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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.

**PLAINTIFFS-PETITIONERS'
NOTICE OF MOTION AND
MOTION FOR PROVISIONAL
CLASS CERTIFICATION;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF**

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that, as soon as they may be heard, Plaintiffs-Petitioners will and hereby do move, pursuant to Fed. R. Civ. P. 23 and Civil L. R. 7-1, for provisional certification of a class of all civil immigration detainees at Yuba County Jail (“YCJ”) and Mesa Verde ICE Processing Facility (“Mesa Verde”), including two subclasses: (1) all civil immigration detainees at YCJ and (2) all civil immigration detainees at Mesa Verde. This motion is supported by the following Memorandum of Points and Authorities, by the Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief, and by declarations of each of the Plaintiffs, or their attorneys on their behalf, and various experts, all of which are filed contemporaneously.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs, hundreds of civil detainees in YCJ and Mesa Verde, seek provisional class certification so the Court can resolve an issue of common fact and law: whether Defendants’ refusal or inability to implement safe social distancing during an unprecedented pandemic violates their Fifth Amendment rights.

Medical experts and public officials agree the only effective way to protect against contracting COVID-19 is social distancing. But that is not possible at YCJ and Mesa Verde. Instead, all members of this highly vulnerable class eat and sleep in close proximity to one another, lack basic sanitation, and live each day unnecessarily exposed to a life-threatening disease. While social distancing is now ubiquitous in all corners of American society, and government authorities and courts have been ordering reductions in prison and jail populations throughout the country, Defendants’ facilities remain an aberration, and the proposed class therefore remains at grave risk of infection.

Plaintiffs seek provisional certification for all civil immigration detainees at YCJ and Mesa Verde, including two subclasses: (1) all civil immigration detainees at YCJ (“YCJ Subclass”); and (2) all civil immigration detainees at Mesa Verde (“Mesa Verde Subclass”)

(together, “the proposed class”). The proposed class comfortably meets the requirements of Federal Rules of Civil Procedure 23(a) and 23(b). *First*, the class is sufficiently numerous: over 250 individuals are currently detained at Mesa Verde, approximately 150 detainees are held at YCJ, and Defendants continue to transfer more detainees into these facilities. *Second*, all class members are bound together by common questions of fact and law. Chief among these is whether in the face of the COVID-19 pandemic, the conditions of confinement at YCJ and Mesa Verde place the detainees at imminent risk of serious or fatal infection in violation of their constitutional rights. *Third and fourth*, the proposed class representatives are proper because their claims are typical of absent class members and because the proposed class representatives and proposed class counsel will adequately represent the class. *Finally*, Defendants have acted and refused to act on grounds that are generally applicable to the class as a whole by creating and maintaining conditions that put the entire class at imminent risk of contracting COVID-19. One injunction will provide class-wide relief.

Class-wide injunctive relief is necessary to protect the lives and constitutional rights of this vulnerable population. As one federal court recently observed in granting provisional certification to a class of immigrant detainees challenging unconstitutional detention conditions in a nearly identical case:

At bottom, a common question of law and fact in this case is whether the government must modify the conditions of confinement—or, failing that, release a critical mass of [d]etainees—such that social distancing will be possible and all those held in the facility will not face a constitutionally violative substantial risk of serious harm. Crucial to the Court’s determination is the troubling fact that even perfectly healthy detainees are seriously threatened by COVID-19.

Savino v. Souza, No. CV 20-10617-WGY, 2020 WL 1703844, at *7 (D. Mass. Apr. 8, 2020) (citations and quotations omitted). The same is true here. All detainees are at risk, and provisional class certification would afford injunctive relief for all class members. The Court should grant provisional class certification.

II. FACTUAL BACKGROUND

Lives are at stake. COVID-19 is a highly infectious viral contagion spreading at an

1 exponential rate across the United States, including Yuba County and Kern County. The Center
 2 for Disease Control and Prevention (CDC) advises that COVID-19 is “thought to spread mainly
 3 from person-to-person,” “primarily between people who are in close contact within one another
 4 (within about 6 feet),” “through respiratory droplets produced when an infected person coughs,
 5 sneezes, or talks.” *See* [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html)
 6 [covid-spreads.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html). COVID-19 is highly contagious because “droplets can land in the mouths or
 7 noses” of those nearby or “inhaled into the lungs” via airborne particles, or people can become
 8 infected “by touching a surface or object that has the virus on it.” *Id.* Critically, the CDC has
 9 recognized that “COVID-19 may be spread by people who are not showing symptoms.” *Id.*
 10 Indeed, as one example of the exponential rate of asymptomatic transmission, the Boston Health
 11 Care for the Homeless Program recently tested every resident at a Boston homeless shelter for
 12 coronavirus. Program doctors were “stunned” by the results: 146 of the 397 (36%) people tested
 13 were positive but asymptomatic.¹

