Development
- Jails and Prisons Standards and Accreditation
- Jails and Prisons Private Contracts
- Alternative Programs
- Treatment Programs
- Correctional Litigation; State and Federal
- Jail and Prison Security
- Jail and Prison Classification
- Jail and Prison Health Services
- Jail and Prison Food Service and Canteen Service
- Correctional Training
- Criminal Justice Standards and Training Commission
- Florida Model Jail Standards
- Correctional Grants
- Jail and Prison Design and Construction
- National Institute of Corrections

CAREER NARRATIVE

Michael A. Berg joined the Office of the Sheriff, Jacksonville, Florida in September 1972, as a Correctional Officer I for the Jails and Prisons Division. In November 1974, Mr. Berg was appointed to the position of Facility Supervisor of Fairfield Correctional Institution. In that position, Mr. Berg directed all aspects of Fairfield Correctional Institution as well as all educational and treatment programs for the department. In April 1977, Mr. Berg was appointed to the position of Chief of Jails of the Jails Division of Duval County, Office of the Sheriff. By this appointment, Mr. Berg assumed total responsibility for the day to day operation of the Duval County Jail, the Duval County Jail Annex, and the inmate facilities of University Medical Center of Jacksonville with a combined total of seven hundred seventy-five (775) inmates, a staff of three hundred ten (310), and a budget of eleven and one half million dollars (\$11,500,000).

In February of 1987, Mr. Berg was appointed Deputy Director of the Jails and Prisons Division. By this appointment, Mr. Berg assumed total responsibility of the daily operation of the Jails and Prisons Division which included the Duval County Jail, the Duval County Jail Annex, Fairfield Correctional Institute, the Community Corrections Divisions and the James I. Montgomery Correctional Institution.

With this appointment, Mr. Berg was responsible for the total operation and services of three (3) major divisions, nearly seven hundred and fifty (750) employees and approximately three thousand (3,000) inmates. In this position, Mr. Berg was also responsible for an annual budget of nearly forty-one million dollars (\$41,000,000).

As Deputy Director of Jails and Prisons, Mr. Berg was the leading member of the Sheriff's team that designed and administered the financing and construction of three (3) major correctional facilities in 1988, 1989 and 1990. These facilities are the three hundred (300) bed Catherine Street facility, the four hundred thirty-two (432) bed North Unit of the Prisons Division, and the new downtown Pre-Trial Detention Facility, which can house up to two thousand one hundred and eighty-nine (2,189) inmates. These facilities represent a cost of eighty one million dollars (\$81,000,00) and approximately two thousand nine hundred (2,900) new inmate beds.

On September 16, 1997, Mr. Berg retired from the Jacksonville Sheriff's Office after twenty-five (25) years of service.

In July 1995, he opened the criminal justice consultant firm of Berg and Associates, which he currently operates.

In November 1997, Mr. Berg was appointed by Secretary Harry K. Singletary, Jr., as Executive Assistant (Chief of Staff) to the Secretary for the Florida Department of Corrections.

In January 1999, he continued to serve Secretary Michael W. Moore as Executive Assistant to the Secretary (Chief of Staff) for the Florida Department of Corrections.

In June 1999, he was promoted to the position of Bureau Chief of Staff Development for the Florida Department of Corrections.

In October 2001, Mr. Berg was selected to be the Assistant to the Director of Institutions for the Florida Department of Corrections.

In February 2003, he was selected to be the Assistant to the Assistant Secretary of Institutions for the Florida Department of Corrections.

In June 2006, Mr. Berg's position was modified to be the Assistant to the Deputy Assistant Secretary of Institutions for the Florida Department of Corrections.

In June 2007, Mr. Berg was assigned to coordinate the contracts for the privately operated Work Release and Transition Centers across the state.

In July 2010, Mr. Berg retired from the Florida Department of Corrections.

(PROFESSIONAL PROFILE)

BERG & ASSOCIATES

**Michael A. Berg
16148 Sunray Road
Tallahassee, Florida 32309
850-894-9407**

FIRM PROFILE AND CREDENTIALS

Michael A. Berg and Associates

Background

Michael A. Berg and Associates is a criminal justice consultant firm formed by Michael A. Berg in 1995 after a twenty-five year career in criminal justice management, primarily in the area of corrections. Michael A. Berg possesses expertise in the areas of criminal justice planning, jail design, criminal justice consultant efforts, expert witness needs, technical assistance for correctional operations, criminal justice training, correctional staffing, budget preparation, inmate industry and more.

Michael A. Berg and Associates has first-hand experience in all aspects of:

- Large, medium and small correctional facility planning, design, operations and management issues.
- Jail design and development issue for large, medium and small facilities.
- Inmate treatment and labor program planning, operations and management issues.
- Criminal justice training and staff development.
- Correctional law at the federal, state and county levels.

Practice Philosophy

Michael A. Berg and Associates is committed to the philosophy that any criminal justice facility must fit the exact needs of the utilizing agency. To ensure that this occurs, every effort is made to determine and understand what it is that the using agency has to have and desires to have in order to operate at its most effective potential. These issues are incorporated in the planning and development effort in every appropriate area. To accomplish this, frequent meetings are scheduled with the using agency on every operational issue.

Michael A. Berg
Principal

**Experience
Summary**

Michael A. Berg represents over thirty-eight years of criminal justice management experience. He has experience in the management of small, medium and mega jails and prisons. His experience includes all areas of correctional and police related administrative issues from arrest to release. Mr. Berg is also very experienced in criminal justice training, correctional litigation, jail and prison design, inmate work and treatment programs, jail staffing plans and correctional operational policy and procedure development. Mr. Berg has provided technical assistance to both large and small correctional departments. He has performed as a consultant, technical assistance provider, expert witness and criminal justice equipment representative.

Michael A. Berg served as a commissioner for the State of Florida Correctional Standards Council and the Criminal Justice Standards and Training Commission under five governors for over twenty-five years. Mr. Berg is also the recipient of the Florida Council on Crime and Delinquencies Distinguished Service Award in the area of corrections, the American Jails Association's Golden Key Award and the highly coveted Louie L. Wainwright Award. Mr. Berg is also recognized for his contribution in the criminal justice arena by Steven's Who's Who in Law Enforcement.

**Jails and Prisons
Related Projects**

Michael A. Berg has served as the team manager on the following correctional design projects:

Project Director – Jail Programming of the Pretrial Detention Facility, Duval County Jacksonville, Florida.

Project Director - Jail Programming of the Nassau County Jail and Sheriff's Office, Nassau County Florida.

Project Director - Prison Programming of the J. I. Montgomery Correctional Center, North Unit, Duval County, Jacksonville, Florida.

Project Director – Treatment Facility Programming of the Community Correctional Center, Duval County, Jacksonville, Florida.

Project Director – Staffing Plan Development for small, medium, and large correctional facilities for the Florida Department of Corrections Jail Review.

Project Director – Correctional Construction Oversight of small, medium and large facilities from site preparation for occupancy.

Project Director – Transition Planning of all small, medium and large facilities in Duval County, Jacksonville, Florida.

Project Director – Operations Procedure Development for new facilities, Duval County, Jacksonville, Florida.

Trainer and Consultant – National Institute of Corrections, PONI and HONI Projects.

Project Advisor – Judicial Facility Development of the 4th Judicial Circuit Court Facilities, Duval County, Jacksonville, Florida.

Project Director – Renovation/Remodeling and occupancy of Duval County Jail Annex and B-Wing of the J. I. Montgomery Correctional Center, Duval County, Jacksonville, Florida.

Project Director – Inmate Industrial Planning and Development, Duval County, Jacksonville, Florida.

EDUCATION

Bachelor of Arts Degree, University of Evansville
Social Science and Criminal Justice Areas

Graduate Course Work in Criminal Justice
University of Georgia
University of Colorado
Michigan State University
Florida State University

REGISTRATION

Certified by the State of Florida Criminal Justice Standards and Training Commission in Corrections, Law Enforcement and Criminal Justice Training (Instructor)

Certified by the U. S. Justice Department, National Institute of Corrections as Registered Consultant

**PROFESSIONAL
AFFILIATIONS**

Florida Sheriff's Association
Florida Council on Crime and Delinquency
National Sheriff's Association
American Jail Association
American Correctional Association

OTHER FACILITY DESIGN/PROGRAMMING AND TRANSITION PROJECTS

Davidson County Sheriff's Office
Davidson County Jail
Nashville, Tennessee
600 Bed Facility
Pre-HONI and Modified HONI

Walker County Sheriff's Office
Walker County Jail
Jasper, Alabama
124 Bed Facility
Pre-HONI and Modified HONI

Osceola County Sheriff's Office
Osceola County Jail
Kissimmee, Florida
460 Bed Facility
System Assessment

Yavapai County Sheriff's Office
Yavapai County Jail
Prescott, Arizona
175 Bed Facility
Pre-HONI

Lincoln County Sheriff's Office
Lincoln County Jail
Troy, Missouri
120 Bed Facility
Pre-HONI

Maury County Sheriff's Office
Maury County Jail
Columbia, Tennessee
200 Bed Facility
Pre-HONI

Jackson County Sheriff's Office
Jackson County Jail
Scottsboro, Alabama
125 Bed Facility
Pre-HONI, Modified HONI and Full HONI

Dakota County Community Corrections
Dakota County Juvenile Facility
120 Bed Facility
Hastings, Minnesota
Pre-HONI

Alachua County Commission
Alachua County Jail
Gainesville, Florida
900 Bed Facility
Systems Assessment

Mason County Sheriff's Office
Mason County Jail
Ludington, Michigan
86 Bed Facility
Pre-HONI

Parma Ohio Police Department
Parma Jail
Parma Ohio
24 Bed Facility
Modified HONI

Columbia County Sheriff's Office
Columbia County Jail
Appling, Georgia
300 Bed Facility
Pre-HONI

Lake County Sheriff's Office
Lake County Jail
Crown Point, Indiana
560 Bed Facility
Pre-HONI

Limestone County Sheriff's Office
Limestone County Jail
Athens, Alabama
250 Bed Facility
Operational Review and Programming Project

Clark County Sheriff's Office
Clark County Jail
Kahoka, Missouri
60 Bed Facility
Pre-HONI

Montgomery County Sheriff's Office
Montgomery County Jail
Fonda, New York
224 Bed Facility
Pre-HONI

Nassau County Sheriff's Office
Nassau County Jail
Yulee, Florida
350 Bed Facility
Federal Court Appointed Monitor of
Federal Class Action Case against Nassau County
Assist in New Jail Design

Osceola County Sheriff's Office
Osceola County Jail
Kissimmee, Florida
Operational & Management Overview

Miller County Sheriff's Office
Miller County Jail
Colquitt, Georgia
Jail Design & Privatization Project

Nobles County Sheriff's Office
Nobles County Jail
Worthington, Minnesota
104 Bed Facility
Pre-HONI

Van Buren County Sheriff's Office
Van Buren County Jail
Spencer, Tennessee
104 Bed Facility
Jail Programming and Design Project
Court Facility Programming and
Design Project
Law Enforcement Center Programming and
Design Project

Columbia County Sheriff's Office
Columbia County jail
Lake City, Florida
Operational Overview and Jail
Size Projections

Orange County Commission
Orange County Department of Corrections
Orlando, Florida
Operational & Management Overview

Alachua County Commission
Alachua County Jail
Gainesville, Florida
Management Review Project

*Also provided advisory directions for numerous correctional agencies in Contract Food Service and Contract Preparation.

EXHIBIT "C"

EXPERT TESTIMONY 2011-PRESENT

1. Case No. CV-2009-27
In the Circuit Court of Perry, Alabama
Derrick Calhoun v. LCS Corrections
Services, Inc., et al.
2011
Plaintiffs
Julian McPhillips, Esq.
Montgomery, Alabama
2. Case No. 3:10-CV-355 MCR/EMT
Marcie Hamilton et al; v. Wendell Hall, et al
2011
Plaintiffs
Randall Berg, Esq.
Santa Rosa County, Florida
3. Case No. 5:10 – CT-3166-BO
Chad Bumgarner, et al, v. NC DOC, et al,
2011
Plaintiffs
Tod Leavon, Esq.
Raleigh, North Carolina
4. Civil Action File No. 1:10-CV-2590-WB
Nadine Keith, Administrator of the Estate of Godfrey Cook, Greg Maddox and Willetta Gray
Plaintiffs v Dekalb County, Georgia, et al, Defendants
2011
Plaintiffs
Keishan J. Davis, Esq
Dekalb County, Georgia
5. Case No.2:10-CV-420-FTM-36DN
Joyce Christie, on Behalf of the Estate of Nicholas T. Christie, Deceased, Plaintiff v
Lee County Sheriff's Department, Lee County, Florida, et al., Defendants
2012
Plaintiffs
William Hawai, Esq
Lee County, Florida

6. Case No. 2:10 – CV-00528-JES/SPC
William Grawbadger, Plaintiff v. George Emaniolidis and Timothy Budz, Administrators of
Florida Civil Commitment Center, Defendants
2012
Plaintiffs
Kristen C. Lentz, Esq
Desoto County, Florid
7. Case No.: 4:10-CV-02042-BSM/JTR; Cecil Edwards, Jr
Cecil Edwards, Jr., Plaintiff v. Karl Byrd, et al., Defendants
2012
Plaintiffs
Morris Thompson, Esq
Faulkner County, Arkansas
8. Case No.: Civil Action File Number 2012-CV-217835
Gabrielle Hall, Plaintiff v. Sheriff Theodore Jackson, Defendant
2013
Plaintiffs
Brian Spears, Esq.
Fulton County, Georgia
9. Case No.: 313 –CV-1012-J-34 TEM
Zina Nelson, Plaintiff v. John Rutherford, Defendant
2013
Plaintiffs
William J. Sheppard
Duval County, Florida
10. Case No.: 6:09-CV-1394-ORL-19-DAB
Carolyn McCreary, as Personal Rep. of the Estate
of Lorenza McCreary v. Brevard County, Florida
2013
Plaintiffs
Eric A. Jacobs, Esq.
Brevard County, Florida
11. Case No.: 13-CV-14481-Southern District
Prison Legal News, a project of the Human Rights
Defense Center, Plaintiff v. Kenneth J. Mascara
2013
Plaintiffs
Randall Berg, Esq.
St. Lucie County, Florida

12. Case No.: 3:13-CV-1352-5-99MMH-JRK
C. Williams Curtis, on Behalf of the Estate of Daniel
Linsinbigler, Deceased v. Rick Beseler as Clay County FL Sheriff, et al.
2014
Plaintiffs
Michael Marrese, Esq.
Clay County, Florida
13. Donald Grochowski, on Behalf of the Estate of
Kenneth Grochowski, Deceased v. Clayton County Georgia Kemmel Kimbrough, Sheriff, et al.
2014
Plaintiffs
John Batson, Esq.
Clayton County, Georgia
14. Case No. 1:14 -CV-00296-5-JC/LAM
Theodore Martinez v. Correctional Healthcare Co., Inc.
Bernalillo County , New Mexico, et al.
2014
Plaintiffs
Dathan Weems, Esq.
Bernalillo County, New Mexico
15. Case No. 1:13-CV-00548-KBM-ACT
The Wrongful Death Estate of Daniel Stephens Shearer, Deceased
By George Shearer as Personal Representative v. Correctional Healthcare Management, Inc.,
Bernalillo County, New Mexico, et al.
2014
Plaintiffs
Dathan Weems, Esq.
Bernalillo County, New Mexico
16. Case No. 2:14-CV-158-FtM-29 DNF
Carlo Laudadio v. Corizon, et al., and Lee County Florida
2014
Plaintiffs
Patrick Harland, Esq.
Lee County, Florida
17. Case No. 13-14481-C1V-Martinez/Lynch
Tyrell Jackson and Randall Chapman, et al., v. Donald Ash, Sheriff for
Wyandotte County, Kansas
2014
Plaintiffs
Joshua A. Glickman, Esq./Stephen Bonney, Esq.
Wyandotte County, Kansas

18. Robert Williams v. Massachusetts Department of Corrections
2014
Plaintiffs
Shannon Leelyn and Mark Bluver, Esq.
Massachusetts Department of Corrections
19. Case No. 3:13-CV-05878-EMC-N.D. CAL.
Audley B. Lyon, Jr., et al., v. U.S. ICE
2014
Plaintiffs
Julie Harumi Mass, Esq.
ICE Northern California
20. Case No. 4:14-CV-397 RH/CAS
Joseph Reilly, et al., v. Sheriff of Leon County
2014
Plaintiffs
Randall Berg, Esq.
Leon County, Florida

EXHIBIT "D"

**BERG & ASSOCIATES
16148 SUNRAY ROAD
TALLAHASSEE, FLORIDA 32309
850-894-9407**

FEE SCHEDULE FOR SERVICES RENDERED

Initial Review	\$1500.00
Deposition Days	\$1500.00 (Per Day)
Court Days	\$1500.00 (Per Day)
Research/Telephone Work	\$150.00 (Hourly)
Report Writing	\$150.00 (Hourly)
Travel Days	\$150.00 (Hourly)
Travel Fees:	
Per Diem	\$66.00 (Daily)
Mileage	\$ 1.00 (Per Mile)
Lodging	At Rate
Airline	At Rate
Car Rental	At Rate

Payment for services rendered is due upon receipt of billing invoice.
Check/s are to be made payable to Michael A. Berg and mailed to the
following address:

Michael A. Berg
16148 Sunray Road
Tallahassee, Florida 32309

Tax number provided upon request.

Exhibit B

1 ROBERT P. VARIAN (SBN 107459)
CHARLES J. HA (*pro hac vice*)
2 DAVID KEENAN (*pro hac vice*)
JUDY KWAN (SBN 273930)
3 ALEXIS YEE-GARCIA (SBN 277204)
ORRICK, HERRINGTON & SUTCLIFFE LLP
4 405 Howard Street
San Francisco, CA 94105
5 Telephone: (415) 773-5700
Facsimile: (415) 773-5759
6 Email: rvarian@orrick.com

7 JULIA HARUMI MASS (SBN 189649)
ANGÉLICA SALCEDA (SBN 296152)
8 MICHAEL T. RISHER (SBN 191627)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
9 OF NORTHERN CALIFORNIA
39 Drumm Street
10 San Francisco, CA 94111
Telephone: (415) 621-2493
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14
15 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 AUDLEY BARRINGTON LYON, JR., et al.,
on behalf of themselves and all others similarly
18 situated,

19 Plaintiffs,

20 v.

21 UNITED STATES IMMIGRATION AND
22 CUSTOMS ENFORCEMENT, et al.,

23 Defendants.

Case No.: 13-cv-05878-EMC

**DECLARATION OF CARL TAKEI IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY ADJUDICATION**

Date: February 11, 2016
Time: 1:30 p.m.
Courtroom: 5
Judge: Hon. Edward M. Chen

[PUBLIC VERSION]

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26 *Attorneys for Plaintiffs*

1 I, Carl Takei, declare as follows:

- 2 1. I make this declaration from my own personal knowledge and, if called to testify on these
3 facts, could and would do so competently.
- 4 2. I accompanied Plaintiffs' expert Michael Berg for the inspections of Yuba County Jail
5 ("Yuba") on October 13, 2015; Rio Consumnes Correctional Center ("RCCC") on
6 October 13, 2015; West County Detention Facility ("Contra Costa") on October 14, 2015;
7 and Mesa Verde Detention Facility ("Mesa Verde") on October 15, 2015, in this case.
- 8 3. Per an agreement with Defendants' counsel, Defendants provided Plaintiffs with a digital
9 camera for the purpose of taking photographs during the inspections. I operated the
10 camera and took photographs using the settings set by Defendants when the camera was
11 provided to me. These photographs were subsequently reviewed and in some cases
12 redacted for security and privacy reasons prior to being produced back to Plaintiffs'
13 counsel. For ease of reference, I inserted Bates numbers reflecting the photo filenames.
14 Apart from the addition of Bates numbering, the photographs attached to this Declaration
15 have not been modified in any way from the photographs that Defendants produced to
16 Plaintiffs.

17 **YUBA PHOTOS**

- 18 4. *Yuba - Booking Area*: Photographs DSC 00019, 20, and 21 are fair and accurate
19 depictions of the booking area of Yuba as it appeared during the inspection on October 13,
20 2015. DSC 00019 depicts the booking desk on the left and multiple rows of inmate chairs
21 on the right. DSC 00020 depicts the inmate chairs from the opposite direction as DSC
22 00019. DSC 00021 depicts the booking desk.
- 23 5. *Yuba - Lyon phone room*: Photographs DSC 00190 and 191 are fair and accurate
24 depictions of the interior of the Yuba semi-private phone room as it appeared during the
25 inspection on October 13, 2015. DSC 00190 is a view of both phones and DSC 00191 is a
26 view of the free call platform instructions and other information in the room.

- 1 6. *Yuba - Office*: Photograph DSC 00027 is a fair and accurate depiction of an office in Yuba
2 that may be used for detainee telephone calls, as it appeared during the inspection on
3 October 13, 2015.
- 4 7. *Yuba - Hallway outside office and Lyon phone room*: Photograph DSC 00033 is a fair and
5 accurate depiction of the hallway outside the office and the semi-private phone room at
6 Yuba as this area appeared during the inspection on October 13, 2015.
- 7 8. *Yuba - Unit A*: Photographs DSC 00222, 225, and 229 are fair and accurate depictions of
8 Yuba Unit A as it appeared during the inspection on October 13, 2015. DSC 00222
9 depicts the two telephones. DSC 00225 depicts the righthand telephone in relation to the
10 nearest cell. DSC 00229 depicts the lefthand telephone in relation to the nearest table.
- 11 9. *Yuba - Unit B*: Photographs DSC 00210 and 219 are fair and accurate depictions of Yuba
12 Unit B as it appeared during the inspection on October 13, 2015. DSC 00210 depicts the
13 two downstairs telephones and DSC 00219 depicts the one upstairs telephone.
- 14 10. *Yuba - Unit C*: Photographs DSC 00198 and 204 are fair and accurate depictions of Yuba
15 Unit C as it appeared during the inspection on October 13, 2015. DSC 00198 depicts the
16 two downstairs telephones and DSC 00204 depicts the one upstairs telephone.
- 17 11. *Yuba - Unit D*: Photographs DSC 00261 and 263 are fair and accurate depictions of Yuba
18 Unit D as it appeared during the inspection on October 13, 2015. DSC 00261 depicts the
19 two telephones. DSC 0023 depicts the righthand telephone in relation to the nearest cell.
- 20 12. *Yuba - Unit E*: Photographs DSC 00252 and 258 are fair and accurate depictions of Yuba
21 Unit E as it appeared during the inspection on October 13, 2015. DSC 00252 depicts the
22 two telephones. DSC 00258 depicts the lefthand telephone in relation to the nearest cell.
- 23 13. *Yuba - Unit F*: Photographs DSC 00244 and 247 are fair and accurate depictions of Yuba
24 Unit F as it appeared during the inspection on October 13, 2015. DSC 00244 depicts the
25 two telephones. DSC 00247 depicts the righthand telephone in relation to the nearest cell.
- 26 14. *Yuba - Hallway outside of G, H, and I*: DSC 00076, 77, and 78 are fair and accurate
27 depictions of the exterior of Yuba Unit G as it appeared during the inspection on October
28

1 13, 2015. In each of these photos, the housing unit telephone is located behind the tan
2 metal slab to the right of the cell door.

3 15. *Yuba - Unit G*: Photographs DSC 00035, 36, 73, and 74 are fair and accurate depictions of
4 the interior of Yuba Unit G as it appeared during the inspection on October 13, 2015.

5 16. *Yuba - Unit H*: Photograph DSC 00080 is a fair and accurate depiction of the interior of
6 Yuba Unit H as it appeared during the inspection on October 13, 2015.

7 17. *Yuba - Unit I*: Photographs DSC 00098, 105, and 106 are fair and accurate depictions of
8 the interior of Yuba Unit I as it appeared during the inspection on October 13, 2015. DSC
9 00098 depicts the housing unit telephone. DSC 00105 depicts (with redactions) the view
10 from the table to the living area. DSC 00106 depicts the view from the table to the phone.

11 18. *Yuba - Unit K*: Photographs DSC 00175 is a fair and accurate depiction (with redactions)
12 of the interior of Yuba Unit K as it appeared during the inspection on October 13, 2015.

13 19. *Yuba - Unit L*: Photographs DSC 00179 and 180 are fair and accurate depictions of the
14 interior of Yuba Unit L as it appeared during the inspection on October 13, 2015.

15 20. *Yuba - Unit P*: Photographs DSC 00139 and 142 are fair and accurate depictions of the
16 telephone and nearby bunks in Yuba Unit P as it appeared during the inspection on
17 October 13, 2015.

18 21. *Yuba - Q1 and Q2*: Photograph DSC 00125 is a fair and accurate depiction of the
19 telephones in the hallway outside Yuba Units Q1 and Q2 as they appeared during the
20 inspection on October 13, 2015.

21 22. *Yuba - Unit R*: Photographs DSC 00112 and 114 are fair and accurate depictions of the
22 interior of Yuba Unit R as it appeared during the inspection on October 13, 2015. DSC
23 000112 depicts the telephone in relation to the desk on the left and bunk on the right. DSC
24 000114 depicts the telephone in relation to the desk on the left and two bunks on the right.

25 23. *Yuba - S1, S2, S3, S4, S5, and S6*: Photograph DSC 00132 is a fair and accurate depiction
26 of the telephone in the hallway outside the S-series Yuba units as it appeared during the
27 inspection on October 13, 2015.

1 24. *Yuba - Unit T*: Photographs DSC 00160 is a fair and accurate depiction of the telephone,
2 television, and nearby bunks in Yuba Unit T as it appeared during the inspection on
3 October 13, 2015.

4 25. *Yuba - Free call platform lists*: Photograph DSC 00094 is a fair and accurate depiction of
5 a page from the free call platform list in Yuba Unit H, as it appeared during the inspection
6 on October 13, 2015. The printed date is 03/06/2015. Photograph DSC 00129 is a fair and
7 accurate depiction of a page from the free call platform list posted next to the telephones
8 in DSC 000125 (i.e., near Q1 and Q2), as it appeared during the inspection on October 13,
9 2015. The printed date is 03/06/2015. Photograph DSC 00141 is a fair and accurate
10 depiction of a page from the free call platform list in Yuba Unit P, as it appeared during
11 the inspection on October 13, 2015. The printed date is 03/06/2015. Photograph DSC
12 00148 is a fair and accurate depiction of a page from another copy of the free call platform
13 list in Yuba Unit P, as it appeared during the inspection on October 13, 2015. The printed
14 date is 03/06/15. Photograph DSC 00188 is a fair and accurate depiction of a page from
15 the free call platform list nearest to the phone in Yuba Unit L, as it appeared during the
16 inspection on October 13, 2015. The printed date is 02/07/14. Photograph DSC 00253 is a
17 fair and accurate depiction of a page from the free call platform list posted in Yuba Unit
18 E, as it appeared during the inspection on October 13, 2015. The printed date is 02/11/14.
19 Photograph DSC 00254 is a fair and accurate depiction of a page from another copy of the
20 free call platform list posted in Yuba Unit E, as it appeared during the inspection on
21 October 13, 2015. The printed date is 03/06/2015.