14 **A. Public Health Officials Call for Social Distancing.**

15 As the CDC has advised, “the best way to prevent illness is to avoid being exposed to this
 16 virus.” <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.
 17 Recognizing the grave danger posed to those living in close quarters, health experts and public
 18 officials have called for social distancing. *See, e.g.,* Decl. of Dr. Robert B. Greifinger Filed in
 19 Support of Motion for TRO at ¶¶ 6, 18, 30-31.² The State of California has issued an order
 20 directing all persons living in the state to “stay home” and to “at all times practice social
 21 distancing.” *See* Cal. Executive Order N-33-20. As this Court has recognized, COVID-19
 22 infections are rapidly increasing in confined spaces, including in a number of jails and prisons.
 23 *Bahena Ortuño v. Jennings*, Mem. & Order, 3:20-cv-02064-MMC (N.D. Cal. Apr. 8, 2020), ECF
 24 No. 38 at 3. YCJ and Mesa Verde are no exception to this risk.

25
 26 ¹ *See* John Karalis, *Coronavirus spread: Testing shows ‘stunning’ asymptomatic COVID-19 rate at Boston homeless*
 27 *shelter*, Masslive.com, April 15, 2020 [https://www.masslive.com/coronavirus/2020/04/coronavirus-spread-testing-](https://www.masslive.com/coronavirus/2020/04/coronavirus-spread-testing-shows-stunning-asymptomatic-covid-19-rate-at-boston-homeless-shelter.html)
 28 [shows-stunning-asymptomatic-covid-19-rate-at-boston-homeless-shelter.html](https://www.masslive.com/coronavirus/2020/04/coronavirus-spread-testing-shows-stunning-asymptomatic-covid-19-rate-at-boston-homeless-shelter.html).

² Declarations indicating “Filed in Support of Motion for TRO” refer to declarations filed in support of Plaintiffs’
 Motion for Temporary Restraining Order, which Plaintiffs filed concurrently with this motion.

B. YCJ and Mesa Verde Are Crowded, Unsafe, and Highly Dangerous to All.

While the rest of the country shuts down to take protective social distancing measures, it is business as usual at YCJ and Mesa Verde. As of April 2, 2020, there were 286 civil detainees at Mesa Verde living in close proximity to one another, as well as numerous staff coming in and out of the facility each day. Supplemental Decl. Erik Bonnar, *Bahena Ortuño*, (filed Apr. 2, 2020), ECF No. 29-1, at ¶ 2 (“Bonnar Decl.”). As of that same date, there were 150 detainees at YCJ, as well as county inmates and staff. Supplemental Decl. Polly Kaiser, *Bahena Ortuño* (filed Apr. 2, 2020), ECF No. 29-2 at ¶ 2 (“Kaiser Decl.”). Notwithstanding the government guidance to depopulate prisons, Defendants continue to funnel more detainees into these facilities. *See* Decl. of Dung Tang Dang Filed in Support of Motion for TRO (“Dang Decl.”) at ¶ 14 (“New people have come into Dorm C [in Mesa Verde] recently who are coughing and sound sick.”); Decl. of Lawrence Kuria Mwaura (“Mwaura Decl.”) at ¶ 11 (describing new detainee transferred into YCJ from Santa Rita Jail).

Despite the pandemic threat, Defendants continue to board detainees in bunk beds and close quarters, serve communal meals, and force shared bathroom spaces. *See* Decl. of Brenda Rubi Ruiz Tovar (“Ruiz Tovar Decl.”) at ¶ 14. Defendants have failed to provide detainees with personal protective equipment or coronavirus testing. *See, e.g., id.* at ¶ 21 (“They did not give us gloves, masks, or any protective gear. I asked for a mask when I went to medical to cover my cough and the staff said that, unless you have a fever, they cannot give them out.”); *see id.* at ¶ 11 (“ICE has not told us anything about the test or whether we will be tested.”). As a result, detainees live in constant fear for their safety. *Id.* at ¶ 22.

Members of the proposed class have pled with Defendants to change these unsafe conditions in increasingly frantic and desperate ways. The conditions have become so dire that detainees at Mesa Verde organized a hunger strike to protest the lack of hygiene products, dearth of proper testing, and continued foot traffic in and out of the facility. *See* Decl. of Javier Alfaro

1 Filed in Support of TRO (“Alfaro Decl.”) at ¶ 25.³ Each day the conditions at YCJ and Mesa
 2 Verde remain unchanged, class members grow more likely to contract COVID-19.

3 As courts around the country have noted, “social distancing is difficult or impossible” in
 4 detention settings, and “being in jail enhances risk” of contracting COVID-19. *See, e.g., Jiminez*
 5 *v. Wolf*, 18-cv-10225-MLW (D. Mass. Mar. 26, 2020), ECF 507-1, at 4 (ordering release of
 6 immigrant detainee in the midst of the COVID-19 pandemic); *see also Xochihua-Jaimes v. Barr*,
 7 No. 18-71460, 2020 WL 1429877, at *1 (9th Cir. Mar. 24, 2020) (*sua sponte* ordering immediate
 8 release of ICE detainee “[i]n light of the rapidly escalating public health crisis, which public
 9 health authorities predict will especially impact immigration detention centers”). Indeed, courts
 10 around the country have explained the health risks—to inmates, guards, and the community at
 11 large—posed by closely confined prison populations. These facilities are no exception, and
 12 absent the Court’s intervention, all proposed class members will remain at risk of contracting this
 13 deadly virus.

14 **C. Proposed Class Definition.**

15 Plaintiffs request that the Court provisionally certify the following proposed class for the
 16 purpose of issuing the preliminary injunction Plaintiffs seek: All civil immigration detainees at
 17 YCJ and Mesa Verde.

18 Additionally, Plaintiffs seek provisional certification for the following two subclasses:

19 **(1) YCJ Subclass:** All civil immigration detainees at YCJ.

20 **(2) Mesa Verde Subclass:** All civil immigration detainees at Mesa Verde.

21 **D. Proposed Class Representatives.**

22 Plaintiffs propose seven class representatives: Brenda Ruiz Tovar, Lawrence Mwaura,
 23 Luciano Gonzalo Mendoza Jeronimo, Angel de Jesus Zepeda Rivas, Javier Alfaro, Dung Tuan
 24 Dang, and Coraima Yaritza Sanchez Nuñez. Each proposed class representative shares the same
 25 injury as absent class members and seeks the same relief as the entire class.

26
 27 ³ *See also* Bob Egelko, *Coronavirus hunger strike at immigration lockup? ICE says no, but California detainees say*
 28 *otherwise*, San Francisco Chronicle, Apr. 13, 2020, <https://www.sfchronicle.com/news/article/Coronavirus-hunger-strike-at-immigration-lockup-15197579.php>.

(1) YCJ Subclass: Proposed class representatives Brenda Ruiz Tovar, Lawrence Mwaura, Luciano Gonzalo Mendoza Jeronimo, and Angel de Jesus Zepeda Rivas are each detained at YCJ. Each person lives in dangerous conditions that expose them to COVID-19 in violation of their Fifth Amendment rights, and each seeks identical relief as other members of the proposed class and YCJ Subclass. *See* Ruiz Tovar Decl. at ¶¶ 4, 14-22; Mwaura Decl. at ¶¶ 10-16; Decl. Luciano Gonzalo Mendoza Jeronimo (“Mendoza Jeronimo Decl.”) at ¶¶ 7-18. Decl. of Angel de Jesus Zepeda Rivas (“Zepeda Rivas Decl.”) at ¶¶ 14-30. Each proposed class representative understands and agrees to their responsibility to prosecute this action on behalf of all class members. *See* Ruiz Tovar Decl. at ¶ 25; Mwaura Decl. at ¶ 45; Mendoza Jeronimo Decl. at ¶¶ 20-21; Zepeda Rivas Decl. at ¶ 33.

(2) Mesa Verde Subclass: Proposed class representatives Dung Tuan Dang, Javier Alfaro, and Coraima Yaritza Sanchez Nuñez are each detained at Mesa Verde. Like their YCJ Subclass counterparts, each proposed class representative suffers from conditions at Mesa Verde that violate their Fifth Amendment rights, and each class representative seeks a class-wide injunction. *See* Dang Decl. at ¶¶ 2, 10-20; Alfaro Decl. at ¶¶ 14-23, 29-32; Decl. of Coraima Yaritza Sanchez Nuñez Filed in Support of Motion for TRO (“Sanchez Nuñez Decl.”) at ¶¶ 11-18. And like the YCJ Subclass representatives, each proposed class representative understands and agrees to represent the interests of the class and the Mesa Verde Subclass. *See* Dang Decl. at ¶ 25; Alfaro Decl. at ¶ 34; Sanchez Nuñez Decl. at ¶ 20.

III. THE COURT SHOULD CERTIFY THE PROPOSED CLASS.

When plaintiffs meet the four prerequisites in Rule 23(a), federal courts in the Ninth Circuit “routinely grant provisional class certification for purposes of entering [preliminary] injunctive relief” under Rule 23(b)(2). *Carrillo v. Schneider Logistics, Inc.*, No. 11-cv-8557, 2012 WL 556309, at *9 (C.D. Cal. Jan. 31, 2012) (citing *Baharona-Gomez v. Reno*, 167 F.3d 1228, 1233 (9th Cir. 1999)); *see also Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1041 (9th Cir. 2012) (finding district court did not abuse its discretion by provisionally certifying class for purpose of entering preliminary injunction); *Saravia v. Sessions*, 280 F. Supp. 3d 1168,

1202 (N.D. Cal. 2017) (provisionally certifying class of detained immigrant children), *aff'd* 905 F.3d 1137 (9th Cir. 2018). Because the proposed class meets the requirements of Rule 23(a) and a single injunction would afford a class-wide remedy, the Court should provisionally certify the proposed class.