22 **RCCC PHOTOS**

23 26. *RCCC - CBF 200*: Photograph DSC 00278 is a fair and accurate depiction of RCCC Unit
24 CBF 200 as it appeared during the inspection on October 13, 2015. DSC 00278 depicts
25 the telephones in relation to the stairwell, table, and each other.
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27
28

- 1 27. *RCCC - CBF 400*: Photograph DSC 00285 is a fair and accurate depiction of RCCC Unit
2 CBF 200 as it appeared during the inspection on October 13, 2015. DSC 00285 depicts
3 the telephones in relation to the stairwell, table, and each other.
- 4 28. *RCCC - SBF 500*: Photograph DSC 00290 is a fair and accurate depiction of RCCC Unit
5 CBF 200 as it appeared during the inspection on October 13, 2015. DSC 00290 depicts
6 the telephones in relation to the stairwell and each other.
- 7 29. *RCCC - KBF 100*: Photographs DSC 00307 and 310 (redacted) are fair and accurate
8 depictions of RCCC Unit KBF 100 as it appeared during the inspection on October 13,
9 2015. DSC 00307 faces toward the door to the unit. DSC 00310 faces into the interior of
10 the unit.
- 11 30. *RCCC - KBF 300*: Photograph DSC 00327 is a fair and accurate depiction of RCCC Unit
12 KBF 300 as it appeared during the inspection on October 13, 2015. DSC 00327 depicts
13 both telephone banks in the unit.
- 14 31. *RCCC - KBF 400*: Photographs DSC 00329 and 337 are fair and accurate depictions of
15 RCCC Unit KBF 400 as it appeared during the inspection on October 13, 2015. DSC
16 00329 depicts one telephone bank in relation to the television. DSC 00337 depicts both
17 telephone banks in the unit.
- 18 32. *RCCC - KBF 500*: Photographs DSC 00342 and 352 are fair and accurate depictions of
19 RCCC Unit KBF 500 as it appeared during the inspection on October 13, 2015. DSC
20 00342 depicts one telephone bank in relation to the television. DSC 00352 depicts both
21 telephone banks in the unit.
- 22 33. *RCCC - RBF "Core" Cells*: Photographs DSC 00355 (redacted) and 360 (redacted) are
23 fair and accurate depictions of the RCCC "Core" cell area as it appeared during the
24 inspection on October 13, 2015. DSC 00355 depicts the portable telephone used in this
25 area of RBF in front of a cell, rotated to show the telephone controls to the camera. DSC
26 00360 depicts the phone and surrounding environment, with the controls facing into the
27 cell.
- 28

- 1 34. *RCCC - RBF 25*: Photographs DSC 00363, 369, and 372 are fair and accurate depictions
2 of RCCC Unit RBF 25 as it appeared during the inspection on October 13, 2015. DSC
3 00363 and 369 depict the telephone and surrounding environment. DSC 00372 depicts the
4 relationship between the telephone and the righthand table depicted in DSC 00369.
- 5 35. *RCCC - RBF 12*: Photographs DSC 00376, 377 (redacted), 378 (redacted), 380, and 384
6 (redacted) are fair and accurate depictions of RCCC Unit RBF 12 as it appeared during the
7 inspection on October 13, 2015. DSC 00376 depicts the telephone and surrounding
8 environment, including a toilet divider, sink, and television. DSC 00377 depicts the toilet
9 in relation to its divider. DSC 00378 depicts the telephone in relation to other features.
10 DSC 00380 depicts the relationship between the telephone and the toilet divider. DSC
11 00384 depicts the relationship between the telephone and the table.
- 12 36. *RCCC - RBF 26*: Photograph DSC 00390 is a fair and accurate depiction of RCCC Unit
13 RBF 26 as it appeared during the inspection on October 13, 2015. DSC 00390 depicts the
14 telephone in relation to the toilet divider.
- 15 37. *RCCC - RBF 22*: Photograph DSC 00405 is a fair and accurate depiction of RCCC Unit
16 RBF 22 as it appeared during the inspection on October 13, 2015. DSC 00405 depicts the
17 telephone in relation to the toilet divider and bunk.
- 18 38. *RCCC - Law Library*: Photographs DSC 00422, 423, 426, and 428 are fair and accurate
19 depictions of the RCCC Law Library as it appeared during the inspection on October 13,
20 2015. DSC 00422 and 423 depict the desk telephone that may be used by detainees. DSC
21 00426 and 00428 depict the rest of the law library.
- 22 39. *RCCC - Free call platform lists*: Photograph DSC 00356 is a fair and accurate depiction
23 of a page from the free call platform list attached to the RCCC RBF “Core Unit” portable
24 telephone, as it appeared during the inspection on October 13, 2015. The printed date is
25 12/03/2014. Photograph DSC 00366 is a fair and accurate depiction of a page from the
26 free call platform list posted adjacent to the RCCC RBF Unit 25 telephone, as it appeared
27 during the inspection on October 13, 2015. The printed date is 12/03/2014. Photograph
28

1 DSC 00379 is a fair and accurate depiction of a page from the free call platform list posted
2 adjacent to the RCCC RBF Unit 12 telephone, as it appeared during the inspection on
3 October 13, 2015. The printed date is 12/03/2014.

4 **CONTRA COSTA PHOTOS**

5 40. *Contra Costa - Unit 8B*: Photographs DSC 00440, 444, 445, 452, 473 (redacted), 484,
6 490, 494, 504, 516, 528, 531, 533, and 535 are fair and accurate depictions of Contra
7 Costa Unit 8B as it appeared during the inspection on October 14, 2015. DSC 00440
8 depicts telephone 37 and its surrounding environment. DSC 00444 depicts telephone 84.
9 DSC 00445 depicts the instructions next to telephone 84. DSC 00452 depicts telephone 37
10 in relation to Cell 19B. DSC 00449 depicts telephones 84 and 54 and their surrounding
11 environment. DSC 00473 depicts telephones 61 and 85 and their surrounding
12 environment. DSC 00484 depicts the relationship between telephones 62 and 14. DSC
13 00490 depicts telephones 62 and 14 and their surrounding environment. DSC 00494
14 depicts telephones 66 and 42 and their surrounding environment. DSC 00504 depicts
15 telephones 18 and 89 and their surrounding environment. DSC 00516 depicts telephones
16 88 and 65 and their surrounding environment. DSC 00528 depicts telephones 41 and 17
17 and their surrounding environment. DSC 00531 depicts telephone 17 in relation to Cell
18 59B. DSC 00533 depicts telephone 41 in relation to Cell 60B. DSC 00535 depicts
19 telephone 17 in relation to the common area.

20 41. *Contra Costa - Lyon Phone/Attorney Meeting Rooms*: Photographs DSC 00538 and 539
21 are fair and accurate depictions of the free phone/attorney meeting room in Contra Costa
22 Unit 8B as it appeared during the inspection on October 14, 2015. Photographs DSC
23 00543 and 545 are fair and accurate depictions of the free phone/attorney meeting room in
24 Contra Costa Unit 7A as it appeared during the inspection on October 14, 2015.

25 42. *Contra Costa - Unit 7A*: Photographs DSC 00546, 559, 563, 566, 570, 573, 576, 579, and
26 582 are fair and accurate depictions of Contra Costa Unit 7A as it appeared during the
27 inspection on October 14, 2015. DSC 00546 depicts telephones 81 and 09 and their
28

surrounding environment. DSC 00559 depicts telephone 33 and its surrounding environment. DSC 00563 depicts telephones 105 and 13 and their surrounding environment. DSC 00566 depicts telephones 166 and 153 and their surrounding environment. DSC 00570 depicts telephones 130 and 142 and their surrounding environment. DSC 00573 depicts telephones 81 and 09 and their surrounding environment. DSC 00576 depicts telephones 140 and 164 and their surrounding environment. DSC 00579 depicts telephones 118 and 106 and their surrounding environment. DSC 00582 depicts telephones 58 and 82 and their surrounding environment.

43. During the inspection, Plaintiffs' and Defendants' counsel agreed to the following stipulation regarding the layout and measurements of the housing units at Contra Costa: "7A is a mirror image of 8B in terms of layout, with respect to the location of housing unit telephones in relation to cells and couches and televisions, +/- 3 inches."

44. *Contra Costa - VTC Rooms*: DSC 00591 and 00588 are fair and accurate depictions of Contra Costa VTC Rooms 1 and 2 as they appeared during the inspection on October 14, 2015. DSC 00591 depicts the interior of VTC Room 1. DSC 00588 depicts the interior of VTC Room 2.

45. *Contra Costa - Law Library*: DSC 00594 is a fair and accurate depiction of the interior of the law library room inside the inmate library at Contra Costa as it appeared during the inspection on October 14, 2015.

46. *Contra Costa - Free call platform lists*: Photograph DSC 00434 is a fair and accurate depiction of the first page of the free call platform list posted in Contra Costa Unit 8B, as it appeared during the inspection on October 14, 2015. The printed date is 12/06/12. Photograph DSC 00555 is a fair and accurate depiction of the first page of the free call platform list posted in Contra Costa Unit 7A, as it appeared during the inspection on October 14, 2015. The printed date is 12/06/12.

MESA VERDE PHOTOS

- 1 47. *Mesa Verde - Interview rooms*: Photographs DSC 00598, 600, 602, and 604 are fair and
2 accurate depictions of the Mesa Verde attorney interview/VTC rooms as they appeared
3 during the inspection on October 15, 2015. DSC 00598 depicts the interior of Private
4 Attorney Room 128. DSC 00600 depicts the interior of Private Attorney Room 127. DSC
5 00602 depicts the interior of Video Teleconference Room 130. DSC 00604 depicts the
6 interior of Video Teleconference Room 132.
- 7 48. *Mesa Verde - Interview 146 and Large VTC room A116*: Photographs DSC 00606, 607,
8 0765, and 766 are fair and accurate depictions of Interview 146 and Large VTC Room
9 A116 as they appeared during the inspection on October 15, 2015. DSC 00606 depicts the
10 interior of Interview Room 146. DSC 00607 depicts the window of Interview Room 146,
11 including the circular metal grille that is embedded in the window. DSC 00765 and 766
12 depict, respectively, the telephone and the VTC setup in Large VTC Room A116.
- 13 49. *Mesa Verde - Telephone closeup*: Photographs DSC 00617 and 618 are fair and accurate
14 depictions of a housing unit telephone at Mesa Verde and the instructions printed on the
15 telephone as it appeared during the inspection on October 15, 2015.
- 16 50. *Mesa Verde - Unit A*: Photographs DSC 00740, 741, and 754 are fair and accurate
17 depictions of Mesa Verde Unit A as it appeared during the inspection on October 15,
18 2015. DSC 00740 and 741 depict a bank of six phones in the front area of Unit A. DSC
19 00754 depicts a bank of four phones in relation to LexisNexis terminals in the rear area of
20 Unit A.
- 21 51. *Mesa Verde - Unit B*: Photographs DSC 00633, 629, 768, 769, and 783 are fair and
22 accurate depictions of Mesa Verda Unit B as it appeared during the inspection on October
23 15, 2015. DSC 00633 depicts a bank of six telephones in the front area of Unit B. DSC
24 00629 depicts the relationship between the bank of telephones and a table. DSC 00768
25 and 769 depict two banks of two telephones each in the rear area of Unit B in relation to
26 LexisNexis terminals and a table. DSC 00783 depicts the bank of telephones in DSC
27 00769 in relation to a bunk.
28

1 52. *Mesa Verde - Unit C*: Photographs DSC 00694 (redacted), 701, 703, 713 (redacted), are
2 fair and accurate depictions of Mesa Verde Unit C as it appeared during the inspection on
3 October 15, 2015. DSC 00694 depicts a bank of two telephones in the rear area of Unit C.
4 DSC 00701 depicts the same bank of telephones in relation to bunks. DSC 00703 depicts
5 a second bank of two telephones in the rear area of Unit C, in relation to LexisNexis
6 terminals. DSC 00713 (redacted) depicts a bank of six telephones in the front area of Unit
7 C.

8 53. *Mesa Verde - Unit D*: Photographs DSC 00654, 663, 664, and 679 are fair and accurate
9 depictions of Mesa Verde Unit D as it appeared during the inspection on October 15,
10 2015. DSC 00654 depicts a bank of six telephones in the front area of Unit D. DSC 00663
11 depicts a bank of two telephones in the rear area of Unit D. DSC 00664 depicts that bank
12 of telephones in relation to a bunk. DSC 00679 depicts another bank of two telephones in
13 the rear area of Unit D in relation to LexisNexis terminals and a table.

14 54. *Mesa Verde - Law library*: Photographs DSC 00724 and 726 are fair and accurate
15 depictions of the Mesa Verde law library as it appeared during the inspection on October
16 15, 2015.

17 55. *Mesa Verde - Holding cells*: Photograph DSC 00792 is a fair and accurate depiction of the
18 portable housing unit telephone used in the Holding Cells. DSC 00798 is a fair and
19 accurate depiction of the interior of a Holding Cell facing toward the cell door, with the
20 telephone receiver passed through the tray slot in the cell door.

21 56. *Mesa Verde - Free call platform lists*:

- 22 a. *Unit A*: Photograph DSC 00711 and 712 are fair and accurate depictions of a copy
23 of the free call platform list posted in Mesa Verde Unit A, as it appeared during the
24 inspection on October 15, 2015. The printed date is 2/27/2015. Photographs DSC
25 00738 and 739 are fair and accurate depictions of another copy of the free call
26 platform list posted in Mesa Verde Unit A, as it appeared during the inspection on
27 October 15, 2015. The printed date of the first page is 6/26/2015 and the printed
28

1 dates of the other pages are 2/27/2015. Photographs DSC 00751 and 752 are fair
2 and accurate depictions of another copy of the free call platform list posted in
3 Mesa Verde Unit A, as it appeared during the inspection on October 15, 2015. The
4 printed date is 2/27/2015. Photographs DSC 00756 and 757 are fair and accurate
5 depictions of another copy of the free call platform list posted in Mesa Verde Unit
6 A, as it appeared during the inspection on October 15, 2015. The printed date of
7 the first page is 6/26/2015 and the printed dates of the other pages are 2/27/2015.

8 b. *Unit B:* Photograph DSC 00614 is a fair and accurate depiction of the first and
9 second pages of a copy of the free call platform list posted in Mesa Verde Unit B,
10 as it appeared during the inspection on October 15, 2015. The printed date of the
11 first page is 6/26/2015 but the second page is dated 02/27/2015. Photograph DSC
12 00616 is a fair and accurate depiction of the first page of another copy of the free
13 call platform list posted in Mesa Verde Unit B, as it appeared during the inspection
14 on October 15, 2015. The printed date is 05/20/2015. Photograph DSC 00636 is a
15 fair and accurate depiction of another copy of the free call platform list posted in
16 Mesa Verde Unit B, as it appeared during the inspection on October 15, 2015. The
17 printed date is 02/27/2015. Photograph DSC 00770 is a fair and accurate copy of
18 another copy of the free call platform list posted in Mesa Verde Unit B, as it
19 appeared during the inspection on October 15, 2015. The printed date for the first
20 page is difficult to read but is different from the printed dates for the other pages,
21 which appear to be 02/27/2015.

22 c. *Unit C:* Photographs DSC 00689 and 690 are fair and accurate depictions of a
23 copy of the free call platform list posted in Mesa Verde Unit C, as it appeared
24 during the inspection on October 15, 2015. The printed date is 2/27/2015.
25 Photographs DSC 00695 and 696 are fair and accurate depictions of another copy
26 of the free call platform list posted in Mesa Verde Unit C, as it appeared during the
27 inspection on October 15, 2015. The printed date is 2/27/2015. Photograph DSC
28

00711 is a fair and accurate depiction of another copy of the free call platform list posted in Mesa Verde Unit C, as it appeared during the inspection on October 15, 2015. The printed date is difficult to read but appears to be 2/27/2015. Photograph DSC 00714 is a fair and accurate depiction of another copy of the free call platform list posted in Mesa Verde Unit C, as it appeared during the inspection on October 15, 2015. The printed date is difficult to read but appears to be 2/27/2015.

d. *Unit D*: Photographs DSC 00638 and 639 are fair and accurate depictions of a copy of the free call platform list posted in Mesa Verde Unit D, as it appeared during the inspection on October 15, 2015. The printed date of the first page is 6/26/2015 but the second page is dated 02/27/2015. Photograph DSC 00641 is a fair and accurate depiction of another copy of the free call platform list posted in Mesa Verde Unit D, as it appeared during the inspection on October 15, 2015. The printed date is 5/20/2015. Photographs DSC 00656 and 657 are fair and accurate depictions of another copy of the free call platform list posted in Mesa Verde Unit D, as it appeared during the inspection on October 15, 2015. The printed date is 02/27/2015. Photograph DSC 00670 is a fair and accurate depiction of another copy of the free call platform list posted in Mesa Verde Unit D, as it appeared during the inspection on October 15, 2015. The printed date of the first page is 6/26/2015 but the second page is dated 02/27/2015.

e. *Holding cells*: Photograph DSC 00790 and 791 are fair and accurate depictions of the free call platform list posted outside of the Mesa Verde holding cells, as it appeared during the inspection on October 15, 2015. The printed date is 2/27/2015.

57. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on December 14, 2015, in Washington, DC



Carl Takei

All Exhibits Provisionally Filed Under Seal

Exhibit C

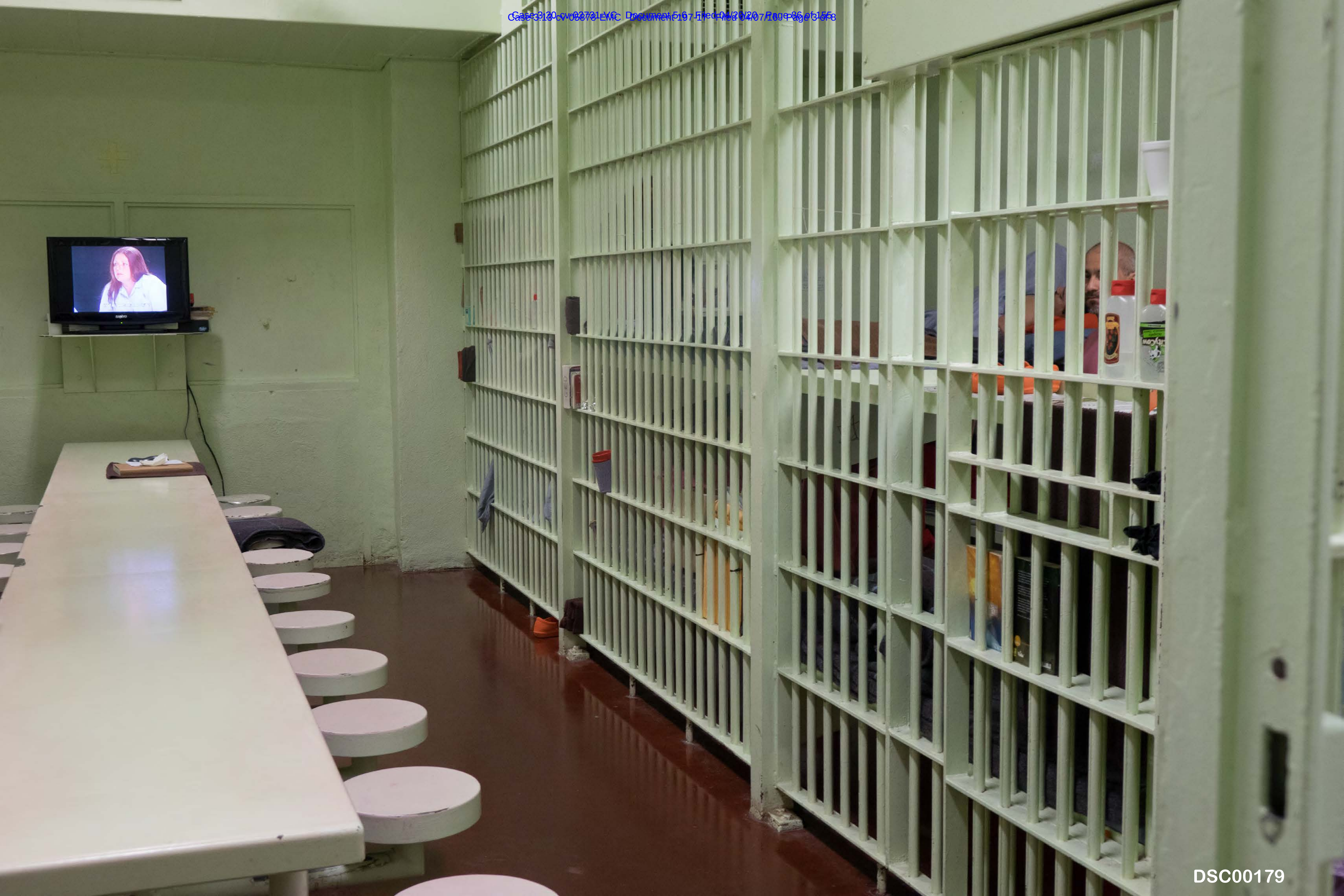
SELECT EXHIBITS (4 of 6)

from Decl. of C. Takei ISO

Plaintiffs' MSJ

[Unsealed per 3/31/16 Order - Dkt 183; Dkt 166 p. 3, C1]









Homeland Security

Yuba County Jail

The following numbers are provided as free calls to all ICE detainees

To place a Pro Bono call, select a language then dial # 10 and follow the voice prompts.

Once connected to the platform:

- Press 1 for English, marque 2 para Español.
- Enter your 9-digit Alien Number.
- Enter the Speed Dial number from the list below followed by the # Key.
- Then Stay on the line.

*American Bar Association	2150 #	*American Civil Liberties Union	9160 #
*Asian Law Alliance - Free Legal	107 #	ACLU - Northern California	
*Catholic Charities Immigration Program - Free Legal Services	106 #	*Asian Law Caucus -Free Legal	101 #
*Community Legal Services in East Palo Alto	9222 #	*Central American Resource Center (CARECEN)- Free Legal Services	104 #
*DHS Inspector General	518 #	*Community Legal Services in East Palo Alto	9232 #
*ICE Office of Professional Responsibility	5673 #	*EOIR (Executive Office of Immigration Review) - San Francisco	110 #
*IMMIGRATION COURT INFORMATION HOTLINE	111 #	*ICE Public Advocate Hotline - Translation service	9116 #
*International Institute of the East	103 #	*Immigration Law Clinic U.C. Davis School of Law - Free Legal Services	105 #
*La Raza Centro Legal San Francisco - Free Legal Services	109 #	*Joint Intake Center	5663 #
*United Nations High Commissioner for Refugees (UNHCR) Asylum-seekers and Refugees only	566 #	*Lawyers Committee for Civil Rights	102 #
		*US District Court - San Francisco	113 #

YUBAJC

2-7-14

17



La ley sobre las violaciones sexuales en prisión 2003

ayuda a la comunidad de...

Handwritten notes in Chinese:

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YUBACA

03/06/2015

	Zambia - Embassy in Washington DC	371 #
	Vietnam - Consulate in San Francisco	188 #
	Uzbekistan - Embassy in Washington DC	692 #
	United Arab Emirates - Embassy in Washington DC	362 #
	Uganda - Consulate in Washington DC	360 #
	Turkey - Consulate in Washington DC	184 #
	Trinidad & Tobago - Embassy in Washington DC	186 #
	Taipei (Taiwan) Economic & Cultural Office - Los Angeles	353 #
	Sweden - Consulate in San Francisco	1420 #
	Sri Lanka - Embassy in Washington DC	182 #
	South Africa - Consulate in Los Angeles	344 #
	Singapore - Consulate in San Francisco	1417 #
	Serbia - Consulate in San Francisco	678 #
	Senegal - Consulate in Washington DC	335 #
	Sierra Leone - Embassy in Washington DC	180 #
	Slovak Republic - Consulate in Los Angeles	334 #
	Solomon Islands - Consulate in New York	181 #
	Slovenia - Consulate in San Francisco	346 #
	Somalia - Consulate in San Francisco	183 #
	South Korea - Consulate in San Francisco	352 #
	Spain - Consulate in New York	1390 #
	Sri Lanka - Consulate in San Francisco	355 #
	Sweden - Consulate in Los Angeles	1438 #
	Switzerland - Consulate in Washington DC	186 #
	Taipei (Taiwan) Economic & Cultural Office - Los Angeles	353 #
	Thailand - Consulate in Washington DC	181 #
	Turkey - Consulate in Washington DC	186 #
	Ukraine - Embassy in Washington DC	507 #
	Uruguay - Consulate in San Francisco	190 #
	Venezuela - Consulate in San Francisco	372 #
	Yemen - Consulate in San Francisco	181 #
	Zimbabwe - Embassy in Washington DC	181 #

Don't Let Go of Hope



La disp...
póngase en...
con el perso...
recibir ayuda

	Saint Vincent and the Grenadines - Consulate in New York	330 #
	San Marino - Consulate in New York	1096 #

03/06/2015



Exhibit D

SELECT EXHIBITS (2 of 6)

from Decl. of C. Takei ISO

Plaintiffs' MSJ

[Unsealed per 3/31/16 Order - Dkt 183; Dkt 166 p. 3, C1]

	Central African Republic - Consulate in Los Angeles	1004 #		Chad - Embassy in Washington DC	223 #
	Chile - Consulate in San Francisco	1919 #		China - Consulate in Los Angeles	447 #
	China - Consulate in San Francisco	172 #		Colombia - Consulate in San Francisco	126 #
	Congo, Democratic Republic of - Embassy in Washington DC	1782 #		Congo, Democratic Republic of - Embassy in Washington, DC	1873 #
	Costa Rica - Consulate in Los Angeles	449 #		Cote d'Ivoire - Embassy in Washington DC	128 #
	Croatia - Consulate in Los Angeles	1117 #		Cuba - Permanent Mission in NY	521 #
	Cyprus - Consulate in San Francisco	1362 #		Cyprus - Embassy in Washington DC	707 #
	Czech Republic - Consulate in Los Angeles	951 #		Denmark - Consulate in Los Angeles	450 #
	Djibouti - Embassy in Washington DC	236 #		Dominican Republic - Consulate in Los Angeles	1602 #
	Ecuador - Consulate in Los Angeles	454 #		Egypt - Consulate in Los Angeles	134 #
	El Salvador - Consulate in San Francisco	135 #		Eritrea - Consulate in Washington DC	243 #
	Estonia - Consulate in Los Angeles	988 #		Ethiopia - Consulate in Los Angeles	136 #
	Fiji - Consulate in San Francisco	137 #		Fiji - Consulate of Los Angeles	832 #
	Finland - Consulate in Los Angeles	455 #		France - Consulate in San Francisco	1513 #
	Gabon - Embassy in Washington DC	610 #		Gambia - Embassy in Washington, DC	250 #
	Germany - Consulate in Los Angeles	140 #		Ghana - Embassy in Washington DC	614 #
	Greece - Consulate in San Francisco	142 #		Grenada - Embassy in Washington DC	712 #
	Guatemala - Consulate in San Francisco	143 #		Guinea - Embassy in Washington DC	713 #
	Guyana - Consulate in Washington, DC	834 #		Guyana - Embassy in Washington DC	259 #

03/06/2015

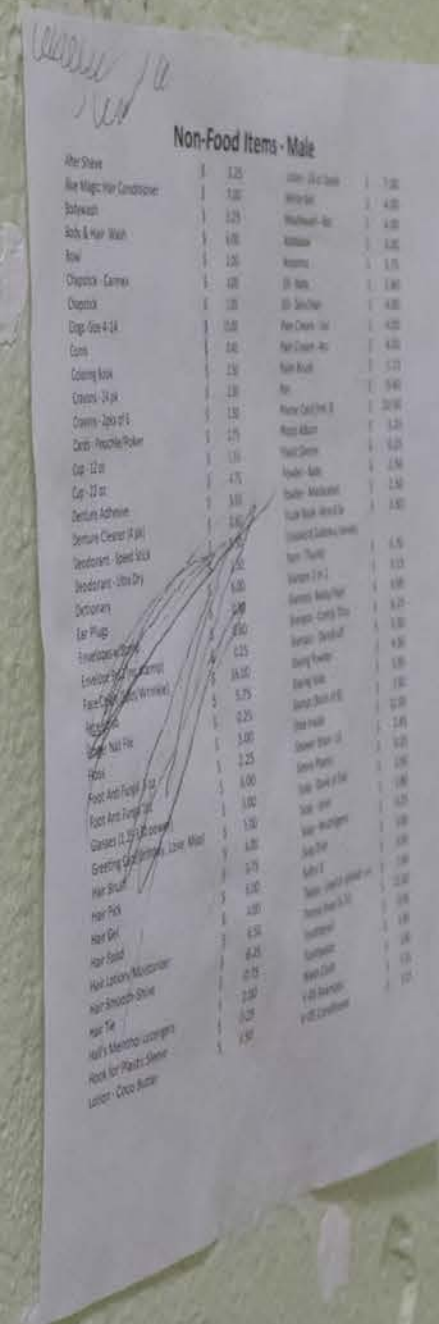
If you are detained by U.S. Immigration
Important rights related to the arrest

A federal court has approved a group of people involved in a major protest. You are part of a close action and lawsuit argues that problems with immigration violate your rights. The lawsuit seeks to void the act.