A. The Proposed Class Meets the Requirements of Rule 23(a).

The proposed class amply meets each requirement of Rule 23(a): numerosity, commonality, typicality, and adequacy. *See* Fed. R. Civ. P. 23(a)(1-4).

1. The Proposed Class Meets the Numerosity Requirement.

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “There is no magic number” for determining when the numerosity requirement has been satisfied,” and “[c]ourts have certified classes with as few as thirteen members.” *Hum v. Dericks*, 162 F.R.D. 628, 634 (D. Haw. 1995). Plaintiffs need only “show some evidence of or reasonably estimate the number of class members.” *Kincaid v. City of Fresno*, 244 F.R.D. 597, 601 (E.D. Cal. 2007) (citation omitted). Where, as here, a plaintiff “seek[s] only injunctive and declaratory relief, the numerosity requirement is relaxed and plaintiffs may rely on [] reasonable inference[s] . . . that the number of unknown [members] is sufficient to make joinder impracticable.” *Civil Rights Educ. & Enf’t Ctr. v. Hosp. Props. Trust*, 317 F.R.D. 91, 100 (N.D. Cal. 2016) (internal quotation marks omitted) (citing *Sueoka v. United States*, 101 Fed. App’x. 649, 653 (9th Cir. 2004)).

The proposed class is sufficiently numerous. There are at least 400 detainees at YCJ and Mesa Verde. *See* Bonnar Decl. at ¶ 2 (286 detainees at Mesa Verde as of April 2, 2020); Kaiser Decl. at ¶ 2 (150 detainees at YCJ). That number satisfies the numerosity requirement. *See Rannis v. Recchia*, 380 Fed. App’x 646, 651 (9th Cir. 2010) (“In general, courts find the numerosity requirement satisfied when a class includes at least 40 members.”); *see also Saravia*, 280 F. Supp. 3d at 1202 (provisionally certifying class of 16 ICE detainees); *Savino*, 2020 WL 1703844, at *1, 9 (provisionally certifying class of 148 detainees housed at two detention facilities). Moreover, Defendants continue to cram more detainees into the facilities on a weekly

basis. *See, e.g.*, Dang Decl. at ¶ 12 (“New people have come into Dorm C [in Mesa Verde] recently who are coughing and sound sick.”); *see also* Mwaura Decl. at ¶ 11 (describing new detainee recently transferred to YCJ). Because new detainees continue to be admitted to YCJ and Mesa Verde, the current number of detainees is “merely the floor for this numerosity inquiry” *Reid v. Donelan*, 297 F.R.D. 185, 189 (D. Mass. 2014) (certifying class of immigration detainees).

Furthermore, “the [lack of] ability to individually bring suit counsels in favor of finding numerosity.” *Pole v. Estenson Logistics, LLC*, No. CV 15-07196 DDP(EX), 2016 WL 4238635, at *5 (C.D. Cal. Aug. 10, 2016); *see also Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993) (holding that because putative class members “are also economically disadvantaged” this factor weighed in favor of class certification). Most proposed class members cannot file individual lawsuits because they lack counsel and cannot file *pro se*. Moreover, absent class certification, the Court will be flooded with dozens, perhaps hundreds, of individual claims—enough to strain judicial resources, while nonetheless leaving many vulnerable individuals without relief. *Rodriguez v. Hayes*, 591 F.3d 1105, 1123 (9th Cir. 2009).

2. The Proposed Class Meets the Commonality Requirement.

Rule 23(a) next requires that there be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Commonality requires plaintiffs to demonstrate that their claims depends upon a “common contention . . . [whose] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Commonality can be satisfied by a single common issue. *See, e.g., Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (Commonality “does not . . . mean that every question or law or fact must be common to the class; all that Rule 23(a)(2) requires is a single *significant* question of law or fact.”) (citations and internal quotation marks omitted).

When a plaintiff is seeking injunctive and declaratory relief, commonality is present “where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.” *Unknown Parties v. Johnson*, 163 F. Supp. 3d 630, 635 (D. Ariz. 2016) (quoting

1 *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)). Indeed, suits for injunctive or
 2 declaratory relief “by their very nature often present common questions satisfying Rule
 3 23(a)(2).” 7A Mary J. Kane, *Fed. Prac. & Proc. Civ.* § 1763 (3d ed. 2018); *see also Saravia*, 280
 4 F. Supp. 3d at 1203 (finding that class-wide preliminary injunctive relief related to ICE’s policy
 5 or practice was “amenable to common answers”).

6 The proposed class meets the commonality requirement because all class members are
 7 subject to the identical constellation of practices: Defendants’ unwillingness or inability to
 8 implement proper social distancing measures at YCJ and Mesa Verde in the face of a dangerous
 9 pandemic. Of course, some class members may be more at risk for hospitalization or death
 10 because of age or preexisting comorbidities *if* they contract COVID-19, but all class members
 11 are at risk *of* contracting COVID-19. *See Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014)
 12 (“Where the circumstances of each particular class member vary but retain a common core of
 13 factual or legal issues with the rest of the class, commonality exists.”). As another court recently
 14 held in certifying a nearly identical provisional class, “To be sure, the harm of a COVID-19
 15 infection will generally be more serious for some petitioners than others. Yet it cannot be denied
 16 that the virus is gravely dangerous to us all.” *Savino*, 2020 WL 1703844, at *7.

17 The proposed class presents common questions amenable to common answers: (1)
 18 Whether the proposed class members are able to adequately practice social distancing at YCJ and
 19 Mesa Verde at all times, and whether the proposed class members are in fact adequately socially
 20 distancing at YCJ and Mesa Verde; and (2) whether the failure to institute social distancing
 21 during a deadly pandemic subjects the proposed class to a heightened risk of illness and death in
 22 violation of proposed class members’ Fifth Amendment Due Process rights.

23 The proposed class presents a more straightforward case than other classes that have
 24 met the commonality requirement. *See, e.g., Lyon v. U.S. Immigration & Customs Enf’t*, 300
 25 F.R.D. 628, 642 (N.D. Cal. 2014) (“[T]he overarching claim is that ICE detainees in these
 26 facilities are denied effective access to telephones and that this impedes communications
 27 with counsel, family, and others The fact that the precise practices among the three
 28

1 facilities may vary does not negate the application of a constitutional floor equally applicable
 2 to all facilities.”); *see also Unknown Parties*, 163 F. Supp. 3d at 636-40 (finding
 3 commonality satisfied when proposed class challenged various conditions of confinement at
 4 eight Customs and Border Patrol facilities near Tucson, Arizona). Here, there is one
 5 overarching issue: whether ICE officials have violated Plaintiffs’ Fifth Amendment rights by
 6 exposing them “to a serious, communicable disease . . . that is more than very likely to cause
 7 a serious illness.” *Castillo v. Barr*, No. CV 20-00605 THJ (AFMx), 2020 WL 1502864, at *5
 8 (C.D. Cal. Mar. 27, 2020) (citing *Helling v. McKinney*, 509 U.S. 25, 32 (1993)). That issue
 9 is common to all class members and thus deserves class-wide resolution.

10 **3. The Proposed Class Representatives Meet the Typicality Requirement.**

11 Rule 23(a)(3) requires that “the claims . . . of the representative parties [be] typical of the
 12 claims . . . of the class.” The typicality requirement “is not highly demanding” because “the
 13 claims need only share the same essential characteristics and need not be identical.” 5 *Moore’s*
 14 *Federal Practice* § 23.24 (2020). “The test of typicality is ‘whether other members [of the class]
 15 have the same or similar injury, whether the action is based on conduct which is not unique to
 16 the named plaintiffs, and whether other class members have been injured by the same course of
 17 conduct.’” *Parsons*, 754 F.3d at 685 (9th Cir. 2014) (citation omitted). Typicality is satisfied
 18 “when each class member’s claim arises from the same course of events, and each class member
 19 makes similar legal arguments to prove the defendant’s liability.” *Rodriguez*, 591 F.3d at 1124
 20 (quotations omitted).

21 The proposed class meets the typicality requirement because the proposed class
 22 representatives and proposed class members are all civil detainees at YCJ and Mesa Verde, and
 23 their claims all arise from Defendants’ failure to implement adequate social distancing in
 24 response to COVID-19. That some class members may be older than others or have preexisting
 25 health conditions that would exacerbate the severity of COVID-19 does not defeat typicality
 26 because *all* class members are at risk of contracting COVID-19 due to Defendants’ actions.
 27 *Savino*, 2020 WL 1703844, at *7 (“[T]he admittedly significant variation among the Detainees
 28

does not defeat commonality or typicality.”). Indeed, typicality is present here because the proposed class representatives and absent class members will suffer the same harm: the significant and avoidable risk of serious illness or death. *See, e.g., Kuang v. U.S. Dep’t of Def.*, 340 F. Supp. 3d 873, 892 (N.D. Cal. 2018), *vacated on other grounds*, 778 Fed. App’x 418 (9th Cir. 2019) (finding typicality requirement met when “named Plaintiffs and putative class members have all suffered, and continue to suffer, the same general injury”).

4. The Proposed Class Representatives and Proposed Class Counsel Meet the Adequacy Requirement.

Rule 23(a)(4) requires that the “representative parties will fairly and adequately protect the interests of the class.” The adequacy inquiry asks: “(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). This requirement “tend[s] to merge with the commonality and typicality criteria of Rule 23(a).” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626, n.20 (1997) (internal quotation marks omitted).

The proposed class representatives meet both aspects of adequacy. First, there is no conflict between the named plaintiffs and other class members. All have suffered the same injury and all seek the same relief. *See Kuang*, 340 F. Supp. 3d at 892 (finding adequacy requirement in part because “named Plaintiffs have a similar alleged injury as the rest of the proposed class.”). Second, the proposed class representatives will vigorously prosecute this action on behalf of all class members. *See supra* at Section II-D, p. 5-6.