If you are a member of this class
You also cannot choose to be left out or through the lawsuit.

If you are an immigration lawyer contact Julia Hartman (kasia@hulph.com) your envelope "Legal Mail" and see Francisco, CA 94111. Please pay

- Your full name
- Your full name
- Your county of origin
- Your detention facility
- The date of your next immigration case that
- Any other information

[illegible]







DSC00112



DSC00114

Exhibit E

PREA Audit: Subpart A

DHS Immigration Detention Facilities

Audit Report



Homeland Security

AUDITOR INFORMATION			
Name of Auditor:	Kurt Pfisterer	Organization:	Creative Corrections, LLC
Email address:	(b) (6), (b) (7)(C)	Telephone number:	518-860-(b) (6), (b) (7)(C)
AGENCY INFORMATION			
Name of agency:	U.S. Immigration and Customs Enforcement (ICE)		
FIELD OFFICE INFORMATION			
Name of Field Office:	San Francisco		
Field Office Director:	David W. Jennings		
ERO PREA Field Coordinator:	(b) (6), (b) (7)(C)		
Field Office HQ physical address:	630 Sansome Street, San Francisco, California 94111		
Mailing address: <i>(if different from above)</i>	Same		
INFORMATION ABOUT THE FACILITY BEING AUDITED			
Basic Information About the Facility			
Name of facility:	Mesa Verde ICE Processing Center		
Physical address:	425 Golden State Avenue, Bakersfield, California 93301		
Mailing address: <i>(if different from above)</i>	Same		
Telephone number:	661-859-1028		
Facility type:	DIGSA		
Facility Leadership			
Name of Official/Officer in Charge:	Ronald Murray	Title:	Warden
Email address:	(b) (7)(C), (b) (6)	Telephone number:	661-859-(b) (6), (b) (7)(C)
Facility PSA Compliance Manager			
Name of PSA Compliance Manager:	Catherine Harvey	Title:	PSA Compliance Manager
Email address:	(b) (6), (b) (7)(C)	Telephone number:	661-859-(b) (6), (b) (7)(C)

AUDIT FINDINGS**NARRATIVE OF AUDIT PROCESS AND DESCRIPTION OF FACILITY CHARACTERISTICS:**

Directions: Discuss the audit process to include the date of the audit, names of all individuals in attendance, audit methodology, description of the sampling of staff and detainees interviewed, description of the areas of the facility toured, and a summary of facility characteristics. Visiting areas were appropriately furnished and typical of any secure correctional facility. Hearing rooms were appropriately located for privacy and lack of routine interruptions.

Intake processing had an appropriate mix of single and multiple occupancy cells. Sight lines were excellent and cells that had toilets had appropriate sections of the windows frosted to provide privacy for toilet use. Interview stations for intake questioning were appropriately shielded from detainee holding cells and reduced the chance for conversations to be inappropriately overheard by anyone without a need to know. The medical unit was immediately adjacent to the intake area and allowed for ease of access and movement between intake and medical.

The medical unit has medical isolation rooms, examination rooms and private offices. The medical unit is staffed 24 hours a day, seven days per week. There is a total of [REDACTED] staff assigned to the unit, to include the mental health clinicians. Detainees are escorted and supervised by security staff when in the medical unit. Medical isolation rooms may also be used for protective custody segregation if placement in the restrictive housing unit (RHU) is deemed inappropriate based on the status of other detainees in the RHU.

The RHU consists of three single cells and is used for protective custody, administrative segregation, and disciplinary segregation. When the unit is in use, a security staff member provides direct supervision.

The housing units consist of four 100-bed dormitory units with bunkbeds. The dormitories are located on the first and second floors. Minimum security detainees and female detainees are housed separately on the first floor (dorms A and B). Medium and high security detainees are housed in separate units on the second floor (dorms C and D). Sight lines are very good. Each dormitory has two multi-user bathrooms consisting of five showers, five toilets, and seven sinks. Toilets and showers are appropriately partitioned for privacy and safety, as well as to avoid cross-gender viewing. There is only one entrance/exit to each of the bathrooms. The staff podium (work station/post) is located to provide direct supervision of the entrance, as well as sight and sound supervision of the bathrooms. PREA-related postings, including how to access outside support services were posted on all housing units in Spanish and English. The PREA audit notice was also posted in all housing units (as well as the main entrance and visiting areas). Male staff are not assigned to work the female housing unit. Opposite gender staff were observed announcing their presence on the housing units during the tour and throughout the three days of the on-site audit.

The food service area has a large, well-appointed kitchen, adequate for the population being served. Appropriately screened detainees are permitted to work in the kitchen. Predatory sex-offenders and detainees with a history of violence are not permitted to work in food service. Security staff are assigned to the kitchen when detainees are working. The dining hall is a spacious area with adequate tables and seating. The area is large enough for individual dorms to be fed comfortably and be appropriately supervised. There are blinds over the windows to the dining hall that are closed when movement in the hallways would involve opposite gender detainees being seen by the occupants.

Outdoor recreation areas are under direct staff supervision. The large, main yard has an outdoor bathroom that is open to allow for safety and supervision but is shielded from video surveillance and actual observation of bodily functions.

(b) (7)(E)

The facility has a video surveillance system that provides coverage for approximately 95% of the program areas where detainees are permitted.

(b) (7)(E) There are no cameras in the bathrooms on the housing units. Detainees are permitted to change clothes in only the bathroom. There are no camera views anywhere where detainees are permitted to shower, use the toilet, or change clothes. Cross-gender viewing from the surveillance system is not an issue. Average retention time for the system is reported to be (b) (7)(E). Recorded images reviewed by this Auditor were crisp and fluid (no jerky motion from low frame per second recording). (b) (7)(E)

The remainder of the first day on-site was spent interviewing specialized staff and reviewing the on-site documentation of practice. The second day of the on-site audit was spent interviewing detainees and random staff.

Eleven random security staff were interviewed by this Auditor. Interviews were conducted in a private room. Staff interviewed were selected to include both male and female officers. Additionally, interviewees were selected to include staff from all three shifts (10:00PM – 6:30AM, 6:00AM – 2:30PM and 2:00PM – 10:30PM) and all housing units. All staff interviewed acknowledged receiving PREA training as required by the DHS standards. All staff were aware of their obligations under the facility's PREA policy (reporting, accepting reports – verbal, written and third party, and protection from harm and retaliation). All staff could readily articulate their first responder duties. All staff were able to articulate steps they would take to protect a detainee from imminent danger of sexual abuse.

Thirty-one detainees were interviewed by this Auditor (10 female and 21 male). Interviews were conducted in a private room without video surveillance. Detainees selected for an interview were chosen to include representatives from all four housing units and as culturally diverse a sampling as possible given the time constraints of the audit process. The countries of origin included Cameroon, Taiwan, Portugal, Mexico, India, South Korea, El Salvador, Sudan, Jamaica, Cuba, Armenia, Fiji, Philippines, Nigeria, Pakistan and Uzbekistan. Interpretive services were used for Spanish and Pashtu. All detainees stated they were aware of their right to be free from sexual abuse while in detention. All knew how to report allegations if they needed to. All detainees acknowledged going through the intake process and being searched by a staff member of the same

gender. All detainees acknowledged being aware when staff of the opposite gender were on the housing unit and that they had a reasonable degree of privacy when changing clothes, showering, and using the toilet. All acknowledged being screened upon admission and seeing medical staff on the date of admission. All but one felt that their medical needs were being appropriately addressed. All but two detainees stated they felt safe at the facility (over half stated this facility was the safest one they had ever been in because staff cared about their safety). The two detainees who stated they did not feel safe, could not offer any concrete reason for feeling unsafe other than not understanding Spanish (primary language spoken by approximately 75% of the population).

There were two detainees on-site who had made an allegation of sexual abuse that occurred at Mesa Verde. Both were interviewed. The first alleged a medical doctor grabbed her by the breasts. A review of the records for this incident documented the doctor was also female and there was a signed consent in the medical record to conduct a breast examination. The medical record also documented an extensive history of mental illness and ongoing treatment for this detainee.

The second detainee victim was interviewed via interpreter. He stated he waited several months (until his alleged abuser was gone from the facility) to report the incident. He stated the facility responded immediately to his verbal report. He was immediately taken to medical (even though the incident was several months ago and the allegation did not involve any penetration) as well as being seen by his licensed social worker. He stated he was interviewed by a Spanish-speaking staff as well as a "policeman." The investigation file was reviewed and documented a thorough administrative investigation and referral to outside law enforcement. No forensic examination was conducted due to the nature of the allegation and no recorded video was available due to the length of time between the incident and when it was reported. The victim acknowledged he was referred to the outside crisis counseling service but preferred to work with his facility social worker. This Auditor met with the social worker and she confirmed the detainee is receiving on-going services for this incident and the prior childhood abuse this incident brought to the surface.

The facility reported five allegations of sexual abuse during this audit period: of the five, three were alleged to have occurred at Mesa Verde. All three were referred to local law enforcement and an administrative investigation was initiated. Two of three incident investigations have been completed and were deemed unsubstantiated. Both files were reviewed by this Auditor and this Auditor concurs with the decisions. The third incident is still under investigation. The Public Information Officer confirmed the incidents were referred for investigation.

SUMMARY OF AUDIT FINDINGS:

Directions: Discuss audit findings to include a summary statement of overall findings and the number of provisions which the facility has achieved compliance at each level: Exceeds Standard, Meets Standard, and Does Not Meet Standard.

On day three, an exit meeting was held with staff from the MVIPC and ICE. The meeting was held in the Warden's office on the afternoon of December 14, 2017. The following persons were in attendance:

(b) (6), (b) (7)(C)

Ronald Murray

(b) (6), (b) (7)(C)

Catherine Harvey

(b) (6), (b) (7)(C)

Management and Program Analyst - Office of Professional Responsibility/External Review and Analysis Unit
Assistant Field Office Director - ICE
Senior Manager - GEO Group, Inc.
Warden - GEO, Mesa Verde Immigration Processing Center (IPC)
Human Resources Manager - GEO, Mesa Verde IPC
Health Services Administrator - GEO, Verde IPC
Chief of Security - GEO, Mesa Verde IPC
Training Administrator - GEO, Mesa Verde IPC
Fire and Safety Manager - GEO, Mesa Verde IPC
Programs Manager - GEO, Mesa Verde IPC
Information Services Manager - GEO, Mesa Verde IPC

The following is a summary of the information shared with the above listed staff at the exit meeting:

There were no issues related to compliance discovered during the tour. Sight lines are very good on all housing units. The assigned staff posts in the housing units help maximize supervision of the bathrooms. The video surveillance system is adequate for the current usage. (b) (7)(E)

There were no issues with the staff interviews, both random and specialized. All staff have been properly trained to the extent necessary for their roles. The interview with the investigator was especially memorable, as this person was a highly skilled investigator with excellent insight into the dynamics of custodial investigations. All of the specialized staff interviews were excellent. Staff's knowledge about their duties and PREA was impressive. All staff this Auditor spoke with were highly professional, well-versed in their jobs and would be an asset at any facility where they worked.

There were no issues related to compliance resulting from detainee interviews. The detainees interviewed clearly understood what PREA is and what the facility and staff were doing to protect them. All information gleaned from the interviews supported full compliance.

There is a total of 41 DHS PREA standards for Subpart A facilities: of the 41 standards, two were deemed not applicable (115.14 - Juveniles and Family Detainees and 115.18 - Upgrades to Facilities and Technologies). There are no juveniles or families housed at the facility and there have been no renovations or upgrades to the facility since it opened in 2015. Additionally, of the remaining 39 standards, 37 were found to

meet standards and two (115.53 and 115.54) were found to exceed standards. Third-party reporting (115.54) exceeds the standard as there are multiple methods for third-party reporting to more than one outside entity. The access to community services for victims of sexual abuse (115.53) is outstanding. The agency the facility has a Memorandum of Understanding (MOU) with is on-site at the facility on a regular basis. They not only provide services for victims as required by the standards but provide preventive and educational services to help detainees avoid sexual abuse and domestic violence upon return to their home communities. This Auditor has never seen such an all-encompassing program in the 100-plus PREA audits he has conducted.

SUMMARY OF AUDIT FINDINGS

Number of standards exceeded:	2
Number of standards met:	37
Number of standards not met:	0
Number of standards N/A:	2

PROVISIONS

Directions: In the notes, the Auditor shall include the evidence relied upon in making the compliance or non-compliance determination for each provision of the standard, the Auditor's analysis and reasoning, and the Auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Corrective Action Plan Final Determination, accompanied by information on specific corrective actions taken by the facility. Failure to comply with any part of a standard provision shall result in a finding of "Does not meet Standard" for that entire provision, unless that part is specifically designated as Not Applicable. For any provision identified as Not Applicable, provide an explanation for the reasoning. If additional space for notes is needed, please utilize space provided on the last page.

§115.11 – Zero tolerance of sexual abuse; Prevention of Sexual Assault Coordinator.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities", clearly delineates the facility's zero tolerance policy and contains an approval signature from ICE. The policy outlines the facility's approach to preventing, detecting, and responding to sexual abuse. The policy clearly delineates the role of Prevention of Sexual Abuse (PSA) Compliance Manager and designates this person as the facility point of contact for the agency PSA Coordinator. The PSA Compliance Manager reports that she has sufficient time to perform her assigned duties. Interviews with the PSA Compliance Manager and all other staff interviews confirm that the facility has a PSA Compliance Manager and that all staff are aware of this role and the duties performed by the assigned person. Interviews with the Warden, PSA Compliance Manager, and the ICE Assistant Field Office Director all fully support full compliance with this standard. Based upon all of the above, this standard is deemed to be in full compliance.

§115.13 – Detainee supervision and monitoring.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities", meets the requirements of each element of this standard. There is sufficient supervision of detainees maintained through appropriate staffing levels and video monitoring to protect detainees against sexual abuse. Comprehensive detainee supervision guidelines have been developed and documented to determine and meet the facility's detainee supervision needs. Detailed post orders (comprehensive detainee supervision guidelines) are provided for all staffing posts (inside and outside the facility). These post orders are not due for review until June 2018. The annual review of the staffing and supervision plan was reviewed by this Auditor and contains all the elements required for full compliance with this standard. Frequent unannounced security inspections are conducted to identify and deter sexual abuse of detainees. Staff are prohibited by policy from alerting others that these security inspections are occurring. Interviews with the Sergeant and officers confirm unannounced rounds occur daily and on all shifts. Officer rounds are documented in the housing unit log book (observed by Auditor). Management rounds are documented on a form created for this specific purpose (copies of these forms were reviewed by this Auditor). Interviews with Warden, PSA and Chief of Security fully support compliance with this standard. Observations, throughout the three days of this audit, confirmed compliance with the staffing and supervision plan. There were no substantiated allegations during this audit period. None of the unsubstantiated investigations reviewed by this Auditor had any recommendations regarding changes to the staffing and supervision plan. Based upon all of the above, this standard is deemed to be in full compliance.

§115.14 – Juvenile and family detainees.

Outcome: Not Applicable (provide explanation in notes)

Notes:

The facility does not house juvenile or family detainees.

§115.15 – Limits to cross-gender viewing and searches.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of each element of this standard. Cross-gender searches, strip searches, and body cavity searches are not conducted at this facility. All searches are performed and documented in a log specific to this purpose. The policy prohibits detainees from being searched for the sole purpose of determining genital characteristics. Security staff are trained in the proper procedures for conducting pat-down searches, including pat-down searches by staff of the opposite gender, and searches of transgender and intersex detainees in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs and agency policy, including consideration of officer safety. There were no transgender or intersex detainees at the facility at the time of the on-site audit. None of the staff interviewed had ever conducted a strip search at MVIPC, let alone one for the purpose of determining a detainee's genital status. Training curriculum for the conducting of cross gender and transgender/intersex searches of detainees was reviewed by this Auditor and met the requirements of this standard. Documentation of staff training was provided and documented compliance with this standard. All officers interviewed acknowledged they had received training on conducting such searches. The facility reports it has not conducted any cross gender searches or searches of intersex or transgender

detainees. Detainees are able to shower, perform bodily functions, and change clothing without being viewed by staff of the opposite gender. Changing clothes is permitted only in bathroom stalls which are out of view of staff and video surveillance. All but one detainee interviewed reported that they had a reasonable degree of privacy when changing clothes, showering and using the toilet. Opposite gender staff announce their presence when entering housing units. This practice was observed throughout the on-site audit and confirmed by detainee and staff interviews. Based upon all of the above, this standard is deemed to be in full compliance.

§115.16 – Accommodating detainees with disabilities and detainees who are limited English proficient.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of each element of this standard. The facility has taken reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse for detainees who are limited in their ability to speak or understand English, deaf or hard of hearing, blind or visually impaired and those with intellectual deficits. The facility provided the entire education program in audio format for the blind and visually impaired and in written format for the deaf and deemed that was sufficient to meet the requirements of this particular standard. There were no deaf or blind detainees to interview to determine the effectiveness of presentation. The facility's PREA education program is an audio/visual presentation that is continually played in English and Spanish. Written materials are provided in English and Spanish and are available in 17 other languages, if needed. Translation and interpretation services are available for detainees with other language needs. Case managers and clinicians are available for detainees with intellectual deficits. All detainees interviewed were aware of their rights under the program. Detainees interviewed were from Cameroon, Taiwan, Portugal, Mexico, India, South Korea, El Salvador, Sudan, Jamaica, Cuba, Armenia, Fiji, Philippines, Nigeria, Pakistan and Uzbekistan. Language Services Associates provided interpretation for Spanish and Pashtu. There were no hearing or visually impaired detainees in the facility at the time of the on-site audit. Interviews with the Warden and PSA Compliance Manager confirmed every effort is made to provide detainees with meaningful access to all aspects of the facility's prevention, detection and response to the sexual abuse prevention program. Based upon all of the above, this standard is deemed to be in full compliance.

§115.17 – Hiring and promotion decisions.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of each element of this standard. The policy requires the facility to refrain from hiring, promoting, or enlisting the services of any employee, contractor or volunteer who may have contact with detainees who has engaged or attempted to engage in any of the prohibited acts described in this standard. Written applications and interview protocols require applicants to answer questions specific to this standard. Material omissions regarding misconduct, or the provision of materially false information, are considered to be grounds for termination or withdrawal of an offer of employment, as appropriate. Staff are also under a continuing affirmative duty to disclose any such misconduct throughout the duration of their employment. Background investigations are conducted to determine whether the candidate for hire is suitable for employment and includes a criminal background records check. Detailed records of these background investigations are maintained and available to the agency upon request. Updated background investigations are conducted every five years for those facility staff who may have contact with detainees. Documentation of employee and contractor background checks was provided on-site. Volunteers go through a similar process and are always under supervision when in contact with detainees. Interview with Human Resources Manager confirmed the process for employees and contractors. Interview with Programs Manager confirmed process for the volunteers. Interview with Human Resources Manager confirmed that information regarding references for former employees is handled through an outside contractor. Based upon all of the above, this standard is deemed to be in full compliance.

§115.18 – Upgrades to facilities and technologies.

Outcome: Not Applicable (provide explanation in notes)

Notes:

The facility opened in 2015. There have been no renovations or upgrades since the opening.

§115.21 – Evidence protocols and forensic medical examinations.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

The evidence protocol is contained in Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities". This policy was approved by ICE. The facility follows a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. Forensic examinations of sexual abuse/assault victims would be conducted at Dignity Health. The facility does not house juveniles and therefore no determination was made regarding its developmental appropriateness for juveniles. Allegations that rise to the level of criminal behavior would be referred to the Bakersfield Police Department. The uniform evidence protocol takes into consideration how best to utilize available community resources and services to address the victims' needs. The facility has established procedures to make outside victim services available, including victim advocacy services, following incidents of sexual abuse. The facility has a memorandum of understanding with a local rape crisis/victim's services program (The Alliance Against Domestic Violence and Sexual Abuse). This program is on-site at the facility several days a week and conducts classes and holds meetings with detainees so that they are a familiar face to the detainees in the event their services are needed. Policy and Procedure 11.1.6.A - MVIPC states that all services shall be provided at no financial cost to the victim. The two completed sexual abuse investigations were reviewed. None of the allegations would have necessitated a forensic examination and therefore, there was no documentation of practice to review. Interview with the Health Services Administrator confirmed services of a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) would be provided free of charge to the victim by Dignity Health. Policy and Procedure 11.1.6.A - MVIPC requires the Bakersfield Police Department be contacted for allegations that rise to the level of criminal behavior. Documentation of those contacts is on file. Based upon all of the above, this standard is deemed to be in full compliance.

§115.22 – Policies to ensure investigation of allegations and appropriate agency oversight.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of each element of this standard. There is a protocol in place to ensure that each allegation of sexual abuse, administrative and criminal, is investigated by the agency or the facility, and referred to local law enforcement. The protocol includes a description of the responsibilities of ICE Headquarters, the facility, and other investigative entities. Interviews with Warden, PSA Compliance Manager and investigator confirm compliance with this standard. Email contact with Bakersfield Police Department confirmed they have investigated allegations. The two completed investigations from this audit period were reviewed by this Auditor. Appropriate documentation of all actions and referrals are maintained in the files. The facility opened in 2015. Investigation reports dating back to 2015 were on file in the PSA Compliance Manager's office in a locked file cabinet. The facility had one allegation involving a staff member fitting this standard. Documentation of appropriate notifications, as required by this standard (Joint Intake Center, ICE Office of Professional responsibility, DHS Office of the Inspector General and the appropriate ICE Field Office Director), were reviewed by this Auditor and demonstrated compliance with this standard. Facility/GEO protocols regarding this standard are available at: <http://geogroup.com/prea>. Based upon all of the above, this standard is deemed to be in full compliance.

§115.31 – Staff training.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of each element of this standard. The training curriculum was reviewed in detail and was deemed to meet the requirements of each element of this standard. All staff interviewed acknowledged having received the PREA training. All acknowledged that the training covered the topics required by the standard. The training supervisor maintains documentation of all training staff have completed. Training records provided to this Auditor support full compliance for this standard. The facility did not open until mid-2015. Documentation of staff training once opened was provided to this Auditor as well as refresher training as appropriate to their length of employment at Mesa Verde. Review of on-site records confirm staff signatures for completion of training. Based upon all of the above this standard is deemed to be in full compliance.

§115.32 – Other training.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIIP, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of this standard. All volunteers and contractors having contact with detainees are trained on their responsibilities under the agency's and the facility's sexual abuse prevention, detection, intervention and response policies and procedures. Contractors and volunteers receive the same training as staff which includes notification of the agency's zero-tolerance policy and how to report any such incidents. Documentation of all volunteers and contractors completing the training was provided to this Auditor. Signed acknowledgements from contractors and volunteers were provided to this Auditor which satisfied the requirements of this standard. Interview with training supervisor confirmed and supported all of the above. An interview with a volunteer confirmed she received appropriate training. Based on all the above this standard is deemed to be in full compliance.

§115.33 – Detainee education.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIIP, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of each element of this standard. During the intake process the detainee orientation program notifies and informs detainees of each element of this standard. Detainees receive a DHS/ICE handbook, GEO handbook and pamphlet from ICE on sexual abuse and assault awareness. These materials are available in English and Spanish. PREA education video was observed be played in the intake holding cells and the dining room on a continuous loop. The detainee education program provided at intake is an audio/visual presentation in English and Spanish. The audio/visual education program meets the requirements of this standard for 90% of the detainees. The facility provided the entire education program in audio format for the blind and visually impaired and in written format for the deaf and deemed that was sufficient to meet the requirements of this particular standard. There were no deaf or blind detainees to interview to determine the effectiveness of presentation. The facility's PREA education program is an audio/visual presentation that is continually played in English and Spanish. Written materials are provided in English and Spanish and are available in 17 other languages, if needed. Translation and interpretation services are available for detainees with other language needs. Detainees with significant learning deficits are assigned a clinical staff to address their needs. All detainees were aware of the video playing in the dining room. Some (less than 25%) did not remember seeing the video in the intake holding cells, but all reported having received written materials upon intake. The number of detainees not recalling seeing/hearing the video during intake is **NOT** deemed a sign of non-compliance by this Auditor as all received written materials at intake, have seen the video played on continuous loop in the dining room and were aware of their rights under the facility's PREA program. Additionally, many of the detainees interviewed had been at the facility for nearly a year. The required postings (zero tolerance posters, information on reporting sexual abuse with telephone numbers, information on rape crisis services, counseling services and victim advocacy services) were observed on all housing units and other common areas throughout the facility. Detainee interviews confirm the postings have been in place for a significant period of time. Intake staff interviewed stated the DHS pamphlet, "Sexual Assault Awareness Information" is given to each detainee during the intake process. The pamphlet is also posted throughout the facility and on all housing units. Signed receipts from detainees receiving the handbook were reviewed and found to be in full compliance with this standard. Based upon all of the above, this standard is deemed to be in full compliance.

§115.34 – Specialized training: Investigations.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIIP, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of this standard. Specialized training on sexual abuse and effective cross-agency coordination is provided to investigators who conduct investigations into allegations of sexual abuse at the facility. All GEO investigations into alleged sexual abuse are conducted by qualified investigators. The training curriculum utilized by GEO is the PREA Resource Center Curriculum. This Auditor reviewed two of three investigation files for allegations occurring during this audit period. Both were clearly written by qualified investigators. Training supervisor confirmed that the specialized training for investigators was conducted separately from other PREA trainings. The investigator interviewed confirmed she had received specialized training and through her answers, demonstrated a clear understanding of inter-agency coordination. Training certificates for all three GEO employee investigators at Mesa Verde were reviewed. Based upon all of the above, this standard is deemed to be in full compliance.

§115.35 – Specialized training: Medical and mental health care.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of this standard. This policy bears an approval signature from ICE. While the facility provides specialized training to its medical and mental health care staff, none of them are DHS or agency employees. Additionally, facility staff do not provide care for victims of sexual abuse occurring at the facility unless life-saving care is needed. The protocol is to transport to Dignity Health. This was confirmed via interview with the Health Services Administrator. Based upon all of the above, this standard is deemed to be in full compliance.

§115.41 – Assessment for risk of victimization and abusiveness.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of this standard. All detainees are assessed at intake to identify those likely to be sexual aggressors or sexual abuse victims. Detainees are housed to prevent sexual abuse, taking necessary steps to mitigate any dangers identified in the assessment. All intakes are kept separate from the general population until they are classified and may be housed accordingly. The classification process and initial housing assignment are required by policy to be completed within 12 hours of admission to the facility. The facility uses three separate standardized risk assessment tools, which cover all areas of this standard, to complete the risk assessment. The assessment tools clearly address all the factors required by this standard. All detainees interviewed reported going through the intake process upon arrival at the facility. The intake processing area has single and multiple occupancy holding cells separate from the rest of the population. The facility's classification and housing system support full compliance with this standard. Additionally, within the housing unit, officers will place detainees who are vulnerable to being victimized, closest to the staff post. All intake staff interviewed stated intake processing, including being seen by medical, takes less than 12 hours. There were no transgender or intersex detainees at the facility to interview. All but one detainee stated they were assigned to a housing unit in less than 12 hours. The completed assessment tool results are put into a matrix which categorizes the detainees as vulnerable to victimization or high risk for victimizing others and are kept on separate housing units. Interviews with vulnerable detainees confirmed that their own concerns about their safety were taken into consideration. Interviews with case manager and PSA Compliance Manager support full compliance with this standard. Interviews with vulnerable detainees at the facility for over 60 days also support full compliance. The risk assessment matrix lists date of admission and date of last reassessment, which also supports full compliance with this standard. None of the staff interviewed (PSA Compliance Manager, intake staff, Chief of Security, Case Manager or officers) could recall any instance where a detainee was disciplined for refusing to answer the questions referenced above. None of the detainees interviewed (which included gay, prior victims of sexual abuse, and high risk for victimizing others) reported ever having been disciplined or threatened with discipline over answering the above referenced questions. Interviews with PSA Compliance Manager, Case Manager and intake staff all support that this information is restricted to a need to know basis. Based upon all of the above, this standard is deemed to be in full compliance.

§115.42 – Use of assessment information.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A – MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of this standard. Information from the risk assessment is used to inform each detainee's housing, recreation, other activities, and voluntary work assignments. All factors required by this standard are taken into consideration when making housing decisions. Each decision is made individually based on the risk assessment factors noted for the individual detainee. Interviews with PSA Compliance Manager, Case Manager and intake staff all support that this information is used to make appropriate decisions regarding housing, work, recreation, and access to volunteers and other outside providers. Detainees deemed high risk of victimizing others are not permitted to work in the food service department. Housing units are clearly set up to keep vulnerable detainees from high risk detainees. There were no transgender or intersex detainees at the facility during the on-site audit. The facility reported having one transgender detainee go through intake in the past 12 months. Due to safety concerns and the detainee's own concerns regarding their safety, the detainee was housed in the medical unit for 48 hours until a transfer to a suitable facility could be arranged. Health Services Administrator, PSA Compliance Manager and case worker confirmed that the policy was followed in this instance. The one transgender detainee previously housed at the facility remained in the medical unit until transferred to another facility. The shower in the medical unit is for individual use. Based upon all of the above, this standard is deemed to be in full compliance.

§115.43 – Protective custody.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of each element of this standard. The facility has written procedures governing the management of the facility's administrative segregation unit that were developed in consultation with ICE. The policy bears an approval signature from ICE. The facility reported that no detainees were held in administrative segregation on the basis of vulnerability to sexual violence. This was confirmed by the Warden and Chief of Security. There were no detainees housed in protective custody due to vulnerability of sexual violence and therefore no documentation of practice to review for compliance. Policy and Procedure 11.1.6.A has written procedures for the regular review of all vulnerable detainees placed in administrative segregation for their protection, as required by this standard. Per the same policy, detainees would have access to programs, visitation, counseling and other services. Lastly, the policy requires that the appropriate ICE Field Office Director be notified no later than 72 hours after initial placement in protective custody. Based upon all of the above, this standard is deemed to be in full compliance.

§115.51 – Detainee reporting.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of each element of this standard. The facility has policies and procedures to ensure that detainees have multiple ways to privately report sexual abuse, retaliation for reporting sexual abuse, and staff neglect or violation of responsibilities that may have contributed to such incidents. These include instructions on how detainees may contact their consular official, the DHS Office of the Inspector General or, as appropriate, another designated office, to confidentially and, if desired, anonymously report these incidents. This also includes instructions on how to contact outside entities not a part of the facility or agency. Policy and This policy requires staff to accept verbal, written, anonymous and third-party reports. All detainees interviewed were aware of multiple methods of reporting sexual abuse and their ability make anonymous reports to outside entities. Interviews with the PSA Compliance Manager, random officers and supervisors confirmed they would accept reports whether they were verbal, in writing, anonymous or third-party. Interview with staff from the Alliance Against Domestic Violence and Sexual Abuse confirmed the ability of detainees to anonymously report to an outside entity as required by this standard as well as the Alliance's ability to immediately forward reports to agency officials. Of the three reported allegations of sexual abuse all three were verbal reports. The investigation files for two of these allegations were reviewed and documentation by staff of the verbal report was present. There were no third-party or anonymous reports made during this audit period and therefore no documentation of practice for review. All staff interviewed stated that they would have to write a report documenting the allegation and their actions regardless of how it was received. Based upon all of the above this standard is deemed to be in full compliance.

§115.52 – Grievances.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" addresses all the requirements of this standard. Detainees are permitted to file a formal grievance related to sexual abuse at any time during, after, or in lieu of lodging an informal grievance or complaint. There is no time limit on when a detainee may submit a grievance regarding an allegation of sexual abuse. The facility has written procedures for identifying and handling time-sensitive grievances that involve an immediate threat to detainee health, safety, or welfare related to sexual abuse. Medical emergencies are brought to the immediate attention of proper medical personnel for further assessment. Detainees may obtain assistance to prepare a grievance from another detainee, the housing officer or other facility staff, family members, or legal representatives and staff shall take reasonable steps to expedite requests for assistance. Information on filing a grievance is found in the GEO detainee handbook. The facility grievance policy fully complies with this standard. Interviews with the grievance coordinator, PSA Compliance Manager, Chief of Security, and Warden all confirm any grievance received alleging sexual abuse would automatically trigger the facility's coordinated response plan. The facility's grievance procedures clearly outline a rapid response to any grievance involving an immediate threat to detainee health, safety or welfare related to sexual abuse. Per the policy, the facility must respond to the initial grievance within five days and respond to any appeal within 30 days. Interview with the grievance coordinator reports that no such grievances were filed during this audit period. The facility reported no grievances related to sexual abuse were received during this audit period. Therefore, there was no documentation of practice for review. No detainees filed such a grievance and therefore no detainee interviews were conducted related to this standard. Based upon all of the above, this standard is deemed to be in full compliance.

§115.53 – Detainee access to outside confidential support services.**Outcome:** Exceeds Standard (substantially exceeds requirement of standard)**Notes:**

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" addresses the requirements of this standard. The facility makes excellent use of available community resources and services to provide valuable expertise and support in the areas of crisis intervention, counseling, investigation, and the prosecution of sexual abuse perpetrators to most appropriately address victims' needs. The facility has a signed, and current, MOU with the California Coalition Against Sexual Assault and the Alliance Against Family Violence and Sexual Assault. The one sexual abuse victim at the facility during the on-site portion of this audit was interviewed. He acknowledged that the services from the Alliance were offered to him, but he preferred to work with the facility's Licensed Social Worker. Interview with the Social Worker confirmed she continues to provide ongoing services to the victim. Interview with PSA Compliance Manager indicated that staff from the Alliance are on-site at the facility on a regular basis. They provide educational programs and counseling in addition to crisis/rape counseling and victim advocacy services. Detainees receive a brochure from the Alliance upon intake. The same brochure is posted on all housing units and other prominent locations throughout the facility. All detainees interviewed were aware of the Alliance and how to contact them if needed. Many were participating in Alliance activities. The facility reports that there were no allegations of sexual abuse reported or investigated as a result of monitoring communications with outside support services. There do not appear to be any applicable mandatory reporting laws related to this facility's population (non-vulnerable adults). All of the detainees interviewed were aware that confidential communications may be monitored. Based upon all of the above, this standard is deemed to be in full compliance and substantially exceeds the requirements of the standard.

§115.54 – Third-party reporting**Outcome:** Exceeds Standard (substantially exceeds requirement of standard)**Notes:**

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of this standard. The facility has established a method to receive third-party reports of detainee sexual abuse and made it available to the public. The ICE website (<https://ice.gov/prea>) and GEO website (<http://geogroup.com/prea>) contain information on third-party reporting. Information is prominently posted in all areas accessible to the public (main entrance, lobby, visiting area). Reporting information on the GEO website is accurate and functional. The facility reports that it has received no third-party reports during this audit period. Based upon all of the above, this standard is deemed to be in full compliance and exceeds the requirements for third-party reporting.

§115.61 – Staff reporting duties.**Outcome:** Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)**Notes:**

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of this standard. Staff are required to report immediately and according to agency policy, any knowledge, suspicion, or information regarding any incident of sexual abuse that occurred in a facility; retaliation against detainees or staff who reported or participated in an investigation about such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. The policy has an approval signature from ICE. All three allegations of sexual abuse were properly reported by staff and investigated. Interviews with PSA Compliance Manager and random staff confirmed their awareness of the policy and their duties to report as required by this standard. All staff interviewed were aware of their obligation to report all allegations of sexual abuse as well as the requirement they document the information in an official written report. The facility does not house vulnerable adults as defined by California statutes. All staff interviewed were aware of the need to maintain strict confidentiality over information regarding allegations of sexual abuse. Based upon all of the above, this standard is deemed to be in full compliance.

§115.62 – Protection duties.**Outcome:** Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)**Notes:**

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of this standard. When staff has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse, he or she shall take immediate action to protect the detainee. Facility staff reported they had not received any reports from third parties, anonymously, through a grievance, or by direct report, of a detainee being in substantial risk of harm from sexual abuse. None of the staff interviewed were aware of such an instance during this audit period and were able to articulate measures they would take to protect a detainee should they become aware of a substantial risk of harm from sexual abuse. Staff indicated these measures included maintaining direct visual supervision of the detainee, calling for a supervisor, isolating the detainee from others and calling for immediate transport to the medical unit. Based upon all of the above, this standard is deemed to be in full compliance.

§115.63 – Report to other confinement facilities.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" addresses the requirements of this standard. Upon receiving an allegation that a detainee was sexually abused while confined at another facility, the facility will notify the appropriate office of the agency or the administrator of the facility where the alleged abuse occurred. Notification will be as soon as possible, but no later than 72 hours after learning of the allegation. Such notification will be documented. If the facility receives notification from another facility pursuant to this standard, it will notify the ICE Field Office and refer the allegation for investigation. The Warden and PSA Compliance Manager reported the facility had received an allegation of sexual abuse, from a detainee during the intake process, which occurred at another facility. Documentation of this incident having been reported within 72 hours was provided for this Auditor's review. Warden and PSA Compliance Manager report the facility has not received a sexual abuse report from another facility during this audit period. Based upon all of the above this standard is deemed to be in full compliance.

§115.64 – Responder duties.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" addresses all the elements required by this standard. All staff carry the protocols for first responders in their ID card holder. This Auditor reviewed the information and it covers their duties in detail. All staff interviewed were aware of their first responder duties. None of the sexual abuse allegations reported during this audit period would have necessitated staff to perform first responder duties, however in all three instances the detainee was immediately transported to the medical unit. There were no allegations of sexual abuse reported during this audit period that would have necessitated a non-security staff to perform first responder duties. Interviews with non-security staff confirmed they carry their first responder duties in their ID card holder for easy access should they need them. Based upon all of the above, this standard is deemed to be in full compliance.

§115.65 – Coordinated response.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

The facility has a written institutional plan (DHS SAAPI Coordinated Response Plan) to coordinate actions to be taken by first responders, medical and mental health practitioners, investigators, and facility leadership in response to an incident of sexual abuse. The facility provided this Auditor with a copy of its coordinated response. It is detailed and specific as to each department's actions in response to an incident of sexual abuse. The plan calls for the facility to use a coordinated, multidisciplinary team approach to responding to sexual abuse. The facility's coordinated response plan was reviewed by this Auditor. The plan clearly takes a multidisciplinary approach to responding to sexual abuse. The facility has a response plan checklist to document the implementation of the plan in response to a report of sexual abuse. The checklist requires date and time entries for the completion of each task. Completed forms are maintained in the investigation file. All three checklists were present for the allegations reported during this audit period. The facility reports that no detainee victims of sexual abuse were transferred during this audit period and therefore no documentation of practice related to transfers of detainee victims was available for review. Based upon all of the above, this standard is deemed to be in full compliance.

§115.66 – Protection of detainees from contact with alleged abusers.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" addresses the requirements of this standard. Staff, contractors, or volunteers suspected of perpetrating sexual abuse are removed from all duties requiring detainee contact pending the outcome of an investigation. There was one sexual abuse report alleging a staff member as the abuser. Documentation of the staff member being placed on no-contact status was provided. Based upon all of the above, this standard is deemed to be in full compliance.

§115.67 – Agency protection against retaliation.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" addresses the requirements of this standard. Staff, contractors, volunteers, and detainees are prohibited by policy from retaliating against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse, or participates in sexual activity as a result of force, coercion, threats, or fear of force. Per the policy, monitoring is for a minimum of 90 days. The facility employs multiple protection measures (i.e. housing changes, removal of alleged staff or detainee abusers from contact with victims, and emotional support services for detainees or staff who fear retaliation for reporting sexual abuse or for cooperating with investigations). The facility reports there were no grievances related to retaliation against staff or detainees during this audit period. The Warden and PSA Compliance Manager report there is a system in place to monitor for retaliation and document any actions taken in response. The one victim of sexual abuse interviewed by this Auditor reported he had not experienced any retaliation and that he has regularly been asked if any has occurred. The Warden and PSA Compliance Manager reported that monitoring for retaliation is documented on a standardized form. This form was reviewed by this Auditor and meets all the requirements of this standard. It requires weekly monitoring. Documentation of monitoring for the one detainee victim still at the facility was provided. Based upon all of the above, this standard is deemed to be in full compliance.

§115.68 – Post-allegation protective custody.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" addresses all the elements required by this standard. The facility reports no detainees were placed in protective custody as related to this standard. The PSA Compliance Manager confirmed this. The policy requires that detainee victims are not held in any type of administrative segregation for longer than five days, except in highly unusual circumstances or at the request of the detainee. Detainee victims of sexual abuse will not be returned to general population until a proper reassessment has been completed. The facility reported no detainee victims of sexual abuse were placed in administrative segregation during this audit period. The PSA Compliance Manager and security staff confirmed there have been no victims of sexual abuse housed in the restrictive housing unit. There were no detainee victims of sexual abuse in segregated housing. There have been no detainee victims held in protective custody and therefore, no documentation of practice is available to review for compliance. In the event a detainee was placed in post-allegation protective custody; the appropriate ICE Field Office Director would be notified. The Warden and PSA Compliance Manager indicated the policy would be followed should such an event occur. Based upon all of the above, this standard is deemed to be in full compliance.

§115.71 – Criminal and administrative investigations.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

GEO Corporate Policy and Procedure Manual 5.1.2-F, "Investigating Allegations of Sexual Abuse and Assault and Evidence Collection in Immigration Detention Facilities" addresses fully the requirements of this standard. The facility conducts administrative investigations (using GEO employee investigators) of allegations of sexual abuse. The only investigation reports reviewed by this auditor were completed by GEO employees. Criminal investigations are handled by the Bakersfield Police Department. A review of both the completed administrative investigations during this audit period, demonstrated a prompt, thorough, and objective investigation was completed by a specially trained and qualified investigator. The quality and thoroughness of the investigation reports were outstanding. Investigation files clearly document an administrative investigation was conducted after the criminal investigation was completed. Both files appropriately document the necessary consultations being conducted. Written reports of investigations conducted during this audit period clearly document all steps taken during the investigative process. These steps meet all the requirements of this standard. Reports are retained, by policy, for at least 10 years. Investigators are specifically trained on the coordination and sequencing of investigations to ensure criminal investigations by local law enforcement are not compromised by internal investigations. Interviews with Warden, PSA Compliance Manager (also a trained investigator) and investigator (Sergeant) all support full compliance with this standard. The one ongoing investigation remains open even though the staff member resigned his position. This clearly demonstrates compliance with this section of the standard. Documentation of cooperation and efforts to remain informed about the investigation are part of the investigation file maintained by the facility. Interviews with the Warden, PSA Compliance Manager and investigator all support full compliance with this standard. Based upon all of the above, this standard is deemed to be in full compliance.

§115.72 – Evidentiary standard for administrative investigations.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

GEO Corporate Policy and Procedure Manual 5.1.2-F, "Investigating Allegations of Sexual Abuse and Assault and Evidence Collection in Immigration Detention Facilities" addresses fully the requirements of this standard. A preponderance of the evidence is the standard for substantiating an allegation in an administrative investigation. The investigator interviewed confirmed that is the evidentiary standard she was trained to use. A review of investigation files determined a preponderance of the evidence is the standard being used. Based upon all of the above this standard is deemed to be in full compliance.

§115.73 – Reporting to detainees.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

GEO Corporate Policy and Procedure Manual 5.1.2-F, "Investigating Allegations of Sexual Abuse and Assault and Evidence Collection in Immigration Detention Facilities" addresses fully the requirements of this standard. The facility will notify detainees who made an allegation of sexual abuse about the outcome of the investigation if they are still in custody or where it is otherwise feasible. The one detainee interviewed who reported sexual abuse stated he was advised of the outcome of the investigation. Written documentation of this notification is in the investigation file. Based upon all of the above this standard is deemed to be in full compliance.

§115.76 – Disciplinary sanctions for staff.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

GEO Corporate Policy and Procedure Manual 5.1.2-F, "Investigating Allegations of Sexual Abuse and Assault and Evidence Collection in Immigration Detention Facilities" addresses fully the requirements of this standard. Staff are subject to disciplinary or adverse action up to and including removal from their position and the Federal service for substantiated allegations of sexual abuse or for violating agency or facility sexual abuse policies. Removal from their position and from the Federal service is the presumptive disciplinary sanction for staff who are substantiated for allegations of sexual abuse or for violating agency or facility sexual abuse policies. Per the Warden, staff are subject to disciplinary action and criminal prosecution commensurate with the type of allegation substantiated. The facility reports that there were no substantiated allegations of sexual abuse against staff and therefore, no documentation of practice was available for review by this Auditor. The facility reports there were no staff removals or resignations in lieu of removal for violations of agency or facility sexual abuse policies. Therefore, no documentation of practice (reasonable efforts to notify relevant licensing bodies) was available for review by this Auditor. The facility reports there was one employee resignation prior to the conclusion of the investigation. That investigation was still pending at the time of the on-site audit. Based upon all of the above, this standard is deemed to be in full compliance.

§115.77 – Corrective action for contractors and volunteers.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

GEO Corporate Policy and Procedure Manual 5.1.2-F, "Investigating Allegations of Sexual Abuse and Assault and Evidence Collection in Immigration Detention Facilities" addresses fully the requirements of this standard. The facility will make reasonable efforts to report substantiated allegations of sexual abuse by a contractor or volunteer to any relevant licensing body, to the extent known, as well as report to law enforcement agencies, unless the activity was clearly not criminal. The facility reports there were no allegations of sexual abuse reported during this audit period that involved contractors or volunteers. The facility reports that there have been no violations of other provisions of these standards by contractors or volunteers and therefore no documentation of practice to review for compliance. Based upon all of the above this standard is deemed to be in full compliance.

§115.78 – Disciplinary sanctions for detainees.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

GEO Corporate Policy and Procedure Manual 5.1.2-F, "Investigating Allegations of Sexual Abuse and Assault and Evidence Collection in Immigration Detention Facilities" addresses fully the requirements of each element (a – f) of this standard. Detainees are subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative or criminal finding that the detainee engaged in sexual abuse. Detainees are not subject to disciplinary sanctions for engaging in consensual acts with staff. The policy further states any imposed sanctions be commensurate with the severity of the committed prohibited act and intended to encourage the detainee to conform with rules and regulations in the future. The facility reports there were no substantiated allegations of detainee-on-detainee sexual abuse, and no sanctions imposed and therefore no documentation of practice to be reviewed for compliance. The one detainee who made an allegation of detainee-on-detainee abuse that was later deemed unsubstantiated stated he was not disciplined for filing the report. Based upon all of the above this standard is deemed to be in full compliance.

§115.81 – Medical and mental health assessment; history of sexual abuse.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of this standard. Detainees with a history of sexually abusive behavior or sexual victimization are referred to a qualified medical or mental health practitioner for medical and/or mental health follow-up as appropriate. Detainees will receive a health evaluation no later than two working days from the date of assessment and a mental health evaluation no later than 72 hours after the referral. A case worker, intake staff and the Health Services Administrator advised the facility maintains a PREA Risk Assessment Tracking Log. This log documents which detainees were deemed to need a follow-up referral and why. The one detainee interviewed who reported a history of sexual abuse acknowledged he was referred and continues to receive services for his past trauma. The Health Services Administrator reports there were no detainees referred for a health evaluation as a result of their intake risk assessment (all referrals were for mental health evaluations). The PREA Risk Assessment Tracking Log fully supports this statement. Medical records are well documented and contain detailed notes providing clear documentation of follow-up on referrals. Interview with mental health clinician provided clear evidence of a dedicated and professional response to mental health needs. Medical Services Unit, which includes the mental health services staff, is a well-managed and professional group who are dedicated to providing their patients the best care possible. Based upon all of the above this standard is deemed to be in full compliance.

§115.82 – Access to emergency medical and mental health services.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" addresses the requirements of this standard. Detainee victims of sexual abuse have timely, unimpeded access to emergency medical treatment and crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis, in accordance with generally accepted standards professional care. Emergency medical treatment services are provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigations arising out of the incident. Health Services Administrator advised that all emergency medical and mental health services would be provided by Dignity Health (community health services provider). The one detainee who reported sexual abuse that would have necessitated possible emergency medical services and potentially a forensic examination waited months after the incident to report it. He was still transported to the ER as a precaution. Interview with his mental health clinician determined that he received all appropriate services given the length of time between the incident and his report. The policy clearly states that services are free of charge. Health Services Administrator stated services are provided free of charge. There is nothing in the detainee's records that would indicate he was charged for these services. Detainee states he was not charged for these services. Based upon all of the above this standard is deemed to be in full compliance.

§115.83 – Ongoing medical and mental health care for sexual abuse victims and abusers.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" addresses the requirements of this standard. Interview with detainee victim of sexual abuse and his clinician confirmed he is receiving ongoing mental health services. The one detainee victim of sexual abuse remains at the facility and is clearly receiving follow up care. The clinician treating him reports that it is extremely difficult to make continuity of care referrals for many detainees who are deported as the services frequently do not exist in the detainee's home community. As a result of my interviews with the Health Service Administrator and mental health clinician, it is this Auditor's professional opinion that detainee victims of sexual abuse at this facility receive care that is as good, if not better than what is available in the community. Any needed service that the facility could not provide would be received from a community practitioner. Access to these services is without financial cost to the detainee. The facility reports that there were no female detainees who reported sexual abuse and therefore no documentation of practice was available for review of compliance. The one detainee victim of sexual abuse reported he was offered testing (the detainee did not specify what type of testing was offered, due to the detainee's obvious distress in talking about the incident this Auditor did not ask him to define the term "testing") while at the ER. Dignity Health's Mercy Hospital is a full-service emergency medical facility which would be capable of providing all appropriate preventive and prophylactic testing and treatment to a victim of sexual abuse. The one alleged abuser in an unsubstantiated report of sexual abuse was no longer at the facility at the time the incident was reported and therefore there is no documentation of practice for review for compliance. If the abuser had been at the facility a mental health evaluation would have been conducted within 60 days. Based upon all of the above this standard is deemed to be in full compliance.

§115.86 – Sexual abuse incident reviews.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" addresses the requirements of this standard. The facility conducts a sexual abuse incident review at the conclusion of every investigation of sexual abuse. Written reports are generated as a result of these reviews. Interviews with the Warden, Chief of Security and PSA Compliance Manager all confirmed that sexual abuse incident reviews do occur and that the incident review team is composed of the appropriate staff members. Documentation of the incident reviews were provided to this Auditor for review. These documents are maintained in the investigation file. Neither of the two incident reviews contained a recommendation for corrective action. Both incidents were deemed to be unsubstantiated. This Auditor deemed the lack of recommendations appropriate based on the circumstances of the incidents. Documentation of the reports being forwarded to the appropriate parties is also maintained in the investigation file. Interviews with members of the incident review team confirmed that the factors required by the standard are taken into consideration as a part of the incident review process. This consideration was documented on the two sexual abuse incident reviews provided to this Auditor. The most recent annual review, dated 09/15/2017 was provided to this Auditor. The annual review report complies with all aspects of this standard and takes into consideration prior years' data for comparison purposes. Documentation of the report sent to the Field Office Director was also provided and meets the requirements of this standard. Based upon all of the above this standard is deemed to be in full compliance.

§115.87 – Data collection.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy and Procedure 11.1.6.A - MVIPC, "Sexual Abuse Assault Prevention and Intervention Program for Immigration Detention Facilities" meets the requirements of this standard. The facility maintains in a secure area all case records associated with claims of sexual abuse, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment, if necessary, and/or counseling in accordance with these standards and applicable agency policies, and in accordance with established schedules. Interview with PSA Compliance Manager confirmed compliance with this standard. Records related claims of sexual abuse are maintained in a locked file cabinet in the PSA Compliance Manager's office. Based upon all of the above this standard is deemed to be in full compliance.

§115.201 – Scope of audits.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

Policy 11062.2: Sexual Abuse and Assault Prevention and Intervention; dated May 22, 2014, indicates the agency will ensure an integrated and comprehensive system of preventing and responding to sexual abuse or assault of individuals in ICE custody. This will include a thorough, coordinated, multidisciplinary team approach, consistent with the goals of the Prison Rape Elimination Act of 2003. This Auditor was given unrestricted access to all areas of the facility. This Auditor was allowed to interview staff and detainees in a confidential manner. Detainees were notified in advance of the date of the audit and provided with the address to confidentially correspond with the Auditor prior to the audit. The Auditor was provided with a thorough tour of the facility including all areas where detainees are housed and work. The facility staff provided the Auditor with relevant documentation to complete a thorough audit of the facility.

AUDITOR CERTIFICATION:

I certify that the contents of the report are accurate to the best of my knowledge and no conflict of interest exists with respect to my ability to conduct an audit of the agency under review. I have not included any personally identified information (PII) about any detainee or staff member, except where the names of administrative personnel are specifically requested in the report template.