Furthermore, the proposed class is represented by experienced counsel from the American Civil Liberties Union of Northern California, American Civil Liberties Union of Southern California, Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, the San Francisco Public Defenders Office, Lakin & Wille LLP, and Cooley LLP. Counsel has extensive experience litigating class actions and other complex federal court litigation, including civil rights class actions on behalf of imprisoned immigrants. *See Declaration of William S.*

Freeman; Declaration of Jordan Wells; Declaration of Bree Bernwanger; Declaration of Genna Brier; Declaration of Judah Lakin; and Declaration of Martin S. Schenker. And class counsel is supported by a team of passionate, capable lawyers. For these reasons, class counsel also meet the requirements of Fed. R. Civ. P. 23(g).

B. The Proposed Class Meets the Requirements of Rule 23(b)(2).

In addition to satisfying the requirements under Rule 23(a), the proposed class should be certified because it meets the requirements of Rule 23(b)(2). Under Rule 23(b)(2), a class action may be maintained if “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.”

“Rule [23](b)(2) was adopted in order to permit the prosecution of civil rights actions.” *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998). As a result, “[i]t is sufficient to meet the requirements of Rule 23(b)(2) [when] class members complain of a pattern or practice that is generally applicable to the class as a whole.” *Rodriguez*, 591 F.3d at 1125-26 (citation omitted) (certifying class of immigrant detainees under Rule 23(b)(2) because “all class members [sought] the exact same relief as a matter of statutory or, in the alternative, constitutional right”); *id.* at 1125 (“The fact that some class members may have suffered no injury or different injuries from the challenged practice does not prevent the class from meeting the requirements of Rule 23(b)(2).”).

The proposed class is a quintessential Rule 23(b)(2) class. Defendants have engaged in unconstitutional behavior towards the entire class. Defendants control the conditions of every class member’s confinement. And every class member is at imminent risk of being infected by COVID-19 as a result of those conditions. An injunction or declaration will provide relief on a class-wide basis. Accordingly, certification under Rule 23(b)(2) is appropriate. *See Parsons*, 754 F.3d at 689 (finding declaratory and injunctive relief proper as to class where “every [member] is allegedly suffering from the same (or at least a similar) injury and that injury can be alleviated for every class member by uniform changes in . . . policy and practice”); *see also Rodriguez*,

591 F.3d at 1126 (certifying Rule 23(b)(2) class of immigrant detainees where “relief from a single practice is requested by all class members”).

IV. CONCLUSION.

The proposed class meets the requirements of Rule 23(a) and Rule 23(b)(2). The Court should provisionally certify the proposed class.

Dated: April 20, 2020

Respectfully submitted,

/s/ William S. Freeman

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Sean Riordan

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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.

**DECLARATION OF ANGEL
 ZEPEDA**

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*Motion for Admission *Pro Hac Vice* Forthcoming

DECLARATION OF ANGEL DE JESUS ZEPEDA RIVAS

I, Angel de Jesus Zepeda Rivas, declare the following based on my personal knowledge:

1. I make this declaration from my personal knowledge and, if called to testify to these facts, could and would do so competently.

2. My full name is Angel de Jesus Zepeda Rivas. I was born in El Salvador and I am 32 years old. I have been in the United States since 2008. I have a two-year-old US citizen daughter. Her mother and I have been in a committed relationship for several years but are not married. I have a good work history. I worked for over two years for My Move.

3. I have been detained at Yuba County Jail in Marysville, CA since November 21, 2019, when ICE came to my house to detain me. I have not been given a bond by ICE, and the judge cannot grant me bond until I have been detained for 6 months.

4. I am in withholding only proceedings, as my prior removal in absentia prevents me from seeking asylum. I passed my reasonable fear interview, as the asylum officer found I have a reasonable fear of torture. From around 2002-2004, I endured sexual and physical abuse by Barrio 18 gang members who wanted me to sell drugs for them at my Christian school. They called me "*marica*," a derogatory word meaning "faggot." My friends and I refused, so they subjected us to sexual and physical abuse. We tried to tell the police, but the police did not help us. I fled to the United States. Because I didn't report a change in my address properly, I was ordered removed in absentia. I was only 17 years old. I was deported from the United States in 2007. Upon returning to El Salvador, I was again threatened and beaten up. I was also assaulted by police. I have a head injury and still suffer headaches from one of the attacks. Afraid for my life, I returned to the United States in 2008.

5. I have no criminal convictions and to my knowledge have never been charged with a crime. In late summer 2018, I was arrested because I happened to be near the scene of a bar fight. I was released quickly and there were no charges brought against me.