Kurt Pfisterer

January 7, 2018

Auditor's Signature & Date

Exhibit F

1 ROBERT P. VARIAN (SBN 107459)
2 CHARLES J. HA (*pro hac vice*)
3 DAVID KEENAN (*pro hac vice*)
4 JUDY KWAN (SBN 273930)
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11 Email: rvarian@orrick.com

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13 ANGÉLICA SALCEDA (SBN 296152)
14 MICHAEL T. RISHER (SBN 191627)
15 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
16 OF NORTHERN CALIFORNIA
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18 San Francisco, CA 94111
19 Telephone: (415) 621-2493
20 Facsimile: (415) 255-8437
21 Email: jmass@aclunc.org

22 *Attorneys for Plaintiffs*

23 [Additional Counsel appear on signature page]

24 UNITED STATES DISTRICT COURT
25 NORTHERN DISTRICT OF CALIFORNIA
26 SAN FRANCISCO DIVISION

27 AUDLEY BARRINGTON LYON, JR., et. al.,

28 Plaintiffs,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT, et. al.,

Defendants.

Case No. 13-cv-05878 EMC

**DECLARATION OF CARL TAKEI IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
ADMINISTRATIVE MOTION TO
RETAIN CONFIDENTIALITY
DESIGNATIONS AND TO FILE
UNDER SEAL**

1 I, Carl Takei, declare as follows:

2 1. I am a staff attorney at the National Prison Project of the American Civil Liberties
3 Union Foundation and one of the lawyers representing Plaintiffs in the above captioned matter. I
4 have personal knowledge of the facts stated in this declaration and I could and would testify
5 competently to them, if called to do so.

6 2. I submit this declaration in opposition to Defendants' Administrative Motion to
7 Retain Confidentiality Designations Under Section 6.3 of the Governing Protective Order.

8 3. Attached herewith as Exhibit A is a true and correct copy of selected photographs
9 of the Mesa Verde Detention Facility ("Mesa Verde"), that were published in an April 23, 2015
10 *Bakersfield Californian* article entitled "ICE 'ramping up' detention center in Bakersfield," and
11 available at [http://www.bakersfield.com/news/2015/04/24/ice-ramping-up-detention-center-in-](http://www.bakersfield.com/news/2015/04/24/ice-ramping-up-detention-center-in-bakersfield.html)
12 [bakersfield.html](http://www.bakersfield.com/news/2015/04/24/ice-ramping-up-detention-center-in-bakersfield.html).

13 4. Attached herewith as Exhibit B is a true and correct copy of screen shots from
14 video footage of Mesa Verde that appeared in a television news story broadcast by KERO 23
15 ABC News, dated April 23, 2015, and available at
16 <https://www.youtube.com/watch?v=Kbgv6W5Vo80>.

17 5. Attached herewith as Exhibit C is a true and correct copy of screen shots from
18 video footage of Mesa Verde that appeared in a television news story broadcast by KBAK
19 Eyewitness News, dated April 22, 2015, and available at
20 <http://bakersfieldnow.com/news/local/ice-facility-in-bakersfield-it-meets-our-highest-standards>.

21 6. I declare under penalty of perjury under the law of the United States that the
22 foregoing is true and correct and that this declaration was executed on March 22, 2016 in
23 Washington, DC.

24
25 By: 

26 Carl Takei
27
28

EXHIBIT A









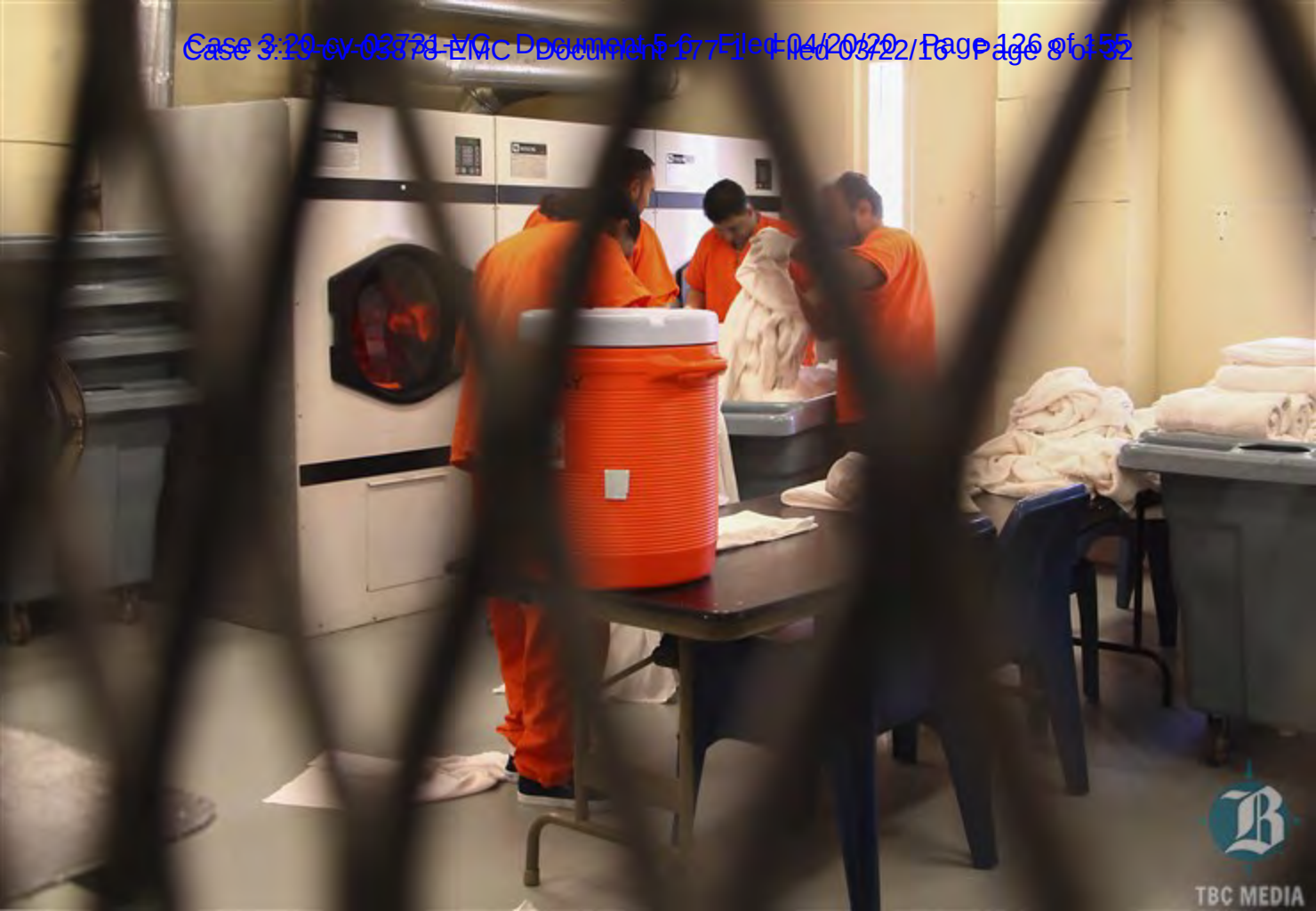


EXHIBIT B

A woman with dark hair, wearing an orange jumpsuit, is sitting on a bed in a detention facility. She is looking down at a book she is holding. The bed has white linens. In the background, another person in an orange jumpsuit is visible, standing near another bed. The room has light-colored walls and metal bed frames.

MESA VERDE DETENTION FACILITY OPEN
DETAINEES AWAIT DEPORTATION OR APPEAL PROCESS

23abc
KERO • BAKERSFIELD

6:01 78°



MESA VERDE DETENTION FACILITY OPEN

DETAINEES AWAIT DEPORTATION OR APPEAL PROCESS



6:01 79°



MESA VERDE DETENTION FACILITY OPEN
DETAINEES AWAIT DEPORTATION OR APPEAL PROCESS



6:01

79°



MESA VERDE DETENTION FACILITY OPEN
DETAINEES AWAIT DEPORTATION OR APPEAL PROCESS



6:01 **79°**



T MESA VERDE DETENTION FACILITY OPEN
DETAINEES AWAIT DEPORTATION OR APPEAL PROCESS

23abc
KERO-BAKERSFIELD
6:00 79°

rnT022

MESA VERDE DETENTION FACILITY OPEN

DETAINEES AWAIT DEPORTATION OR APPEAL PROCESS

23abc
KERO-BAKERSFIELD

6:00

79°

BCNe

MESA VERDE DETENTION FACILITY OPEN

DETAINEES AWAIT DEPORTATION OR APPEAL PROCESS

23abc
KERO • BAKERSFIELD

6:01

78°

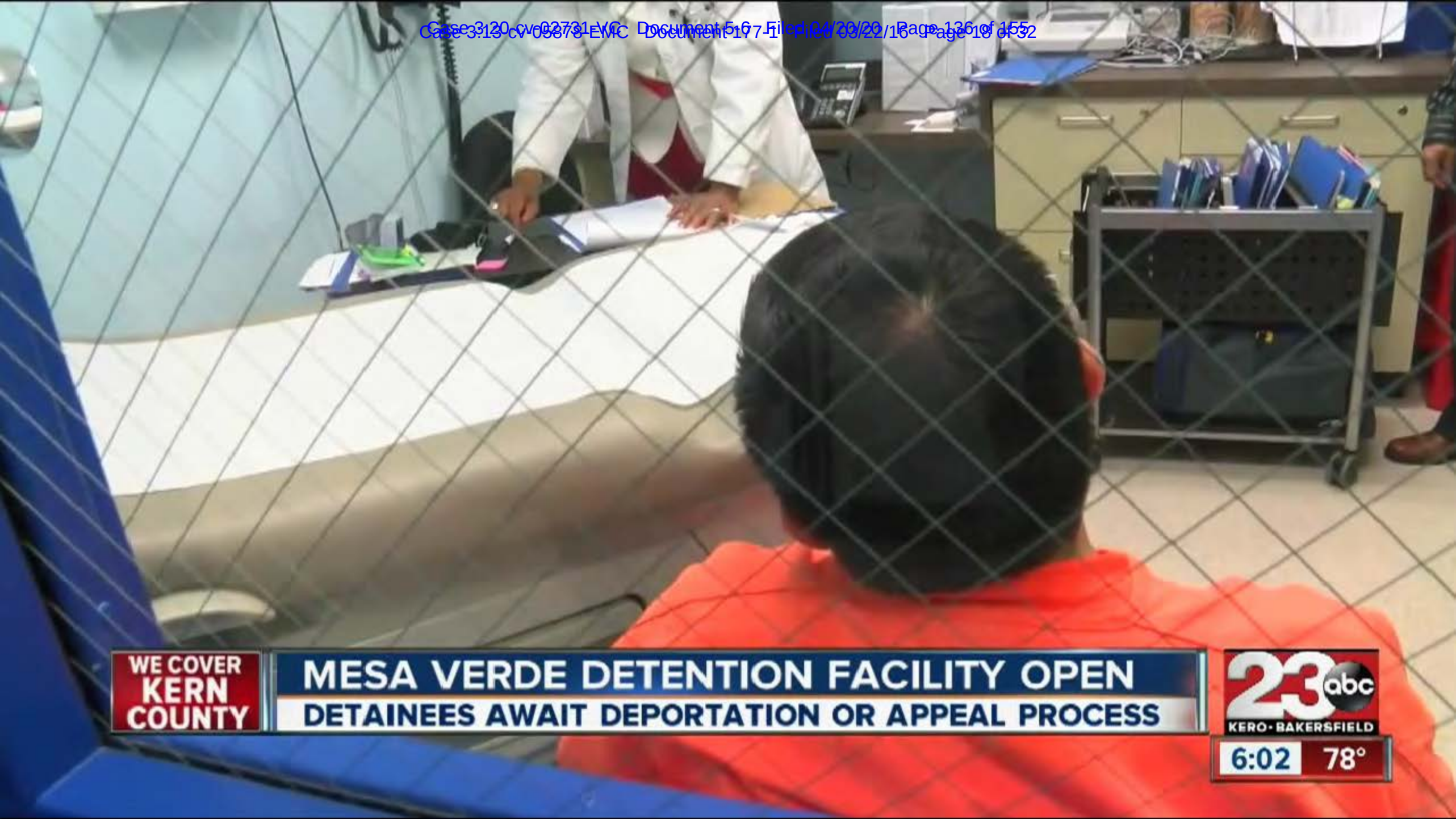


**WE COVER
KERN
COUNTY**

**MESA VERDE DETENTION FACILITY OPEN
DETAINEES AWAIT DEPORTATION OR APPEAL PROCESS**

23 abc
KERO-BAKERSFIELD

6:02 78°



**WE COVER
KERN
COUNTY**

MESA VERDE DETENTION FACILITY OPEN

DETAINEES AWAIT DEPORTATION OR APPEAL PROCESS

23abc
KERO • BAKERSFIELD

6:02 78°



**WE COVER
KERN
COUNTY**

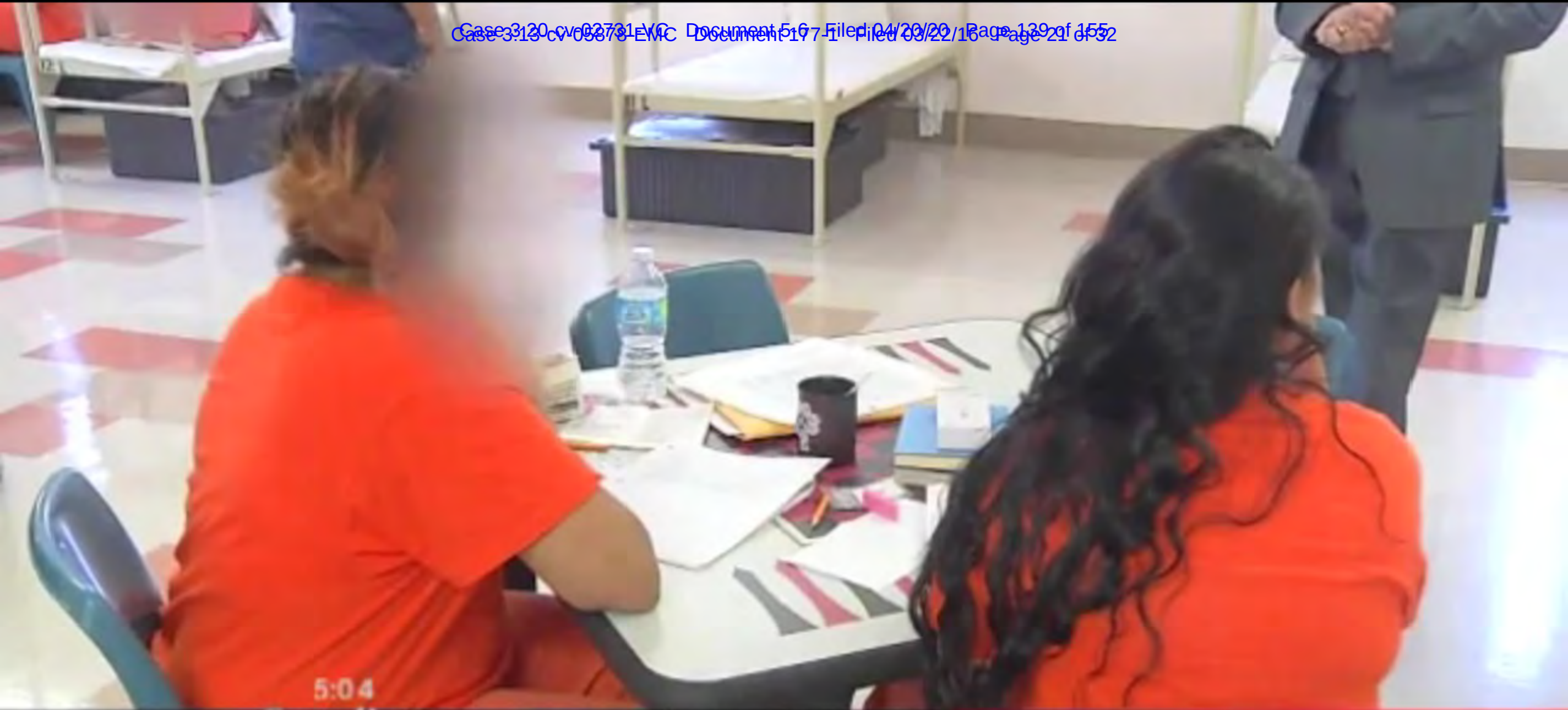
MESA VERDE DETENTION FACILITY OPEN

DETAINEES AWAIT DEPORTATION OR APPEAL PROCESS

23abc
KERO • BAKERSFIELD

6:01 78°

EXHIBIT C



5:04

Eyewitness
News • KBAK
HIGH DEFINITION

"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES



5:04

Eyewitness
News KBAK
HIGH DEFINITION

"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES



8:05
Eyewitness
News KBAK
HIGH DEFINITION

"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES



5:04

Eyewitness
News • KBAK

HIGH DEFINITION

"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES



5:05

Eyewitness
News • KBAK
HIGH DEFINITION

"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES



5:05

Eyewitness
News • KBAK

HIGH DEFINITION

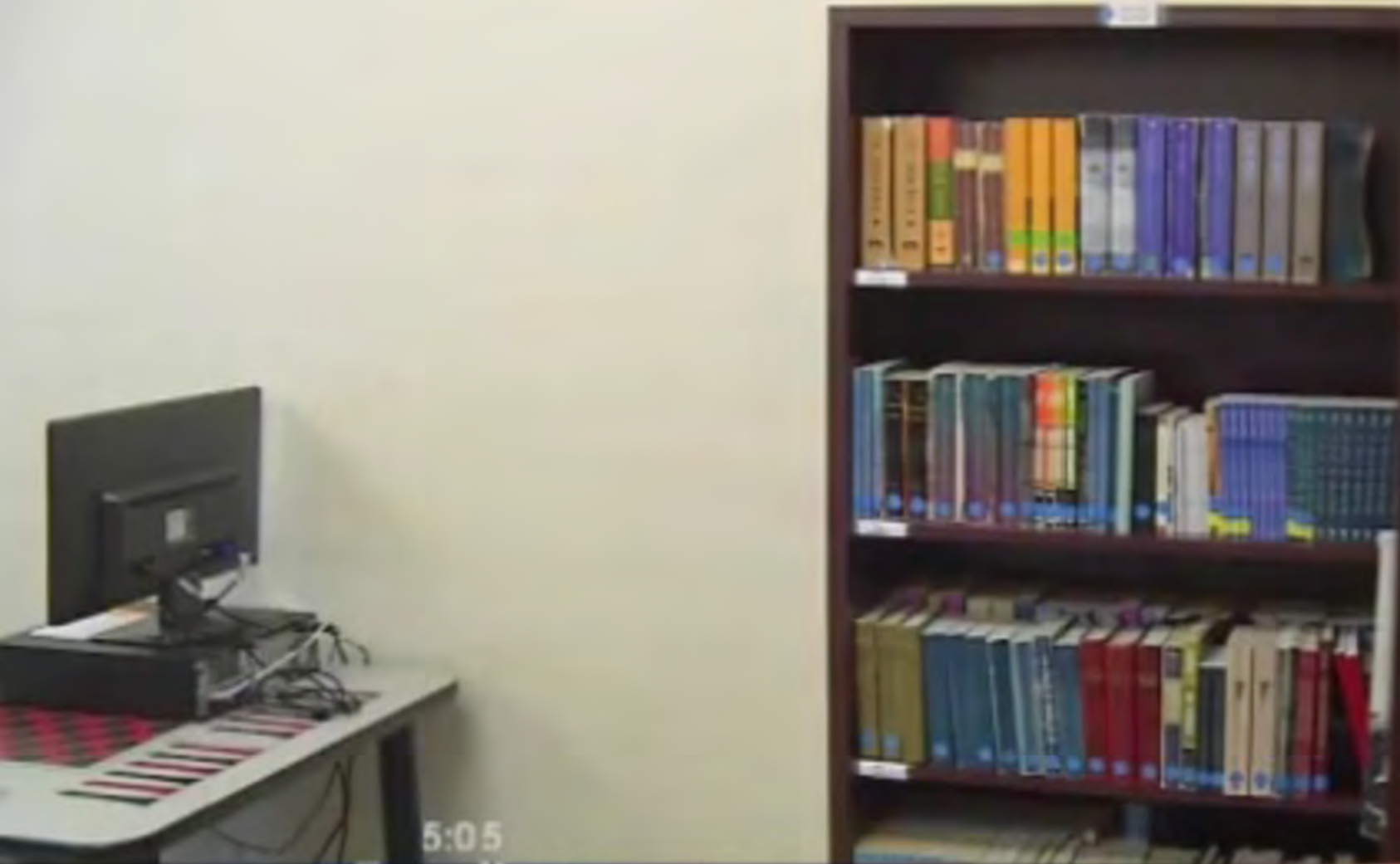
"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES



5:05

Eyewitness
News KBAK
HIGH DEFINITION

"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES



5:05

**Eyewitness
News** • KBAK

HIGH DEFINITION

**"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES**



5:05

Eyewitness
News • KBAK

HIGH DEFINITION

"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES



5:05

Eyewitness
News KBAK

HIGH DEFINITION

"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES

5:05

**Eyewitness
News** • KBAK

HIGH DEFINITION

**"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES**

NURSES STATION 161

5:05

Eyewitness
News • KBAK

HIGH DEFINITION

"ICE" MESA VERDE FACILITY
UP TO 400 IMMIGRATION DETAINEES

Exhibit G

https://www.appeal-democrat.com/news/yuba-county-jail-population-reduced/article_a8151172-7f9e-11ea-ac0c-3f2874db2934.html

Yuba County Jail population reduced

By David Wilson dwilson@appealdemocrat.com

Apr 15, 2020

Yuba County Jail staff has made changes meant to mitigate the spread of COVID-19, the coronavirus.

Jails – especially those such as Yuba County’s that serve as detention centers for the U.S. Immigration and Customs Enforcement – have been the focus of some attention since the onset of the pandemic.

The local jail received a letter last week from the Campaign for Immigrant Detention Reform (CIDR) that called on the county to release all U.S. Immigration and Customs Enforcement (ICE) detainees along with other demands related to the COVID-19 pandemic.

Yuba County Sheriff’s Office public information officer Leslie Carbah said the department was aware of the letter and made changes to prevent the possible spread of the virus before receiving it.

“Our comprehensive efforts have taken into account guidelines from the Centers for Disease Control (CDC), California Board of State and Community Corrections (BSCC), ICE and the Yuba County Public Health officer,” Carbah said via email. “Our mitigation efforts far exceed the

issues referenced in the letter from CIDR.”

CIDR, in addition to urging the release of all ICE detainees, recommended releasing inmates who are over 50, immuno-compromised or have underlying conditions, releasing at-risk inmates who are non-violent and releasing people with fewer than 60 days on their sentence.

Carbah said the jail has reduced its population by more than 20 percent since the beginning of the pandemic. The releases have been for people incarcerated for non-violent and non-serious charges and those who were near their sentenced release date.

“Each person released was done so after a thorough vetting process because the safety of our community is paramount in any such decision we make,” Carbah said. “We will continue to monitor our jail population going forward.”

Yuba County Jail has a maximum capacity of 493 beds and the current population is approximately 293. Of those, 154 are ICE detainees, according to Carbah.

Inmates who are over 65 or have specific underlying health conditions that make them susceptible to serious illness if they contract COVID-19 have been identified by the jail and special precautions have been taken to separate and monitor that group, Carbah said.

In its letter to the jail, CIDR mentioned its concern about an apparent lack of soap at Yuba County Jail and how that could contribute to possible spread inside the jail.

Carbah responded to that claim by saying there is no shortage of hand soap for inmates.

"All inmates are provided soap at no cost to them and additional soap is provided upon request," Carbah said. "This has been true throughout this pandemic and so any accusations to the contrary are incorrect."

In addition, the jail conducts daily sanitation and cleaning based on CDC guidelines, according to Carbah.

"There is a lot of misinformation floating around out there from various activist groups and political editorial 'news' outlets," Carbah said.

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Yuba City man charged in child molestation

Appeal-Democrat

Police Blotter: Wednesday, April 15, 2020

Appeal-Democrat

Caring for babies during coronavirus

Appeal-Democrat

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANGEL DE JESUS ZEPEDA RIVAS,
BRENDA RUIZ TOVAR, LAWRENCE
MWAURA, LUCIANO GONZALO
MENDOZA JERONIMO, CORAIMA
YARITZA SANCHEZ NUÑEZ, JAVIER
ALFARO, DUNG TUAN DANG,

Petitioners-Plaintiffs,

v.

DAVID JENNINGS, Acting Director of the
San Francisco Field Office of U.S. Immigration
and Customs Enforcement; MATTHEW T.
ALBENCE, Deputy Director and Senior
Official Performing the Duties of the Director
of the U.S. Immigration and Customs
Enforcement; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; GEO GROUP,
INC.; NATHAN ALLEN, Warden of Mesa
Verde Detention Facility,

Respondents-Defendants.

CASE NO.

**[PROPOSED] TEMPORARY
RESTRAINING ORDER**

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18 *Attorneys for Petitioners-Plaintiffs*

19 **Motion for Admission Pro Hac Vice Forthcoming*

[PROPOSED] ORDER

Upon review of Plaintiffs-Petitioners' Motion for Temporary Restraining Order, the Class Petition for Habeas Corpus and Class Complaint for Declaratory and Injunctive Relief, all supporting exhibits, and any response filed by Defendants, Plaintiffs' Motion for Temporary Restraining Order is GRANTED. Pursuant to Rule 65 of the Federal Rules of Civil Procedure and Civil L. R. 65-1, the Court orders as follows:

TEMPORARY RESTRAINING ORDER

The Court concludes that Plaintiffs-Petitioners have met their burden of showing: (1) a likelihood of success on the merits of their claim under the Due Process Clause of the Fifth Amendment; (2) that the continued detention of Class members under current conditions of detention at Mesa Verde ICE Processing Facility and the Yuba County Jail is causing and will cause irreparable harm to Class members absent a temporary restraining order; (3) that the balance of equities weighs in Plaintiffs-Petitioners' favor; and (4) that the public interest favors granting the motion. Accordingly, a temporary restraining order pursuant to Federal Rule of Civil Procedure 65 and the inherent equitable powers of this Court is warranted.

1. The Court HEREBY DECLARES that conditions of confinement for all members of the provisionally certified class, namely, all individuals held as detainees of United States Immigration and Customs Enforcement (ICE) at the Mesa Verde ICE Processing Facility and the Yuba County Jail, are currently unconstitutional under the Fifth Amendment because they do not permit social distancing as necessary to minimize the risk of infection with COVID-19.
2. It is hereby ORDERED THAT:
 - a. Within 72 hours from the date of this Order, Defendants shall obtain from every member of the provisionally certified class the address at which they would reside if released and contact information for a responsible adult with whom they would reside at that location, if any, using Form A, attached hereto as Exhibit A;

- 1 b. Within 72 hours from the date of this Order, Defendants shall begin providing the
2 Court and Plaintiffs' counsel with the information obtained pursuant to the
3 preceding paragraph, as well as the following information about each individual
4 currently detained at Mesa Verde and the Yuba County Jail: name, A number,
5 age, and current medical conditions. Defendants shall provide such information
6 at a rate of 25 class members per day, in a spreadsheet or comparable searchable
7 format (hereinafter "spreadsheet information").
- 8 c. Within 72 hours from the date of this Order, Defendants shall provide to each
9 class member a copy of their individual alleged age and current medical
10 conditions, using Form B, attached hereto as Exhibit B, or any substitute form
11 mutually agreed-to by Defendants and Plaintiffs' counsel. Each class member
12 shall immediately be given an opportunity to report any alleged errors to the
13 Court and Plaintiffs' counsel using Form B. Within 24 hours of receiving any
14 such forms back from class members, Defendants shall provide Plaintiffs' counsel
15 and the Court any forms on which class members have alleged errors.
- 16 d. Within 24 hours from the date of this Order, Defendants shall distribute notice to
17 the class, to be furnished by Plaintiffs' counsel, advising all class members of a
18 phone number and email address at which they can reach Plaintiffs' counsel.
19 Defendants shall post the notice prominently in all dorms or other housing units,
20 as well as all rooms where telephones or computers are available for class
21 members' use, and ensure the availability of facilities for free and confidential
22 telephone calls between class members and class counsel.
- 23 e. Defendants shall ensure that the forms and class notice provided to class members
24 are translated, either orally at the time they are provided or in writing, so that
25 class members receive the forms in a language they understand.
26
27
28

- 1 f. Beginning 72 hours from the date of this Order, this Court shall consider, on an
2 expedited basis, individual applications for release filed under this Order by class
3 counsel, as follows:
- 4 i. Each application should provide the information set forth in subparagraphs
5 2.a-c above and any other relevant information, and should not exceed two
6 pages (excluding any supporting documentation) absent exceptional
7 circumstances;
- 8 ii. Defendants may respond to each application in 24 hours, but such
9 responses shall not exceed two pages (excluding any supporting
10 documentation), absent exceptional circumstances;
- 11 iii. Replies in support of applications shall be limited to one page (excluding
12 any supporting documentation);
- 13 g. No security shall be required.
14

15 **ORDER TO SHOW CAUSE**

16 Defendants are ordered to show cause before this Court why a preliminary injunction
17 should not issue requiring Defendants to allow Plaintiffs to be and remain released as ordered
18 herein. The hearing on the order to show cause will be held on _____ at
19 _____.

20
21 IT IS SO ORDERED.
22

23 Dated this ____ day of April 2020

24 _____
25 United States District Judge
26
27
28

EXHIBIT A

**IMPORTANT NOTICE ABOUT RELEASE FROM
MESA VERDE AND YUBA COUNTY JAIL DURING THE COVID-19 PANDEMIC**

This form allows any detainee at Mesa Verde ICE Processing Facility (“Mesa Verde”) and Yuba County Jail (“Yuba”) to be considered for release due to the COVID-19 pandemic.

In *Zepeda Rivas v. Jennings*, Case No. _____ (N.D. Cal.), a federal court has decided that, under the United States Constitution, people at Mesa Verde and Yuba must be given enough space to maintain six feet of “social distance” at all times. The court found that keeping people in more crowded conditions creates a substantial risk of being infected with COVID-19 (the coronavirus).

Under the Court’s order, **anyone** detained at Mesa Verde and Yuba can request release through submission of this Form until Mesa Verde and Yuba have lowered their population enough to permit six feet of social distancing between all detainees.

To be considered for release through the lawsuit, you **must** provide the information requested below. Your response will be provided to the Court, the Government, and attorneys who represent the Mesa Verde and Yuba detainees in this case. If any of your information changes after you respond, you must complete a new form with your updated information.¹

If you do NOT want to be considered for release, do not fill out this form.

NAME: _____ A NUMBER: _____

BIRTH DATE: _____

PROVIDE THE ADDRESS WHERE YOU WOULD LIVE IF RELEASED (PLEASE INCLUDE STREET ADDRESS, APT. NUMBER, CITY, AND STATE)

PROVIDE CONTACT INFORMATION FOR ONE ADULT YOU WOULD RESIDE WITH AT THAT LOCATION, IF ANY:

I declare under penalty of perjury that the foregoing is true and correct.

DATE: _____ SIGNED: _____

¹ If you have questions about this form, you can contact the attorneys who brought this lawsuit at _____[NUMBER] or by email at _____ [EMAIL]. Note that even if you contact them, you will not be considered for release unless you submit this form.

EXHIBIT B

**FORM B – GOVERNMENT’S SUBMISSION IN RESPONSE TO YOUR REQUEST FOR RELEASE
FROM MESA VERDE OR YUBA COUNTY JAIL DURING THE COVID-19 PANDEMIC**

This form concerns your request to be considered for release due to the COVID-19 pandemic.

The Government has provided the following information about you to the Court. (Additional information may be attached to this form). The Court will consider this information in deciding your application for release:

NAME:

A NUMBER:

AGE:

CURRENT MEDICAL CONDITIONS:

If you think any of this information is incorrect, please complete the form below.

There are errors in the following information provided about me (Circle all that apply):

NAME	A NUMBER	AGE	MEDICAL CONDITIONS
------	----------	-----	--------------------

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

ANGEL DE JESUS ZEPEDA RIVAS,
 BRENDA RUIZ TOVAR, LAWRENCE
 MWAURA, LUCIANO GONZALO
 MENDOZA JERONIMO, CORAIMA
 YARITZA SANCHEZ NUÑEZ, JAVIER
 ALFARO, DUNG TUAN DANG,

Petitioners-Plaintiffs,

v.

DAVID JENNINGS, Acting Director of the
 San Francisco Field Office of U.S. Immigration
 and Customs Enforcement; MATTHEW T.
 ALBENCE, Deputy Director and Senior
 Official Performing the Duties of the Director
 of the U.S. Immigration and Customs
 Enforcement; U.S. IMMIGRATION AND
 CUSTOMS ENFORCEMENT; GEO GROUP,
 INC.; NATHAN ALLEN, Warden of Mesa
 Verde Detention Facility,

Respondents-Defendants.

CASE NO.

**PETITIONERS-PLAINTIFFS'
 NOTICE OF MOTION AND
 MOTION FOR TEMPORARY
 RESTRAINING ORDER**

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that, as soon as they may be heard, Plaintiffs will and hereby do move, pursuant to Civil L. R. 7-1 and 65-1, for a temporary restraining order directing ICE¹ to release a sufficient number of putative class members in order to allow for social distancing at Mesa Verde ICE Processing Facility (Mesa Verde) and Yuba County Jail (YJC). This motion is supported by the following Memorandum of Points and Authorities, the Class Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief, the Motion for Provisional Class Certification, and declarations of each of the Class Representative Plaintiffs, or their attorneys on their behalf, and various experts, all of which are filed contemporaneously.

Pursuant to Civil L.R. 65-1(b), on April 20, 2020 at 4 p.m., counsel for Plaintiffs called Assistant U.S. Attorney Sara Winslow at the U.S. Attorney's Office for the Northern District of California and sent an e-mail to Ms. Winslow to advise of the emergency reasons requiring them to seek a temporary restraining order. In addition, Plaintiffs' counsel e-mailed to Ms. Winslow copies of (1) the Class Petition for Writ of Habeas Corpus and Class Complaint for Injunctive and Declaratory Relief, (2) Motion for Temporary Restraining Order, (3) Motion for Provisional Class Certification, and (4) associated proposed orders.

I. INTRODUCTION

As COVID-19 ravages the country and the world, Plaintiffs are trapped in close quarters in two immigration detention centers, Mesa Verde and YJC. Plaintiffs spend their days within arm's reach of one another, share communal bathrooms and showers, and are forced into tightly spaced single-file lines throughout the day. To prevent contracting and spreading COVID-19, the Centers for Disease Control and Prevention ("CDC") has recommended that individuals avoid contact with others and practice social distancing.² Yet, Plaintiffs' continued detention in Mesa Verde and YJC prevents them from doing exactly what the CDC recommends.

¹ References to "Defendants" in this motion are not intended to suggest that Plaintiffs here seek injunctive relief against any non-governmental entities.

² See Coronavirus Disease 2019 (COVID-19), Prevent Getting Sick, How to Protect Yourself & Others, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

1 Social distancing is critical with COVID-19 because the disease has no known vaccine or
 2 cure and is highly contagious. It can survive on hard surfaces and be transmitted by touch. It can
 3 be carried and transmitted by people who exhibit no symptoms. To implement the CDC's
 4 guidance, 95% of Americans—about 316 million people—have been ordered to stay at home.³
 5 Until there is a vaccine or cure for COVID-19, which will likely take over a year,⁴ the disease
 6 will continue to spread and could threaten the life of any adult who contracts it.

7 Defendants' response to has been dangerously inadequate. Experts have been warning
 8 Defendants that COVID-19 will spread "like wildfire" in congregate settings, like Mesa Verde
 9 and YCJ, where people cannot consistently maintain a distance of at least six feet from one
 10 another. In other jails and detention center, it has, with deadly results. Defendants have the
 11 power to reduce the detained populations at both Mesa Verde and YCJ to sufficiently
 12 accommodate consistent, meaningful social distancing. They refuse to do so. Indeed, in recent
 13 weeks, Defendants *increased* the detained immigrant population at YCJ.⁵

14 Recognizing the profound risk that continued detention in Mesa Verde and YCJ poses to
 15 those detained there, multiple judges in this District have ordered ICE to release detained
 16 immigrants on the grounds that their continued detention would violate the Constitution.⁶
 17 Plaintiffs here are currently suffering the *same* constitutional violation that has justified
 18 individual release in these cases.

19 Hundreds of lives are at stake. The systemic crisis at Mesa Verde and YCJ must be
 20 resolved at a systemic level. And it must be resolved quickly. As of April 17, there have been

21
 22 ³ See Sarah Mervosh, et al., N.Y. Times (Apr. 7, 2020), *See Which States and Cities Have Told Residents to Stay at Home*, <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.

23 ⁴ Carolyn Kormann, New Yorker (Mar. 8, 2020), *How Long Will It Take to Develop a Coronavirus Vaccine?*, <https://www.newyorker.com/news/news-desk/how-long-will-it-take-to-develop-a-coronavirus-vaccine> (quoting Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases).

24 ⁵ As of April 18, 2020, there were 157 ICE detainees at YCJ. This marks a net increase of seven ICE detainees at
 25 YCJ compared to April 2. During the same period, the net YCJ population of criminal detainees decreased by
 26 several dozen. Thus, during the same period that YCJ responded to COVID-19 by decreasing its population of
 27 criminal detainees, ICE made the facility more crowded than it otherwise would have been. Riordan ¶ 9.

28 ⁶ See *Doe v. Barr*, No. 20-cv-02141-LBR, 2020 WL 1820667, at *9-10 (N.D. Cal. Apr. 12, 2020) (granting TRO
 and ordering release of ICE detainee in YCJ on grounds that risk of continued confinement was excessive in
 relation to government interest); *Bent v. Barr*, No. 19-cv-06123-DMR, 2020 WL 1812850 at *4-6 (N.D. Cal. Apr.
 9, 2020) (same Mesa Verde); *Bahena Ortuño v. Jennings*, No. 20-cv-02064-MMC, 2020 WL 1701724, at *3-5
 (N.D. Cal. Apr. 8, 2020) (same for Mesa Verde and YCJ detainees).

124 confirmed COVID-19 cases among ICE detainees nationwide—a jump of over 50 cases from the previous week.⁷ This Court should grant a temporary restraining order to implement a system for class members’ expedited release until conditions in Mesa Verde and YCJ can accommodate the required social distancing.

II. FACTS

A. COVID-19 Poses Grave Risk of Harm to Plaintiffs

COVID-19 is a deadly, highly contagious viral disease that has no cure. It has caused a global pandemic, infecting millions of people and killing over a hundred thousand in a matter of months.⁸ In the United States, there are at least 720,630 cases and 37,202 confirmed deaths.⁹ In California, there are at least 31,530 cases and 1,178 confirmed deaths.¹⁰

COVID-19 poses a serious health risk to all adults. Although certain characteristics such as advanced age or underlying health conditions exacerbate the risk of death or serious illness from COVID-19, any adult who contracts the disease can experience severe illness, require hospitalization, or die. While people under the age of 20 have largely been protected from severe effects of the coronavirus, 55% of COVID-19 hospitalizations and 20% of deaths were from people between the ages of 20 and 64. Greifinger ¶ 8. Early CDC data shows nearly 40% of COVID-19 patients hospitalized in the U.S. have been between the ages of 18 and 54.¹¹ In New York, approximately one-third of the patients between the ages of 30 and 39 who died

⁷ U.S. Immigr. & Customs Enforcement, Confirmed Cases, ICE Guidance on COVID-19 (last updated Apr. 17, 2020, 8:00 p.m.), <https://www.ice.gov/coronavirus>.

⁸ See World Health Org., Coronavirus Disease 2019 (COVID-19) Situation Report – 89 (Apr. 18, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200418-sitrep-89-covid-19.pdf?sfvrsn=3643dd38_2.

⁹ See Ctrs. for Disease Control & Prevention, Coronavirus Disease 2019 (COVID-19), Cases, Data, & Surveillance, Cases of Coronavirus Disease (COVID-19) in the U.S. (last updated Apr. 19, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>. Kern County, where Mesa Verde is located, has seen 574 cases and three deaths. See Kern Cty. Pub. Health Servs. Dep’t, COVID-19 Dashboard (last updated Apr. 19, 2020), https://kernpublichealth.com/covid-19_dashboard/. Yuba and Sutter Counties have seen 40 cases and three deaths, while neighboring Sacramento and Yolo Counties have seen more than 1,000 cases and 400 deaths. See Yuba Cty., Coronavirus Update for Yuba-Sutter (last updated Apr. 19, 2020, 6:18 p.m.), <https://www.yuba.org/coronavirus/>. Dr. Greifinger has cautioned that according to at least one model, as few as ten confirmed cases in a county indicate a near-certainty of an existing, undetected epidemic. Greifinger ¶ 45.

¹⁰ See L.A. Times, *Tracking Coronavirus in California* (last updated Apr. 19, 2020, 11:50 p.m.), <https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/>.

¹¹ See Dr. Sanjay Gupta, *The Mystery of Why the Coronavirus Kills Some Young People*, CNN (Apr. 6, 2020), <http://www.cnn.com/2020/04/05/health/young-people-dying-coronavirus-sanjay-gupta/index.html>.

from COVID-19 did not appear to have any risk factors,¹² and physicians treating COVID-19 have noted the “randomness” with regard to which young people are unable to survive contraction of the illness.¹³ Short of death, COVID-19 can cause prolonged illness and suffering in people of any age who contract it. In addition to requiring ventilation to stabilize oxygen intake, increasing numbers of patients also risk kidney failure and require dialysis, possibly permanently.¹⁴ People of all ages and medical backgrounds who have contracted COVID-19 describe painful symptoms including vomiting, diarrhea, fever, relentless shivering, and severe difficulty breathing.¹⁵

In addition, many people have undiagnosed risk factors. For example, hypertension makes someone at higher risk of severe illness from COVID-19,¹⁶ but the CDC has stated that about 11 million adults in the U.S. have high blood pressure but do not know it.¹⁷ Under-diagnosis of risk factors is particularly likely among the proposed class, who are part of a population that often lacks adequate access to healthcare. Among the nonelderly population, 23% of noncitizens with lawful status and more than four in ten (45%) undocumented

¹² See Chris Mooney et al., *Hundreds of Young Americans Have Now Been Killed by the Coronavirus, Data Shows*, Wash. Post (Apr. 8, 2020), <https://www.washingtonpost.com/health/2020/04/08/young-people-coronavirus-deaths/>.

¹³ *Id.*

¹⁴ Reed Abelson et al., *An Overlooked, Possibly Fatal Coronavirus Crisis: A Dire Need for Kidney Dialysis*, N.Y. Times (Apr. 18, 2020), <https://www.nytimes.com/2020/04/18/health/kidney-dialysis-coronavirus.html>.

¹⁵ See Marissa J. Lang, *Nightmares, Flashbacks, Uncertainty: A 29-year-old Recovers After Coronavirus Brought Him Near Death*, Wash. Post (Apr. 17, 2020), https://www.washingtonpost.com/local/coronavirus-covid-19-recovery-francis-wilson-virginia-dc/2020/04/16/0bb55974-7858-11ea-a130-df573469f094_story.html (describing experience of otherwise healthy 29-year-old who survived COVID-19 after requiring an 11-day medically induced coma); Lizzie Presser, *A Medical Worker Describes Terrifying Lung Failure from COVID-19—Even in His Young Patients*, ProPublica (Mar. 21, 2020), <https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients> (respiratory therapist describing COVID-19 as “knocking out what should be perfectly fit, healthy people. Patients will be on minimal support, on a little bit of oxygen, and then all of a sudden, they go into complete respiratory arrest, shut down and can’t breathe at all.”); Fiona Lowenstein, *I’m 26. Coronavirus Sent Me to the Hospital.*, N.Y. Times (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/opinion/coronavirus-young-people.html> (describing feeling “desperate for oxygen” before being hospitalized); Sui Lee Wee & Vivian Wang, *Two Women Fell Sick from Coronavirus. One survived.*, N.Y. Times (Mar. 13, 2020), <https://www.nytimes.com/interactive/2020/03/13/world/asia/coronavirus-death-life.html> (describing experiences of two otherwise healthy nurses in China who contracted COVID-19 and were hospitalized, one of whom died).

¹⁶ Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19), People Who Need Extra Precautions, People Who are at Higher Risk for Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

¹⁷ Ctrs. for Disease Control & Prevention, *CDC Features, Diseases & Conditions, 5 Surprising Facts About High Blood Pressure*, <https://www.cdc.gov/features/highbloodpressure/index.html>.

immigrants were uninsured as of March 2020, compared to less than one in ten (9%) citizens.¹⁸ Lack of health insurance often results in a failure to identify chronic diseases or other health conditions.¹⁹

There is no vaccine, antiviral treatment, or cure for COVID-19. Greifinger ¶ 6. The disease is believed to spread through “respiratory droplets” through “close exposure” of up to six feet. Mishori ¶ 6; Greifinger ¶ 11. “Transmission also is possible through contact with contaminated surfaces.” Greifinger ¶ 10. Individuals infected with COVID-19 can transmit it to others even if they have no symptoms. Mishori ¶ 6.

Because of its highly contagious nature, the only available strategy to reduce the risk of injury or death from COVID-19 is to prevent people from being infected in the first place. Greifinger ¶ 6; Mishori ¶ 22. “Social distancing,” or maintaining a minimum of six feet of separation at all times from other people, paired with “hand hygiene,” is the only effective means of stopping the spread of the disease. Greifinger ¶ 11; Hernandez ¶ 12 (“The most effective mitigation measures are community-wide social distancing.”). Social distancing is the “cornerstone” of the CDC’s prevention plan.²⁰ In the last month, state governments and the federal government have fundamentally restructured American life to limit all interaction except within one’s own household, and, when such interaction is unavoidable, to require social distancing.²¹

B. Adequate Social Distancing is Impossible at Current Population Levels at Mesa Verde and YCJ

In early April, Mesa Verde had detainee population of 286 people. *See Bahena Ortuño v. Jennings*, No. 20-cv-02064-MMC (N.D. Cal.), Supp. Dec. of Erik Bonnar ¶ 2 (ECF No. 29-2).

¹⁸ Health Coverage of Immigrants, Kaiser Family Foundation (Mar. 18, 2020), <https://www.kff.org/disparities-policy/fact-sheet/health-coverage-of-immigrants/>.

¹⁹ Jennifer Tolbert et al., Key Facts about the Uninsured Population, Kaiser Family Foundation (Dec. 13, 2019), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>.

²⁰ Ctrs. for Disease Control & Prevention, Coronavirus Disease 2019 (COVID-19), Prevent Getting Sick, Cloth Face Covers, Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

²¹ Mervosh et al., *supra* note 2 (listing orders by state).

YCJ has a current detainee population of approximately 286 people—approximately 157 of those are ICE detainees, while the remainder are detained pursuant to the Yuba County criminal justice system. Riordan ¶ 9. Social distancing is incompatible with every aspect of life in detention at Mesa Verde and YCJ.

First, Plaintiffs and the proposed class cannot maintain physical distance from other detainees in the units where they sleep. YCJ contains several different types of housing units, each with its own alphabetical designation. There are four dorms (B, C, P, R) in which detainees sleep in bunk beds in close proximity to one another. Riordan Exh. A (Berg Report at p. 9); *id.* Exh. C (photograph marked as DSC “198” is unit C); *id.* Exh. D (photographs marked as DSC 112 and DSC 114 are of housing unit R); Kavanagh ¶¶ 5-6, 10-11. The C and D dorms have 50 beds. Kavanagh ¶ 6. Six other housing units (G, H, I, J, K, L) have bunk beds bolted to the wall and are separated from corridors by a set of bars with open space between the bars, so air flows freely between the cells and the corridors. Riordan Exh. A at 9; *id.* Exh. D (photograph marked as DSC 105 is of housing unit I); Kavanagh ¶ 9. The distance from top to bottom bunk throughout the facility is less than six feet. Mwaura ¶ 10; Zepeda ¶ 15. Several other housing units (D, E, F) involve two-person cells surrounding a common area where half of each unit’s detainees are released at a time during the day. Riordan Exh. A at 9.

Throughout the sleeping quarters in YCJ, social distancing is impossible. Mwaura ¶¶ 9-10; Tovar ¶ 14; Zepeda ¶¶ 14-15. From their own beds, Plaintiffs can reach out and touch the beds beside them. Tovar ¶ 14; Mwaura ¶ 10 (describing two bunks within two feet of him and four more within four feet). The dorms in which plaintiffs live are crowded. Tovar ¶ 14 (dorm is “completely full”); *see also* Mwaura ¶ 10 (only 8 detainees out of 36 do not have a bunk mate); Zepeda ¶ 15 (describing that all bottom bunks are less than a meter apart and occupied).

In Mesa Verde, all detainees sleep in bunk beds only a few feet apart in 100-bed dormitory spaces. Knox Dec. ¶ 9; Riordan Exh. E (2018 PREA Audit) at 2. Mesa Verde has three isolation cells in a restricted housing unit that hold one person each. Riordan Exh. E at 2. Plaintiffs also describe being arm’s width from others while in their beds. Dang ¶ 13; Nuñez ¶

14; Alfaro ¶ 18 (“[The bunk beds] are so close to one another I can reach out my arms and touch another bunk bed.”). Social distancing is impossible at current levels. *See* Dang ¶ 11 (surrounded by full bunks in at-capacity dorm); Nuñez ¶¶ 12, 14 (sleeping in half-capacity dorm less than six feet from two other women); Alfaro ¶ 16 (describing one or two beds free out of 100).

“[B]y definition [the sleeping arrangements in both facilities] prohibit[] social distancing, as the distance between the upper and lower bunks is less than six feet.” Greifinger ¶ 34. Further, “[b]ecause detainees get in and out of bed, bunk beds that are closer than ten feet from one another will not allow adequate social distancing.” *Id.* ¶ 35. At Mesa Verde specifically, Dr. Greifinger has concluded that it “is fundamentally a congregate living space where there is a high risk of infectious spread.” Greifinger Dec. ¶ 34(a). Similarly, at YCJ, although there are number of different unit layouts, “none of the sleeping arrangements appear safe in the context of the coronavirus.” Greifinger ¶ 34(b).

Second, Plaintiffs and the proposed class cannot maintain safe physical distance from one another when sharing common areas in their housing units, including when eating and using the bathroom and shower. In the dining areas in both facilities, most tables and chairs in common spaces are bolted to the ground and cannot be moved. Kavanagh ¶ 3 (YCJ); Riordan Exhs. C & D (Takei ECF No. 197-17 & 197-15) (YCJ); Riordan Exh. F (Takei at 5, 24, 25) (Mesa Verde); Tovar ¶ 14 (YCJ); Alfaro ¶ 22 (Mesa Verde). At the tables, class members sit “right next to each other,” Zepeda ¶ 16 (YCJ), “elbow to elbow,” Mwaura ¶ 13 (YCJ); Alfaro ¶ 22 (“When we watch television, we sit right next to one another”) (Mesa Verde). There is not enough space between chairs to maintain social distances at the tables and not enough tables for detainees to space themselves among them. Kavanagh ¶ 9 (YCJ); Dang ¶¶ 17-18 (Mesa Verde); Nuñez ¶ 14 (Mesa Verde). At Mesa Verde, “[t]he people serving food are an arm’s length distance or less” from Plaintiffs when they serve them. Dang ¶ 17.

Plaintiffs regularly have to line up without sufficient space to maintain social distancing in the line. At Mesa Verde, guards force Plaintiffs to line up and take them to the dining area;

they are “inches apart in line.” Dang ¶ 17; *see also* Nuñez ¶ 14. At YCJ, Plaintiffs must also regularly line up in close quarters. *See* Zepeda ¶ 21 (to use the bathroom), ¶ 23 (to see medical staff); ¶ 24 (to receive afternoon medication); Mwaura ¶ 12 (to go to dining hall).

It is likewise impossible to maintain social distance when using the bathrooms and showers at both facilities. At Mesa Verde, there are five toilets, five showers, and seven sinks per 100-person dormitory. Riordan Exh. E at 2. Plaintiffs are “shoulder to shoulder” when washing their hands. Nuñez ¶ 12. At YJC, toilets and showers are shared and are separated by curtains or thin dividers that generally rise to shoulder height. Tovar ¶ 15 (“you do not have any privacy or space”); Kavanagh ¶ 6; *see also* Mwaura ¶ 16. Plaintiffs’ experiences illustrate that “the structure and facilities of the Mesa Verde Detention Center and the Yuba County Jail [make] social distancing [] impossible . . . and there is a serious risk of infection for all of those who are detained.” Greifinger ¶ 43.

C. Plaintiffs Face an Imminent and Substantial Risk of Exposure to COVID-19 in Mesa Verde and YCJ

Jail and detention settings like Mesa Verde and YCJ “pose a heightened public health risk to the spread of COVID-19, even greater than other non-carceral institutions.” Greifinger ¶ 16. According to Dr. Mishori, “The risk posed by infectious diseases in immigration detention facilities is significantly higher than in the community, both in terms of risk of exposure and transmission and harm to individuals who become infected.” ¶ 7. In addition, at Mesa Verde and YCJ, the risks inherent in detainees’ inability to maintain six feet of physical distance from others are compounded by other conditions of confinement, including poor sanitation, inadequate access to personal hygiene, substandard medical care, and the entry of newly-detained people into the population without proper screening or quarantine. Greifinger ¶¶ 39, 41, 42, 49-56 (identifying factors within Mesa Verde and YCJ that compound the risk inherent in Plaintiffs’ inability to maintain social distancing).