6. I have type 2 diabetes. I was diagnosed around early 2019, prior to being detained at Yuba. I was taking medication and had my diabetes under control at the time I was detained. When I got to Yuba, I told the medical staff that I had diabetes and was taking medicine to control it. They told

1 me they would keep me under medical review. For about five days after that, they took my blood from
2 my finger, and my blood sugar levels were okay. But I think that was because I had been taking
3 medication to control the diabetes for so long.

4 7. About two weeks after I was detained, my body started feeling really hot and I got
5 constant nose bleeds. Those were symptoms I'd experienced before I was diagnosed with diabetes. I
6 went to see medical staff, and I remember that they pricked my finger to test my blood sugar. I
7 remember it was high then, and they tested it for the next two days, and it started to come down. I could
8 see the number on the little machine that reads your blood sugar levels. They told me not to eat any
9 sweets, like the desserts they give for food or sell at the commissary. But I wasn't given any
10 medication.

11 8. From December and February, I would sometimes feel hot in my body and feel really
12 dizzy. In February, I remember that I saw medical staff and my blood sugar levels were high. They told
13 me I could exercise or take medicine. I remember my doctor outside of Yuba telling me that exercising
14 could help, so I decided to try exercising. They didn't give me any more information, just to have a
15 daily exercise routine. But they didn't give me a routine to follow. I tried to do exercise. I would run up
16 and down the stairs, and with some other detainees, we'd do pushups and sit ups. The most exercise
17 you can do is run up and down the stairs, because there isn't any other space. The space on the roof
18 where we go for "outside" time is very small, and there isn't enough room to run or really do exercise. I
19 was doing this exercise routine about three days a week until everyone in my pod got sick. Now, I can't
20 exercise because my feet are so swollen and painful. It is also really hard to do exercise when you feel
21 depressed.

22 9. Since February 28, 2020, I have submitted at least ten requests to see the doctor. I have
23 saved copies of many of these requests, but have thrown some away. On March 5, 2020, I asked to see
24 a doctor because I was feeling hot all through my body and feeling a tingling sensation and numbness,
25 all the way from my feet through my chest. Two or three days later, I saw the medic, they took my
26 blood pressure and I was sent back to my pod. On March 20, I requested again to see a medic because
27 the heat in my body and tingling hadn't gone away, and on top of that, I felt like I couldn't catch my
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1 breath and felt a stabbing sensation in my chest. I was really scared. A few days later, the medical staff
2 took my blood pressure again and sent me back to my Pod. I don't remember them telling me what my
3 blood pressure was at that time.

4 10. For the past two weeks or so, my feet have become so swollen that I am currently unable
5 to walk normally. This swelling starts at my knees all the way to my feet. I also continue to feel like my
6 body is hot, and like I have tingling and numbness all over my body. I requested to see the doctor again
7 on April 9th, and the medical staff said they would do an x-ray. I told them that I hadn't injured myself
8 and that these were symptoms of my diabetes. I believe they drew my blood then, and the day after I
9 saw medical staff, they told me I am pre-diabetic and gave me Metformin. But the pain and swelling in
10 my feet didn't go away, so I asked to see the doctor again on April 15th. Instead, they took me for x-
11 rays. I haven't gotten results from the x-rays.

12 11. Since I came to Yuba, I have also been diagnosed with hypertension. This was first
13 discovered about two weeks ago, when they took my blood pressure and it was over 160. Since then,
14 across a number of tests, it hasn't gone below 160. Medical staff have told me this means I have high
15 blood pressure. I remember a recent reading of my blood pressure was 163, and I am having trouble
16 breathing. Sometime around April 12th I began taking medication for hypertension. On the morning of
17 April 18, my blood pressure was taken again and it was 185. They took it again and it was 176. Medical
18 staff gave me a pill that they said would help bring my blood pressure down. They said it was related to
19 my swollen feet. Later in the afternoon, they took my blood pressure again, and it had gone up to 190.
20 I'm really scared. I was feeling a lot of pressure in my chest, and I'm worried I'm going to have a heart
21 attack. My feet are still swollen. I don't understand how, when I came to Yuba I had no symptoms and
22 I was feeling healthy, and now five months later, I have high blood pressure and so much pain.

23 12. When they take my blood pressure, I see them taking another person's blood pressure
24 right before me, and then they don't clean the cuff, and take my blood pressure. And that's directly on
25 my skin.

26 13. I also have allergies and take medication for that. At times, my allergies make it difficult
27 to breathe, cause me to sneeze, give me a very runny nose, cause a very thick mucus in my sinuses, or
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1 make me very congested. I have been taking allergy medication at Yuba since around the middle of
2 April, but it hasn't helped yet. I also suffer from recurring frequent headaches and sometimes
3 migraines, due to an injury from when I was physically assaulted in El Salvador. The headaches get
4 very bad at times and it's really difficult. I have been given ibuprofen and Tylenol at Yuba, but neither
5 help with the pain. All the noise here inside make it worse. I spend a lot of time lying down to try to
6 relax but the pain doesn't go away.