Plaintiffs describe sanitary and hygienic conditions that are wanting. At Mesa Verde, detainees must wash their hands, shower, and clean their personal items using hotel-size

shampoo and soap. Nuñez ¶ 11. On April 17, 2020, they received a liquid soap dispenser and napkin dispenser, ostensibly in response to COVID-19. Nuñez ¶¶ 11, 16. There is no access to hand sanitizer. Dang ¶ 20. Plaintiffs are paid \$1 per day to clean their dorms and the bathrooms they share with up to 99 other detainees for themselves, using only a mop, gloves, and cleaning solution. Dang ¶ 16. One individual describes that everyone in his dorm must “use and re-use the same little towel over and over again to dry [their] hands or wipe surfaces, and it smells and is unsanitary.” Alfaro ¶ 23. At YCJ, the solitary bathroom in the yard is “disgusting,” (Tovar ¶ 17) and clothes often come back from laundry with a foul smell (Zepeda ¶ 26). Detainees without protective gear were forced to clean up after a visibly ill woman was removed from a dorm in which she languished for days. Tovar ¶ 21.²² Moreover, Defendants’ responses to people with symptoms have been delayed and inconsistent with CDC recommendations and their own internal policies. *See* Tovar ¶¶ 7-9, 21 (describing delayed, inadequate response to sick woman in dorm); Mwaura ¶ 30 (sick detainees in dorm room not receiving attention); Alfaro ¶ 39 (“I have also never heard of anyone here who has been isolated or quarantined.”).

Perhaps even more shockingly, Defendants have continued to introduce *new* detainees into the ghastly existing conditions at Mesa Verde and YCJ, including people transferred from facilities with known COVID-19 cases and who entered without a two-week quarantine. Alfaro ¶ 17 (“within hours of someone leaving, a new person comes in to take their place”); Dang ¶ 12 (describing newly-detained people who are coughing and sick); Nuñez ¶ 16 (detailing transfer from YCJ to MV who was not quarantined before joining dorm); Zepeda ¶¶ 29-30 (noting two transfers from Santa Rita Jail, one of whom entered YCJ dorm after five days in cell alone and another who was isolated for only six hours)²³; Mwaura ¶ 31 (describing new detainee who entered Apr. 17, 2020).

²² Even outside the context of the pandemic, Plaintiffs have experienced substandard medical care in both YCJ and Mesa Verde. *See* Tovar ¶ 18 (YCJ); Mwaura ¶ 6 (not receiving care for Valley Fever at YCJ); Zepeda ¶ 9 (10 outstanding requests to see medical staff at YCJ); Dang ¶ 24 (MV failed to respond to request for medical records).

²³ Santa Rita Jail has 27 confirmed cases of COVID-19. *See* Rick Hurd, *Coronavirus: Alameda County Now Has Second-Most Cases in Bay Area*, East Bay Times (Apr. 17, 2020), <https://www.eastbaytimes.com/2020/04/17/coronavirus-alameda-county-now-has-second-most-cases-in-bay-area/>.

Defendants’ own medical subject matter experts have recognized that conditions like those present currently at Mesa Verde and YCJ amount to a “tinderbox scenario” for the rapid spread of COVID-19. *See* Letter from Drs. Scott A. Allen & Josiah Rich to Rep. Bennie Thompson, *et al.* (Mar. 19, 2020), <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238> (hereafter “Drs. Allen & Rich Letter”). So, too, have Plaintiffs’ experts. As Dr. Mishori described, “A coronavirus brought into a detention facility can quickly spread among the dense detainee cohort. Soon many are sick—including high-risk groups such as those with chronic conditions—quickly overwhelming the already strained health infrastructure within the facility.” ¶ 16. Dr. Greifinger has specifically reviewed ICE’s response to the threat of COVID-19 and concludes that it “is deficient, putting detainees . . . in imminent danger of serious illness and death.” ¶ 43.

In addition, it is clear that the only way to mitigate against this doomsday scenario is to significantly reduce the population of both Mesa Verde and YCJ. As Dr. Greifinger explains, ICE has failed “to appreciate the importance of releasing detainees to limit the risk for the individuals released, for those who remain detained, and for the general public.” Greifinger ¶ 47.²⁴ All experts agree that social distancing, paired with vigilant hygiene, is the most effective measure to prevent transmission of COVID-19, *see* Hernandez Dec. ¶¶ 11-12; Mishori Dec. ¶¶ 10-11; Greifinger Dec. ¶ 11, 30, 31, and it is clear that both Mesa Verde and YCJ have “fail[ed] to meet minimally acceptable standards of social distancing, putting the residents at grave and unacceptable risk of pervasive infections, [which will] lead[] to serious illness and death.” Greifinger ¶ 59. In turn, release is “the most important means of mitigating the spread of COVID-19 in ICE detention centers . . . even if the conditions inside the facility were impeccable.” Greifinger ¶ 48.

At this point, ICE does not need to hypothesize as to what might happen in Mesa Verde or YJC once COVID-19 takes hold as, sadly, in other congregate facilities where conditions are

²⁴ Greifinger identifies numerous other deficiencies in ICE’s national response. *See* Greifinger ¶¶ 39, 41, 42, 48-55.

similar to those in Mesa Verde and YCJ, tragedy has struck. In three weeks across March and April, the jail at Rikers Island in New York jumped from no cases among inmates to 273 cases, a higher rate of infection than in the most infected places in the world; four corrections staff members and one inmate have died. Greifinger ¶¶ 21-22. The Cook County Jail has likewise seen an alarming rise in cases: the Jail went from two confirmed inmate cases on March 23, 2020, to 342 confirmed inmate cases on April 17, 2020.²⁵ Three inmates have died.²⁶ As of April 17, 2020, there were at least 124 confirmed cases among detainees in ICE custody, including at least eighteen at the Otay Mesa Detention Center in San Diego.²⁷ These tragedies are foreseeable and preventable.

The catastrophe of a concentrated outbreak, which endangers the lives of not only those trapped in custody, but also those on the outside because it can overwhelm an already-stressed public health infrastructure, are precisely why multiple jurisdictions, including Los Angeles, Detroit, Travis County, New York City, and more than half of states have released thousands of people from criminal custody.²⁸

III. LEGAL STANDARD

Plaintiffs are entitled to a temporary restraining order if they establish that they are “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”).

²⁵ Andy Grimm, ‘I feel like I lost the battle for my husband,’ widow of dead Cook County Jail detainee says, Chicago Sun Times, <https://chicago.suntimes.com/2020/4/16/21224183/lost-battle-husband-widow-dead-cook-county-jail-detainee-coronavirus> (Apr. 16, 2020).

²⁶ *Id.*

²⁷ U.S. Immigration and Customs Enforcement, Confirmed Cases, ICE Guidance on COVID-19 (last updated Apr. 13, 2020, 11:43 a.m.), <https://www.ice.gov/coronavirus> (click on “Confirmed Cases”); see also Max Rivlin Nadler, KPBS, *Otay Mesa COVID-19 Outbreak Now The Largest At A US Immigration Detention Center*, <https://www.kpbs.org/news/2020/apr/14/otay-mesa-detention-center-now-largest-immigration/> (Apr. 14, 2020).

²⁸ See Responses to COVID-19 pandemic, Prison Policy Initiative (Apr. 10, 2020) (collecting instances where jails and prisons have released detainees due to COVID-19), <https://www.prisonpolicy.org/virus/virusresponse.html#releases>.

1 A temporary restraining order may likewise issue where “serious questions going to the merits
 2 [are] raised and the balance of hardships tips sharply in [plaintiff’s] favor.” *All. for the Wild
 3 Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation omitted). To succeed under the
 4 “serious question” test, Plaintiffs must show that they are likely to suffer irreparable injury and
 5 that an injunction is in the public’s interest. *Id.* at 1132.

6 **IV. ARGUMENT**

7 As the institutions of American life, including jails and prisons across the country,
 8 fundamentally transform to accommodate social distancing, ICE stands virtually alone in
 9 defying the medical and societal consensus. Despite overwhelming expert evidence to the
 10 contrary, ICE asserts that immigrants detained in facilities where no one has tested positive for
 11 COVID-19 are not at risk of infection at all, even as the disease ravages the communities
 12 outside and regardless of whether ICE has administered any tests. ICE maintains that it can keep
 13 immigrants in custody safe by ordering increased access to soap and sanitizer, conducting
 14 screenings that fail to account for asymptomatic transmission, and issuing bare
 15 recommendations that encourage social distancing while simultaneously admitting that “strict
 16 social distancing may not be possible in congregate settings such as detention facilities.”²⁹

17 ICE has made clear that it will not act of its own volition to make social distancing
 18 possible. Although on April 10, ICE issued a non-binding recommendation that detention
 19 centers consider reducing their populations to 75% of capacity (regardless of whether such a
 20 reduction was actually sufficient to accommodate social distancing in any particular facility), a
 21 week later, ICE’s Acting Director Matthew T. Albence told a Congressional oversight
 22 committee that the agency contemplated no further releases.³⁰ Before Congress, Acting Director
 23 Albence went further, testifying that ICE cannot release any more detainees because it would
 24 suggest that the Administration is “not enforcing our immigration laws,” which would be a
 25

26 ²⁹ ICE ERO, *COVID-19 Pandemic Response Requirements*,
 27 <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf> (Apr. 10, 2020).

28 ³⁰ House Committee on Oversight and Reform, *DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus*, <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees> (Apr. 17, 2020).

“huge pull factor” and create a “rush at the borders.”³¹ ICE’s actions in California bear out this strategy of relative inaction. Just in the past few weeks, the population of ICE detainees at YCJ has *increased*. Riordan ¶ 9. In court, ICE has taken the position that the threat of COVID-19 is speculative because there are no confirmed cases at Mesa Verde or YJC.³²

Courts in this circuit have seen ICE’s responses to the COVID-19 crisis for what they are: half-measures that do not effectively protect the civil detainees in ICE’s custody from a serious risk of infection. *See e.g., Castillo v. Barr*, No. cv-20-00605, 2020 WL 1502864, at *5 (C.D. Cal. Mar. 27, 2020) (“Civil detainees must be protected by the Government. Petitioners have not been protected. They are not kept at least 6 feet apart from others at all times.”) As a result, judges have required ICE to release individual detainees from Mesa Verde and YCJ on the grounds that their continued detention would violate due process. *See Bahena Ortuño v. Jennings*, No. 20-cv-02064-MMC, 2020 WL 1701724 at *4 (N.D. Cal. Apr. 8, 2020); *Bent v. Barr*, No. 19-cv-06123-DMR, 2020 WL 1812850 at *6 (N.D. Cal. Apr. 9, 2020); *See Castillo v. Barr*, No. cv-20-00605 TJH (AFMX), 2020 WL 1502864, at *5 (C.D. Cal. Mar. 27, 2020).

The population levels in Mesa Verde and YCJ are a structural barrier that prohibit necessary social distancing and, as a result, the risk of contracting COVID-19 looms over every single Plaintiff every single day. This Court’s intervention is urgently needed to prevent the catastrophic harm to Plaintiffs that will result if ICE is permitted to proceed in its intransigent refusal to reduce the population of its facilities.

A. Plaintiffs are Likely to Succeed on the Merits

1. Plaintiffs’ Detention in an Environment Where Social Distancing is Impossible is Unreasonably Dangerous in Violation of Substantive Due Process

The Constitution prohibits the government from exposing people in its custody to unjustifiable or unreasonable risks of harm. These constitutional protections are strongest for

³¹ House Committee on Oversight and Reform, *DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus*, <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees> (Apr. 17, 2020).

³² Opp. Brief at 16, *Bahena Ortuño v. Jennings*, No. 3:20-cv-02064 (N.D. Cal. Mar. 30, 2020) (“In any event, Petitioners’ assertion that detention per se poses an increased risk of health complications or death from COVID-19 is purely speculative. COVID-19 has not spread to the facilities where Petitioners are being detained.”)

civil detainees like Plaintiffs, who are in detention pursuant to civil immigration laws. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Their constitutional rights while in custody are derived from the Due Process Clause of the Fifth Amendment, which provides significantly greater protection than the Eighth Amendment’s ban on cruel and unusual punishment. *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982). Plaintiffs are likely to prevail on either of two due process theories. First, the risks presented by COVID-19 in the congregate detention environments of Mesa Verde and YCJ are excessive in relation to the government’s interests and could be achieved by alternative and less harsh methods. Second, the government’s decision to maintain robust population levels at Mesa Verde and YCJ constitutes deliberate indifference.

a. The Impossibility of Social Distancing Exposes Plaintiffs to an Unjustifiable Risk of Contracting A Deadly Virus in Light of Alternatives to Detention that Would Equally Serve the Government’s Interests in Appearance for Removal Proceedings and Community Safety

Conditions of confinement violate due process when they expose civil detainees to a risk of harm that is either excessive in relation to a legitimate government objective, or is imposed to achieve an objective that could be accomplished using “alternative and less harsh methods.” *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (“[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.”).

Conditions of confinement for civil detainees are presumptively unconstitutional when they are “identical to, similar to, or more restrictive than” those afforded their criminal counterparts. *Unknown Parties v. Nielsen*, No. CV-15-00250-TUC-DCB, 2020 WL 813774, at *4 (D. Ariz. Feb. 19, 2020) (quoting *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982)). There is currently a nationwide trend of mass releases of people serving sentences for criminal convictions to protect their health and facilitate social distancing within jails and prisons.³³ Los Angeles County alone has released at least 1,700 people from county jails, Washington State

³³ *See supra* n. 27.

has released at over 1,100 people serving sentences for convictions, and Michigan is releasing at least 1,000 people per month.³⁴ Plaintiffs, as civil detainees, are entitled to “more considerate treatment” than their criminal counterparts, *Jones*, 393 F.3d at 931-32, but Defendants have notably not extended them similar treatment. Out of well over 30,000 civil ICE detainees nationwide, the agency has released 693,³⁵ and does not intend to release more.³⁶ In YCJ, also home to individuals incarcerated for criminal offenses, the county has released some prisoners in response to COVID-19, but ICE has *increased* its population of civil detainees.³⁷ Instead of depopulating detention centers in line with criminal justice authorities nationwide, Defendants have sought to make changes at the margins that do not effectively address the risk that their current custody imposes on Plaintiffs. *See* Greifinger ¶ 47. Because Plaintiffs have been afforded considerably inferior treatment than their criminal counterparts, their continued detention is presumptively unconstitutional.

It is well-settled that a detained individual’s constitutional protections extend to “future harm,” including a “condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or years.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *see also id.* at 34 (“It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them”); *Parsons v. Ryan*, 754 F.3d 657, 679 (9th Cir. 2014) (affirming the certification of a class of prison inmates and explaining that “every single [] inmate faces a substantial risk of serious harm if [the prison’s] policies and practices provide constitutionally deficient care for treatment of medical, dental, and mental health needs”).

As detailed *supra*, under the current conditions in Mesa Verde and YCJ, Plaintiffs are exposed to a risk of infection with a deadly, incurable virus because consistent social distancing

³⁴ *Id.*

³⁵ Hott Decl. ¶¶ 10, 13, ECF No. 125-1, *Frailhat v. ICE*, No. 5:19-cv-01456 (C.D. Cal. Apr. 15, 2020).

³⁶ Press Release, House Comm. on Oversight and Reform, *DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus* (Apr. 17, 2020), <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>.

³⁷ Riordan ¶ 9 (noting increase in ICE population at YCJ); *id.* Exh. G, David Wilson, *Yuba County Jail Population Reduced*, Appeal Democrat (Apr. 15, 2020).

1 is impossible. *Supra* § II.B. Defendants cannot seriously dispute this. Three judges in this
 2 district have ordered detainees released from Mesa Verde and YCJ, pointing to their risk of
 3 infection without the ability to maintain social distance. *Bahena Ortuño*, 2020 WL 1701724 at
 4 *4 (finding that four “petitioners cannot practice meaningful social distancing in [Mesa Verde
 5 and YCJ]”); *Bent*, 2020 WL 1812850 at *6 (“[E]ven assuming that Respondents accurately
 6 describe [Mesa Verde]’s current practices, these practices are inadequate to ensure the ‘safety
 7 and general wellbeing’ of [Mesa Verde] detainees during the COVID-19 pandemic.”); *Doe v.*
 8 *Barr*, No. 3:20-cv-02141 LB, 2020 WL 1920667 at *10-11 (citing *Bahena Ortuño* and *Bent* in
 9 holding same for YCJ detainee).

10 Because *all* adults risk serious harm if they contract COVID-19, *see* Greifinger ¶ 8, and
 11 all individuals are at the same risk of contracting COVID-19, all putative class members are at
 12 serious risk of harm from COVID-19. *Cf. Savino v. Souza*, No. 1:20-cv-10617-WGY, 2020 WL
 13 1703844 at *7 (D. Mass. Apr. 8, 2020) (certifying class of all ICE detainees in Bristol County
 14 House of Corrections and recognizing that “[c]rucial to the Court’s determination is the
 15 troubling fact that even perfectly healthy detainees are seriously threatened by COVID-19. . . . it
 16 cannot be denied that the virus is gravely dangerous to all of us”); *Malam v. Adducci*, No. 2:20-
 17 cv-10829, 2020 WL 1809675 at *3) (E.D. Mich. Apr. 9, 2020) (“declin[ing] to set a floor for
 18 the level of risk a party must show to warrant immediate release from immigration detention due
 19 to the COVID-19 pandemic” and ordering release of ICE detainee who did not fall into CDC
 20 risk category.)

21 The Government’s judicially-recognized interest in the continued detention of
 22 Plaintiffs—ensuring public safety and that Plaintiffs appear at their removal proceedings—
 23 cannot justify exposing them to a substantial risk of contracting a deadly, incurable virus and
 24 suffering severe bodily harm or death as a result. Judges in this District have already ordered
 25 individual detainees released, finding that the government’s interests can be accomplished
 26 through “alternative, less harsh methods,” like release on supervision and conditions. *Bahena*
 27 *Ortuño* 2020 WL 1701724 at *4 (finding that despite the government’s “non-punitive purpose”
 28

in detaining petitioners their current detention is “excessive in relation to that purpose”); *Doe*, 2020 WL 1820667 at *10 (same for YCJ detainee); *Bent*, 2020 WL 1812850 at *7-8 (same for Mesa Verde detainee). Courts throughout the country have reached similar conclusions. *See, e.g., Rafael L.O. v. Tsoukaris*, No. 20-3481, 2020 WL 1808843 at *7 (D.N.J. Apr. 9, 2020) (recognizing that “COVID-19, and its associated risks, is the difference maker—it changes the equation in evaluating the government’s legitimate objectives”); *Thakker v. Doll*, No. 1:20-cv-480, 2020 WL 1671563 at *8 (M.D. Pa. Mar. 31, 2020) (same for ICE detainees in York County Jail in Pennsylvania). ICE itself has recognized as much when it issued a statement recognizing the need for alternatives to detention for *new arrestees* to protect public health.³⁸ Inexplicably, however, ICE has refused to apply that same logic to its current detainees.

This is particularly troubling because it is well established that 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. *See Thakker*, 2020 WL 1671563 at *8 (noting “that ICE has a plethora of means *other than* physical detention at their disposal by which they may monitor civil detainees and ensure that they are present at removal proceedings, including remote monitoring and remote check-ins”) (emphasis in original). These alternatives to detention are highly effective: for example, a federally contracted evaluation of a program that featured monitoring instead of immigration detention reported a 99% attendance rate at all immigration court hearings and a 95% attendance rate at final hearings. *See* U.S. Gov’t Accountability Office, GAO-15-26, *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness* 10-11 (Nov. 2014), <https://www.gao.gov/assets/670/666911.pdf>; *see also Brief of 43 Social Science Researchers and Professors as Amici Curiae in Support of Respondents*, at 36-37, *Jennings v. Rodriguez*, 2016 WL 6276890, (No. 15-1204) (discussing an alternatives to detention program studied in

³⁸ *See* ICE Guidance on COVID-19, <https://www.ice.gov/covid19> (Apr. 17, 2020) (during pandemic, in many circumstances ICE “will exercise discretion to delay enforcement actions until after the crisis or use alternatives to detention, as appropriate.”), available at <https://www.ice.gov/covid19>.

2011 that saw fewer than 1% of participants removed from the program due to arrest by another law enforcement agency).

Plaintiffs and the proposed class are therefore likely to demonstrate that the government's interests could be satisfied by alternatives to detention and that their current detention in dangerous conditions is unconstitutionally excessive.

b. Plaintiffs are also Likely to Prevail by Showing Defendants' Refusal to Ensure Adequate Social Distancing Constitutes Deliberate Indifference

People in government custody have a right to reasonable health and safety. *See Youngberg v. Romeo*, 457 U.S. 307, 315–16 (1982). “The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.” *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989).

As individuals who are detained for civil offenses, Plaintiffs need not prove “deliberate indifference” to prevail on a substantive due process claim. *Jones*, 393 F.3d at 933. Nonetheless, here, Defendants clearly are being deliberately indifferent to the substantial risks posed by COVID-19 within the congregate detention environments of Mesa Verde and YCJ. In contrast to the subjective Eighth Amendment standard, the Fifth Amendment deliberate indifference standard is purely objective. The government violates due process when “there is a substantial risk of serious harm” to Plaintiffs and the proposed class “that could [be] eliminated through reasonable and available measures that [Defendants] did not take” and that are likely to “caus[e] the injury the plaintiff [will] suffer[.]” *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016). Where Defendants are fully aware of the serious risks facing Plaintiffs and fail to take the only measures known to effectively mitigate those risks, they are deliberately indifferent under the Fifth Amendment. *See, e.g., J.P. v. Sessions*, 2019 WL 6723686 at *36 (C.D. Cal. Nov. 5, 2019) (finding the plaintiffs likely to succeed in proving the government was

1 deliberately indifferent where they presented evidence that immigration enforcement agencies
2 were aware of risks associated with a policy and implemented it anyways).

3 Here, Defendants have acted, and continue to act, with deliberate indifference to known
4 and obvious risks of COVID-19 transmission. On February 25, 2020, March 13, 2020, and
5 March 19, 2020, Defendants' own medical experts warned them that COVID-19 endangered
6 everyone in their custody and that "social distancing is essential to slow the spread of the
7 coronavirus to minimize the risk of infection." *See supra* Drs. Allen & Rich Letter (Mar. 19,
8 2020). On March 17, 2020, these same medical experts published an opinion piece in the
9 *Washington Post* explaining the need to act immediately to stem the spread of COVID-19 in
10 jails and prisons.³⁹ They warned Defendants that only release from custody on a large scale
11 could prevent calamity. Scores of medical experts, including the expert testimony in this case,
12 have subsequently agreed. Greifinger ¶¶ 47, 58; Hernandez ¶ 30; Mishori ¶¶ 22-23.
13 Respondents have disregarded their advice and instead adopted a series of half-measures that are
14 "patently insufficient to protect Petitioners." *Basank v. Decker*, No. 20 Civ. 2518, 2020 WL
15 1481503, at *6-7 (S.D.N.Y. Mar. 26, 2020) (ordering release from immigration detention
16 because Defendants were deliberately indifferent to risk of COVID-19 infection); *see also*
17 *Castillo*, 2020 WL 1502864, at *5 (ordering release from Adelanto ICE Processing Center
18 because "Petitioners have not been protected. They are not kept at least 6 feet apart from others
19 at all times. They have been put into a situation where they are forced to touch surfaces touched
20 by other detainees, such as with common sinks, toilets, and showers.").

21 It is not possible to mitigate the risk of contracting COVID-19 in Mesa Verde and YCJ
22 without consistent social distancing. Greifinger ¶ 31 ("If there is inadequate social distancing,
23 hygiene and sanitation, there will almost certainly be infection and an outbreak."), ¶ 59 ("The
24 only way to avoid these unacceptable risk is to materially reduce the population, implement
25 social distancing as described herein, and ensure appropriate hygiene."). According to the CDC
26

27 ³⁹ Josiah Rich *et. al*, *We must release prisoners to lessen the spread of coronavirus*, *Washington Post* (Mar. 17,
28 2020), <https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus/>.

1 a “cloth face cover is not a substitute for social distancing.”⁴⁰ The uniform medical consensus,
 2 embraced by the CDC, maintains that even when vigilant hygiene and sanitation are
 3 maintained,⁴¹ it simply is not possible to prevent contagion unless people can maintain a
 4 physical distance of at least six feet from one another at all times. Greifinger ¶47.

5 While Defendants have issued guidance to “promote” social distancing,⁴² it is patently
 6 insufficient at Mesa Verde and YCJ, where social distancing is currently impossible. Greifinger
 7 Dec. ¶ 47 (“The measures outlined in ICE’s April 10 Guidance are impossible to carry out given
 8 the limits of the infrastructure” at Mesa Verde and YCJ). Even if, as the guidance suggests,
 9 detention centers actually reduce their populations to 75% of capacity, Dr. Greifinger points out
 10 that “ICE provides no evidence that 70% of 75% capacity would facilitate effective social
 11 distancing within dormitories or cells, which requires that individuals maintain six feet of
 12 separation.” Greifinger Dec. ¶ 48(a). As Judge Phillips just found in a case involving prisoners,
 13 “The County’s assurances that it has provided unlimited free soap to prisoners and advised
 14 prisoners to remain physically distant—without establishing that it is physically possible to do
 15 so—is unlikely to be sufficient to defeat a claim of deliberate indifference . . . In sum,
 16 Defendant has failed to demonstrate that it is currently taking adequate precautions to protect
 17 the health of the prisoners in the country jails.” *Gray v. Cty. of Riverside*, 5:13-cv-0444-VAP-
 18 OPx (C.D. Cal. Apr. 14, 2020), Order at *5 (ECF 191).

19 Similarly, courts have already found that ICE’s current actions to date—which include
 20 providing free soap, increasing sanitation supplies, screening staff for body temperature, and
 21 encouraging good hygiene—do not satisfy Defendants’ constitutional duty to mitigate the risk
 22 of harm to detainees in Mesa Verde and YCJ because they do not accommodate social
 23 distancing. *Doe*, 2020 WL 1820667 at *11 (“The petitioner cannot meaningfully protect himself
 24 at the Yuba County jail from the risks of his custody”); *Bahena Ortuño*, 2020 WL 1701724 at
 25

26 ⁴⁰ CDC, Coronavirus Disease 2019 (COVID-19) Protect Yourself: Know How It Spreads,
 27 <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁴¹ Vigilant hygiene and sanitation are not possible at Mesa Verde and YCJ. *Supra* § II.C.

⁴² ICE ERO COVID-19 Pandemic Response Requirements at 4, 13 (Apr. 10, 2020), available at
 28 <https://www.ice.gov/covid1>.

*4 (ordering release of petitioners with medical vulnerabilities because they “cannot practice meaningful social distancing in [Mesa Verde and YCJ]”).

The facts are clear: social distancing is the only meaningful measure to prevent the spread of COVID-19 among the Plaintiff class. Social distancing is currently impossible in Mesa Verde and YCJ. It will continue to be impossible in Mesa Verde and YCJ unless Defendants significantly reduce the detained populations in each detention center. Mishori ¶¶ 22-23. The law is also clear: because Defendants have failed to take known, available measures to mitigate an obvious, substantial risk to Plaintiffs, the law is also clear: the conditions of Plaintiffs’ confinement violate due process. *See Castro*, 833 F.3d at 1071.

B. Plaintiffs Satisfy the Remaining Factors for Preliminary Relief

1. Exposure to a Lethal Virus Which Lacks Any Vaccine, Treatment, or Cure Constitutes Irreparable Harm

“[T]he deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Irreparable harm exists where government actions threaten an individual’s health. *See M.R. v. Dreyfus*, 663 F.3d 1100, 1111 (9th Cir. 2011), *as amended by* 697 F.3d 706 (9th Cir. 2012); *Indep. Living Ctr. of S. Cal., Inc. v. Shewry*, 543 F.3d 1047, 1050 (9th Cir. 2008). Likewise, continued immigration detention under “substandard physical conditions, [and] low standards of medical care” is a form of irreparable harm supporting injunctive relief. *See Padilla v. ICE*, 953 F.3d 1134, 1148 (9th Cir. 2020). Defendants cannot dispute that all adults face a risk of serious illness upon contracting COVID-19. Greifinger Dec. ¶ 8, that social distancing is the only effective measure to prevent the spread of COVID-19, Hernandez Dec. ¶ 12, and that social distancing will not be possible inside Mesa Verde and YCJ without reducing the detained population. Greifinger Dec. ¶¶ 33-35. “Inadequate health and safety measures at a detention center cause cognizable harm to every detainee at that center.” *Hernandez v. Wolf*, No. 20-cv-00617, slip op. at 8-9 (C.D. Cal. Apr. 1, 2020), *citing Parsons*,

754 F.3d at 679. The entire Plaintiff class is at risk of irreparable harm that can be remedied only by depopulating Mesa Verde and YCJ.

2. Public Interest and Balance of Equities Weigh Heavily in Plaintiffs' Favor

Plaintiffs' continued detention at current population levels "threatens the health of detainees, staff and the broader population." Greifinger Dec. ¶ 24. For these reasons, as in the cases where this Court has already granted relief, the balance of equities falls squarely in the Plaintiffs' favor. *See Doe*, 2020 WL 1920667 at *11; *Bent*, 2020 WL 1812850 at *7; *Bahena Ortuño*, 2020 WL 1701724 at *4.

As an initial matter, "[f]aced with . . . preventable human suffering, [the Ninth Circuit] ha[s] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quotation omitted). Moreover, it is in both ICE's and the broader public interest to reduce the threat of an imminent COVID-19 outbreak at Mesa Verde and YCJ. ICE has an interest in preventing any potential spread of COVID-19 in its detention facility, which may then affect guards, visitors, attorneys, and others who may potentially interact with detainees. An outbreak of COVID-19 at Mesa Verde and YCJ would doubtless put significant pressure on or exceed the capacity of local health infrastructure. *Hernandez* Dec. ¶¶ 23 (stating that an outbreak at Mesa Verde or YCJ would likely "strain[] and overload[]" nearby emergency medical facilities) As a judge of this Court explained:

[U]nder the highly unusual circumstances presented, i.e., a global pandemic of a type not seen within recent memory, the public interest is served by the requested injunction. Specifically, the public interest in promoting public health is served by efforts to contain the further spread of COVID-19, particularly in detention centers, which typically are staffed by numerous individuals who reside in nearby communities.

Bahena Ortuño, 2020 WL 1701724 at *4. Accordingly, the balance of equities favors Plaintiffs. To the extent ICE has public safety or flight concerns about any particular detainee, those can be accounted for through the alternatives to detention discussed above. *See supra* at 17-18.

C. Justice Requires Comprehensive Relief for the Class

“[T]he appropriate capacity of a jail during a pandemic obviously differs enormously from its appropriate capacity under ordinary circumstances.” *Bent*, 2020 WL 1812850 at *4, quoting *Basank*, 2020 WL 1481503 at *6. There are hundreds of ICE detainees at Mesa Verde and YCJ. Should the Court deny Plaintiffs’ motion for provisional class certification and a temporary restraining order, dozens of individual Mesa Verde and YCJ detainees will likely file claims for relief depending on their access to lawyers. Those individual petitions would vindicate individual Petitioners through release, but, given the time-consuming nature of individual habeas litigation, would leave hundreds of identically situated people detained under conditions that violate their due process rights. They also would constitute an enormous tax on this Court’s resources, will likely take too long and would, at best, result in constitutional rights turning on the happenstance of whether a detainee has access to a lawyer, or on their language skills and education level. That is fundamentally unfair. *All* of the Proposed Class Members are at grave risk of COVID-19 infection under their current conditions of confinement, regardless of whether their circumstances permit them to file individual claims. The appropriate remedy for the system-wide crisis at Mesa Verde and YCJ is system-wide relief for all those whose rights are being violated.

Litigation on behalf of the detainees in both facilities, which share in the jurisdiction of the San Francisco ICE Field Office, also prevents absurd efforts that depopulate one facility but result in increased populations in the other, like transfers *between* the facilities. During the course of the COVID-19 pandemic, ICE has transferred detainees from YCJ to Mesa Verde, thus reducing the population in one while increasing the other, and unjustifiably placing the transferred detainee and detainees in the new facility at risk. Sanchez-Nunez ¶ 16 (detainee transferred from YCJ to Mesa Verde immediately introduced into general population).

Another district court recently certified a class of ICE detainees held at two detention centers in Bristol County, Massachusetts, recognizing that a systemic remedy was necessary “*in order to protect everyone* [in the facility] from the impending threat of mass contagion.” See *Savino*, 2020 WL 1703844 at *7 (emphasis added). That court issued an order requiring a

1 reduction of the population of those detention centers on an expedited, individualized basis. *Id.*
 2 at 28.

3 Plaintiffs propose that this Court adopt a similar procedure, as set forth in the Proposed
 4 Order, by which claims for relief are processed fast enough that there is a chance social
 5 distancing could be established at Mesa Verde and YCJ before a serious outbreak occurs, but
 6 also allows this Court to assess the individual circumstances of detainees at Mesa Verde and
 7 YCJ and craft appropriate conditions of release. Of course, nothing in Plaintiffs' Proposed Order
 8 bars Defendants from implementing an alternative plan to rapidly reduce the populations to a
 9 level where they could implement social distancing at both facilities.

10 ICE, however, has steadfastly refused to implement such a system to date— leaving no
 11 doubt that this Court's intervention is desperately needed. This Court should grant the
 12 temporary restraining order, adopt Plaintiffs' proposal for considering release requests on an
 13 expedited basis, and keep that system in place until the Government takes the necessary steps to
 14 cease the ongoing system wide Fifth Amendment violation at Mesa Verde and YCJ.

15 **V. SECURITY**

16 "Rule 65(c) invests the district court with discretion as to the amount of security required,
 17 if any." *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and
 18 citation omitted). District courts routinely exercise this discretion to require no security in cases
 19 brought by indigent and/or incarcerated people. *See, e.g., Toussaint v. Rushen*, 553 F. Supp.
 20 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351,
 21 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This Court should do the same.

1 **VI. CONCLUSION**

2 This Court should grant Plaintiffs' motion and order ICE to release people from Mesa
3 Verde and YCJ in order to facilitate social distancing.

4
5 Dated: April 20, 2020

Respectfully submitted,

6 /s/ William S. Freeman

7 William S. Freeman

8 Sean Riordan

9 Angélica Salceda

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 12 SAN FRANCISCO DIVISION

13 ANGEL DE JESUS ZEPEDA RIVAS,
 14 BRENDA RUIZ TOVAR, LAWRENCE
 MWAURA, LUCIANO GONZALO
 15 MENDOZA JERONIMO, CORAIMA
 YARITZA SANCHEZ NUÑEZ, JAVIER
 16 ALFARO, DUNG TUAN DANG,
 Petitioners-Plaintiffs,

17 v.

18 DAVID JENNINGS, Acting Director of the
 San Francisco Field Office of U.S. Immigration
 19 and Customs Enforcement; MATTHEW T.
 ALBENCE, Deputy Director and Senior
 20 Official Performing the Duties of the Director
 of the U.S. Immigration and Customs
 21 Enforcement; U.S. IMMIGRATION AND
 CUSTOMS ENFORCEMENT; GEO GROUP,
 22 INC.; NATHAN ALLEN, Warden of Mesa
 Verde Detention Facility,

23 Respondents-Defendants.
 24
 25
 26
 27
 28

**DECLARATION OF SANDRA
 HERNANDEZ**

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**Motion for Admission Pro Hac Vice Forthcoming*

Declaration of Sandra Hernandez

1. I am the president and CEO of the California Health Care Foundation, which works to improve health care systems in California. Prior to joining CHCF, I was CEO of The San Francisco Foundation, which I led for 16 years. From 1994 to 1997, I served as Director of Health for the City and County of San Francisco. I also co-chaired San Francisco's Universal Healthcare Council which designed Healthy San Francisco, an innovative health access program for the uninsured.

2. In February 2018, I was appointed by Governor Jerry Brown to the Covered California Board of Directors. In December 2019, I was appointed by Governor Gavin Newsom to the Healthy California for All Commission. I served on President Bill Clinton's Commission on Consumer Protection and Quality in the Healthcare Industry, and on two Institute of Medicine committees, including one on the Implementation of Antiviral Medication Strategies for an Influenza Pandemic. Since 2017, I have been on the Planning Committee for the Future of Health Services Research at the National Academy of Medicine. I also serve on the University of California Regents Health Services Committee and the University of California-Davis Gordon & Betty Moore School of Nursing National Advisory Committee.

3. I practiced at San Francisco General Hospital in the HIV/AIDS Clinic from 1984 to 2016 and was an assistant clinical professor at the UCSF School of Medicine. I am a graduate of Yale University, the Tufts School of Medicine, and the certificate program for senior executives in state and local government at Harvard University's John F. Kennedy School of Government.

4. Attached as Exhibit A is my curriculum vitae.

A. Respiratory Spread of COVID-19

5. The COVID-19 strain was isolated on January 7, 2020 after the first cases of the 2019 novel coronavirus (SAS-CoV-2) were identified in December 2019. The public health

1 response in Wuhan, China, where the strain first appeared, was a mass quarantine of 59 million
2 people in Wuhan and surrounding cities in mid-January. By the end of January, the World
3 Health Organization declared the spread of COVID-19 an international public health
4 emergency.

5 6. Transmission of COVID-19 is largely through community contact via respiratory
6 spread. Droplets carrying the virus are transmitted primarily through hands and surfaces. As a
7 result, infection control must focus on reducing droplet spread. Studies have shown viral
8 shedding before symptom onset and in asymptomatic patients, suggesting that these individuals
9 are important in disease transmission.

10 7. Any publicly reported tally of reported cases and deaths from COVID-19 almost
11 certainly represents an undercount of infections given the constrained availability and
12 accessibility of COVID-19 testing. The overwhelming majority of cases, in the United States
13 and around the world, have resulted from community transmission.

14 8. About 5% of patients with COVID-19 will develop acute respiratory distress
15 syndrome (ARDS) and require intensive care. Approximately 20% of infected individuals may
16 need hospitalization for clinical reasons.

17 **B. U.S. and California Public Health Response to COVID-19**

18 9. Testing capacity for COVID-19 was slow to become available in the United
19 States. It is now increasing in California and across the country but remains insufficient to
20 respond to the need. As testing increases, it is expected that the number of confirmed cases will
21 increase markedly.

22 10. There is currently no treatment or vaccine for COVID-19. The clinical response
23 for most individuals with COVID-19 is limited to infection control. Patients with COVID-19
24 will require isolation and, depending on the severity of symptoms, hospitalization.

1 11. Limiting the growth of new cases can be achieved by (1) limiting social contact
2 through social distancing and self-quarantine; (2) limiting the probability of infection during
3 social contacts through, i.e., ensuring personal hygiene and hand-washing, disinfecting
4 frequently touched surfaces and, where appropriate, wearing personal protective equipment; (3)
5 decreasing the infectious period through contact tracing, case isolation, and timely treatment if
6 medication is available; and ultimately (4) reducing population susceptibility to the virus
7 through vaccination.

8 12. At this point, given the lack of more widespread community testing, and the lack
9 of available treatments, the only option is mitigation. The most effective mitigation measures
10 are community-wide social distancing.

11 13. The public health response to COVID-19 in California has been extensive. The
12 primary goal of the response has been to limit the growth of new cases in order to flatten the
13 outbreak. If effective, this serves to protect limited health care resources and allow time for the
14 development of effective medication and vaccines. Without an intervention, the pandemic will
15 quickly overwhelm the capacity of the health systems to respond to both COVID-19 and other
16 medical needs.

17 14. To that end, on March 4, Governor Gavin Newsom declared a state of emergency
18 to make resources available, formalize emergency actions, and assist in state preparations for an
19 anticipated spread of COVID-19.¹ He also used the state's authority to make all medically
20 necessary screening and testing for COVID-19 free for 24 million more California residents.²
21 This includes waiving all fees for emergency room, urgent care or provider office visits related
22 to the screening and testing of COVID-19. The state also encouraged health plans to expand
23 telehealth services in order to increase screening and testing capacity.

24
25 ¹ See <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf> (accessed
Mar. 21, 2020).

26 ² See <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-012.aspx> (accessed Mar. 21, 2020).

1 15. In a March 15 proclamation, Governor Newsom advised all people over the age of
2 65 to shelter in place; ordered the closure of bars, nightclubs, wineries and brewpubs; decreased
3 restaurant capacity by half to permit social distancing; and severely restricted visitors to long-
4 term care facilities and hospitals. He also announced that 51% of school districts, which
5 represent 80-85% of all students in California, had closed for an extended period. He further
6 expressed the intent of public authorities to procure hotels and motels for homeless people in
7 order to decrease the risk of transmission for the unhoused.

8 16. On March 16, seven Bay Area counties issued the first “shelter in place” policies
9 in the country. Three other counties followed. Pursuant to these policies, individuals were
10 directed to severely limit activity, travel and business outside the home. Only essential services,
11 such as health care, police, grocery stores, and gas stations, were exempted. On March 19,
12 Governor Newsom expanded the “shelter in place” policy to the entire state.³ There are a
13 growing number of shelter in place policies across the country.

14 17. COVID-19 remains a serious public health threat in California and nationwide.
15 However, as of today, these public health measures adopted in California appear to have been
16 effective in “flattening the curve,” or reducing the rate of increase of infections and deaths, in
17 the state. Although California was one of the earliest states to experience a significant number
18 of cases and deaths, it now ranks relatively low among the states in terms of infections and
19 deaths as a percentage of the population.

20 18. There have been COVID-19 cases reported in Kern and Yuba Counties, the sites
21 of the Mesa Verde and Yuba immigration detention centers, respectively. As of April 18, 2020,
22 there are 610 confirmed cases in Kern County⁴ and 41 confirmed cases in Yuba and Sutter
23 Counties.⁵

24 ³ See <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf> (accessed Mar. 22, 2020).

25 ⁴ See <https://www.bakersfield.com> (accessed Apr. 18, 2020).

26 ⁵ See <https://www.yuba.org/coronavirus/> (accessed Apr. 18, 2020).

C. Effects on Public Health of a COVID-19 Outbreak in Prisons, Jails or Detention Facilities

19. Jails, prisons and detention facilities are places where individuals eat, sleep and live in close quarters. These are the type of environments where infectious diseases can most quickly spread. This is particularly true as respiratory hygiene within these facilities are limited.

20. Detention facilities have limited ability to allow for social distancing, and therefore are unable to effect the kinds of public health response measures that appear to have been effective to date in slowing the transmission of COVID-19.

21. In addition, detention facilities do not generally have the ability to isolate people who are infected with COVID-19; to test all detainees in order to identify those with COVID-19 infection (whether they are symptomatic or asymptomatic); to provide the acute respiratory support for individuals who manifest severe respiratory distress due to the infection.

22. Prisons, jails and detention facilities are not isolated from the community. They are part of and rely on the broader community. People from the community—including staff, contractors and vendors—come and go for various reasons. Detainees also need to be transported to and from facilities to attend court hearings, for specialized medical care, or for other reasons. There can also be rapid turnover of individuals in the facilities. With each entry and exit, individuals can bring infectious disease into or out of the facilities.

23. Typically, immigration detention facilities are also in medically under-resourced areas. This is true for Mesa Verde, in Bakersfield, California; and Yuba County Jail, in Marysville, California. Marysville and Bakersfield are medically underserved. The immigration detention facilities are not designed to handle specialized or intensive care. Thus, if an individual detainee—or many detainees—need specialized care, they must rely on the medical resources that are available in the community. In rural parts of California, these resources quickly become strained and overloaded.

1 24. Compelling evidence and current public health mitigation efforts would suggest
2 that all efforts to avoid a COVID-19 infection outbreak in detention centers would significantly
3 reduce the burden both on employees in those centers as well as the larger community in which
4 those centers reside such that the health care delivery system can cope with existing infections
5 better.

6 25. All counties are already burdened or expecting to be burdened by COVID-19,
7 hence the extraordinary public health interventions. But there would be more capacity to
8 respond if detained individuals are released to their homes—where there is less likelihood of
9 infection because there is greater possibility of social distancing.

10 26. Access to emergency medical services can be constrained because of the COVID-
11 19 related health burdens increasingly imposed on emergency health services. All individuals in
12 California have access to emergency medical care, regardless of their immigration status. The
13 barrier to emergency COVID-19 care for someone without lawful immigration status in
14 California would be more the capacity of the health system, and not their immigration status.

15 27. California's rural hospitals would likely be unable to cope with an outbreak of
16 COVID-19 at a local immigration detention facility. This would limit the effectiveness of the
17 response for the individual infected and needing emergency care. But it would also affect others
18 in the community who might have unmet medical needs.

19 28. For these reasons, an outbreak of COVID-19 at immigration detention facilities
20 would have ripple effects for the community at large. Prison health is public health.

21 **D. Benefits to Public Health from Release of Immigration Detainees**

22 29. In my opinion, there is an opportunity to promote the public health in the
23 communities where the detention centers exist. It would be in the community's best interests to
24 rapidly depopulate these congregate facilities in California.

1 30. For the reasons elaborated above, and the reasons which are motivating
2 unprecedented public health directives at the local and state levels, it is my expert opinion that it
3 is in the interest of the public health of the State of California for immigration detention
4 facilities to release detainees into the community. This is true so long as the individuals have a
5 home to go to and they are willing and able to abide by local guidelines and directives.

6 31. It is consistent with the public health guidance and priorities of the State to
7 encourage the release of detainees. The unnecessary detention of individuals in congregate
8 facilities in the midst of a pandemic has risks to the individual and to the broader public.

9 32. The current recommendations of health care providers in the state are for
10 individuals to rest and recuperate at home, including if they have been tested and/or exposed to
11 COVID-19, so long as they are not experiencing severe symptoms. Under current guidelines,
12 individuals who are exposed to a COVID-19 patients ought to be tested for COVID-19,
13 quarantined for 14 days, and assessed for COVID-19 infection. Therefore, individuals who have
14 been exposed to COVID-19, including in the detention centers, ought to be quarantined where they
15 are not in a congregate living situation and not exposing others to potential infection. This is
16 true for individuals who have exposure to COVID-19 in the detention centers.

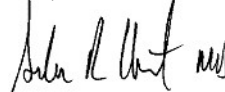
17 33. Even if the aggressive public health interventions across California ultimately
18 result in a stabilizing or improving infection rate, this would not necessarily eliminate the need
19 to decrease significantly the populations in the detention facilities. This is for several reasons.
20 First, the heightened risk of infectious spread inside the detention facilities would continue
21 because of the unique characteristics of congregate settings, even if things improved somewhat
22 outside the detention facilities. Second, the fact that the detention centers would remain as
23 hotspots, or potential hotspots, would pose a threat both to those detained and also to the health
24 of the public in the facilities and beyond. In some ways, the detention centers pose a unique
25 threat to the public's health after there is stabilization outside of the detention centers in the
26

1 community, because an outbreak in the detention centers would threaten to reignite the spread
2 of the pandemic when there has been some containment. Absent widespread testing in the
3 community, which does not currently exist in California, it is also impossible to know current
4 case rates and trends in new case infections. For these reasons, the loosening of social
5 distancing cannot happen overnight; there will not be an on-off switch even for counties and the
6 state. The detention centers will continue to pose a risk for those detained and for the broader
7 public for some time after social distancing is relaxed in the areas around the detention centers.

8 34. Thus, it is consistent with state and local guidance for the general population to
9 immediately depopulate detention centers as they are extremely high-risk for exacerbating the
10 COVID-19 epidemic.

11 Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true
12 and correct.

13
14 Executed this 20th day in April 2020 in, San Francisco, California.



16 Sandra R. Hernández, MD



Sandra R. Hernández, MD
President & CEO
California Health Care Foundation

Dr. Sandra R. Hernández became president and CEO of the California Health Care Foundation in January 2014. CHCF is an independent, nonprofit philanthropy with assets of more than \$700 million, headquartered in Oakland, California, and dedicated to improving California's health care system so that all Californians — especially those with low-incomes — can get the care they need.

Prior to joining CHCF, Dr. Hernández was CEO of The San Francisco Foundation, which she led for 16 years. She previously served as director of public health for the City and County of San Francisco.

Dr. Hernández is an assistant clinical professor at the University of California, San Francisco, School of Medicine and a leadership council member of the UCSF Institute for Global Health Sciences. She practiced at San Francisco General Hospital in the AIDS clinic from 1984 to 2016. She is a graduate of Yale University, the Tufts School of Medicine, and the certificate program for senior executives in state and local government at Harvard University's John F. Kennedy School of Government.

Originally from Tucson, Arizona, she spent much of her childhood in rural New Mexico with her grandparents. There she came to honor and appreciate her Mexican culture and its intrinsic values of community and public service. Her love of science and math was nourished by her father, a self-educated engineer.

Dr. Hernández serves as a board member of Covered California, a commissioner of the Healthy California for All Commission, a trustee of the Reno-based Western Asbestos Settlement Trust, and as an independent director of First Republic Bank. She is a member of the Public Policy Institute of California's Statewide Leadership Council, the United States of Care Founder's Council, the Well Being Trust Advisory Council, and the National Academy of Medicine's planning committee for convening around the future of health services research.

Her earlier affiliations include President Clinton's Commission on Consumer Protection and Quality in the Healthcare Industry, and two Institute of Medicine committees: one on the Consequences of Uninsurance, and another on the Implementation of Antiviral Medication Strategies for an Influenza Pandemic.

Dr. Hernández is a former board member of Grantmakers In Health, the Council on Foundations, the California Managed Risk Medical Insurance Board, the Yale University President's Council, the UCSF Chancellor's Advisory Board, and the UCSF Clinical and Translational Science Institute Advisory Board. She co-chaired San Francisco's Universal Healthcare Council, which designed Healthy San Francisco, an innovative health access program for the uninsured.



Sandra R. Hernández, MD
President & CEO
California Health Care Foundation

Education

M.D., Tufts University School of Medicine, 1984, Boston, MA
B.A., Psychology, Yale University, 1979, New Haven, CT
W. K. Kellogg Fellowship
John F. Kennedy School of Government Local and State Executive
Program Certificate
Honorary Doctorate, California Institute of Integral Studies, 2006, San
Francisco, CA

Medical Licensure

Medical Board of California
Physician and Surgeon, 1986–Present

Medical Training

Residency, Primary Care/Internal Medicine
San Francisco General Hospital
University of California, San Francisco, 1984–1987

Language Competency

English and Spanish

Current Employment

California Health Care Foundation
Oakland, CA
January 2014–Present

Employment Experience

Chief Executive Officer
The San Francisco Foundation
September 1997–December 2013

Assistant Clinical Professor
School of Medicine
University of California, San Francisco
July 1992–Present

Director of Health
City and County of San Francisco
Department of Public Health
January 1994–August 1997

County Health Officer and Deputy Director
Community Public Health Services and AIDS
San Francisco Department of Public Health
November 1992–January 1994

Acting Medical Director
Community Public Health Services
San Francisco Department of Public Health
September 1991–November 1992

Director, AIDS Office
San Francisco Department of Public Health
February 1990–November 1992

Branch Chief, Health Resources and Services
AIDS Office
San Francisco Department of Public Health
1988–1990

Current Appointments and Public Service

Healthy California for All Commission

Commissioner

December 2019–Present

United States of Care

Founder’s Council

March 2018–Present

Well Being Trust

Advisory Council

March 2018–Present

Covered California

Board of Directors

February 2018–Present

National Academy of Medicine

Planning Committee for the Future of Health Services Research

July 2017–Present

Board of Regents, University of California

Health Services Committee

March 2016–Present

West Coast Healthcare Executive Summit

Member 2014–Present

Public Policy Institute of California Statewide Leadership Council

April 2011–Present

First Republic Bank

Board of Directors

August 2010–Present

Institute for Global Health Sciences Advisory Council

University of California, San Francisco

2009–present

Western Asbestos Settlement Trust

Appointed Trustee

California Superior Court

April 2004–Present

Academic Appointments

Clinical and Translational Science Institute Clinical Research Center

External Advisory Board
University of California, San Francisco
2007–2017

San Francisco General Hospital
Faculty, Department of Medicine
Medical Attending
AIDS Clinic (Ward 86)
1987–2016

Pediatric Leadership for the Underserved
Advisory Council
University of California, San Francisco
2006–2016

Program in Medical Education for the Urban Underserved
Advisory Council
University of California, San Francisco
2006–2016

Chancellor's Advisory Board
University of California, San Francisco
2010–2014

Campus Facilities Improvement Association
University of California, San Francisco
2008–2012

Past Appointments
and Public Service

Betty Irene Moore School of Nursing at UC Davis
National Advisory Council
2016–2019

Health IT Strategic Planning and Innovation Workgroup
Member
2014–2017

Yale University
University Council Member
2011–2016

Blue Shield of California Foundation
Board of Directors
2010–2014

The Center for Investigative Reporting
Board of Directors
2011–2014

Federal Reserve Bank of San Francisco
Economic Advisory Councilmember
2011–2014

National Academy of Sciences Institute of Medicine
Committee on Implementation of Antiviral Medication Strategies for an
Influenza Pandemic
2007–2008

Council on Foundations
Board of Directors
Committee on Inclusiveness, Ethics and Practices
2006–2009

Co-Chair, Mayor's Universal Healthcare Council
San Francisco Health Access Plan
Mayor Gavin Newsom
2006

Chair, Mayor's Blue-Ribbon Committee on the Future Location of San
Francisco General Hospital
Mayor Gavin Newsom
2005

National Academy of Sciences Institute of Medicine
Committee on the Consequences of the Uninsured
2003–2004

Lucile Packard Children's Hospital
Board of Directors and Chair of Public Policy Committee
2003–2010

Corporation for Supportive Housing
Board of Directors, Chair Governance Committee
1997–2008

Blackbaud, Inc.
Board of Directors and Audit Committee
2002–2006

California State Senate-Appointed Member
Managed Risk Medical Insurance Board
1998–2007

Kaiser Permanente
Member, National Advisory Council on Professional and Organizational
Ethics
1997–2003

Grantmakers in Health
Board of Directors
1998–2003

Presidential Appointee
President Clinton's Commission on Quality and Consumer Protection in
the Health Industry
Co-Chair, Subcommittee on Roles and Responsibilities of Public/Private
Care Purchasers and Oversight Organizations
1997–1998

San Francisco Health Plan
Founding Chair, Board of Directors
1995–1998

Scientific Advisory Committee on Antiviral Therapy
Federal Drug Administration
1995–1998

Honors / Awards

San Francisco Business Times
Most Admired CEO
2019

University of California, San Francisco
Alumni Excellence Award
2015

Openhouse, San Francisco
Adelman/Gurevitch Founders Award
2015

Hispanic Business Magazine
Woman of the Year
2008

Tufts Medicine Magazine
Cover
2008

San Francisco Planning and Urban Research Association
Silver Spur Award
2008

Women Healthcare Executives

Woman of the Year

2007

Modern Healthcare Magazine

One of Ten Healthcare Leaders for the Next Century: Up and Comers

1997

League of Women Voters of San Francisco

Women Who Could Be President Award

1993