7 14. At Yuba County Jail, I am housed in C Pod. Before C Pod, I was in B Pod. They are set
8 up in the same way. There are about 37 people here, and it's really hard to get away from people and
9 find calm. It is impossible at any time during the day or night for me to be socially distant from other
10 people. The place is just too small for so many people.

11 15. When I arrived, this unit was full, with 50 people. There are two levels in C Pod. On the
12 first floor are all the bunk beds. The beds are less than a meter apart. Right now where I'm sleeping, I
13 am on the top bunk, and since I moved into a corner, there is one bunk bed that is empty next to me,
14 and then in the next bed there is someone else. But that is rare. All the lower bunks are taken and
15 almost everyone is sleeping with someone in the bed next to them. Although I'm on the top bunk and
16 there isn't someone in the bed next to me on the top bunk, there is someone on the bottom bunk below
17 me. He is about one meter away from me. There are 25 bunk beds in total, and all of the bottom bunks
18 are occupied because many people have injuries or pain that keeps them from getting in the top bunk.
19 So they are assigned a lower bunk.

20 16. On the second floor are the tables, where we eat and gather. The tables each seat 5 or 6
21 people each and are at most 1.5 meters apart. The tables are made of metal and are bolted to the floor.
22 The metal benches are also affixed to the floor and you cannot move them. Even without 50 people,
23 there aren't enough tables for us to be able to sit far enough apart. We are sitting right next to each
24 other, without much distance. Some people now eat in their beds. But every time I go to eat, I am
25 within two meters of other people.
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1 17. I know the distance between the tables and beds because we've measured it. There are
2 people in C Pod who have worked in construction, and so we've counted the distance between the
3 tables and the beds using our feet.

4 18. We get soap every two or three days. They are tiny bars of soap. It's not enough. They
5 give us a cleaning liquid to wash the bathrooms, which is really harsh and smells very strong of
6 chemicals. Since we don't have enough soap, we use that to wash our hands. When we use that on our
7 bare hands, it burns.

8 19. We have to do all the cleaning. Daily, we sweep, mop, and clean the bathrooms. The
9 showers are disgusting. Even if when we use the disinfectant, and clean them every day, they're still
10 dirty. But we don't get any protection to clean, not even gloves for the harsh chemicals.

11 20. Staff wear own masks and gloves, but me and other detainees do not have access to them.
12 When we have asked for gloves and masks, they have only said "maybe tomorrow," but we never get
13 them.

14 21. There are only two urinals. There is often a line to use the urinal, especially in the
15 mornings when we first wake up. And people are one after another in line. That's the same at night,
16 when everyone needs to use the sinks to brush our teeth. It feels impossible to maintain distance.

17 22. We haven't been told anything about the virus. About three weeks ago, they put up a flier
18 that says there is free soap. Then they put up a poster about the symptoms of COVID-19 but no one has
19 told us about the virus or what we should do. About two weeks ago, a Sargent came by C Pod. There
20 were four of us sitting at a table on the second floor. He looked at us and said, "guys, keep your
21 distance. Six feet," and then casually walked away. We don't have anywhere else to be. We see on the
22 news that we are supposed to maintain six feet of distance, but this was the first time that anyone at the
23 facility had told us.

24 23. When we go to see the medical staff, they call our names and we walk about 30 steps
25 down a hallway to the pharmacy. We're one after another as we walk. They open the door and we sit in
26 another hallway that they use as a waiting room. The chairs used to be right next to each other, but on
27 April 18th for the first time, the chairs were spaced farther apart. On that day, there were three of us that
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1 went to the clinic from C Pod, and there were two other people from B pod. The Sargent came by, with
2 some other officials I didn't recognize. They had masks and they were spraying what smelled like
3 bleach all over. They shut us in a small room while they sprayed. There was a mattress on the floor and
4 some sheets. That room is probably three meters by three meters, and the five of us were in there for
5 maybe five minutes, without any protection like masks.

6 24. To deliver our medication, staff come twice a day, in the morning and again in the
7 afternoon. There are probably 15 people taking medications. In the morning, they come early, maybe
8 around 6am. They call our names, and we get up to get our medications. Before, we would all get up
9 and stand in a line, one after another, to get our medication. About a week ago, there was some kind of
10 argument between the officer and a detainee, so now they call us up by name, one-by-one. In the
11 afternoon, when they come to deliver medications, we basically have get in line. With their masks on
12 and everyone awake and talking, its much harder to hear them, so we have to gather closer together.

13 25. They have started taking our temperatures every morning. I think this has been happening
14 for at least the past two weeks. It's in the early morning. They wake us up, and everyone gets in line.
15 Since people are still half asleep, we don't think about it and one person is right behind the next. The
16 nurse and the guard have gloves and a mask on, but they don't say anything about people standing so
17 close together. They don't change their gloves or masks, and they use the same thermometer.
18 Sometimes they use an under-the-tongue reader. They also use a machine that you insert your pointer
19 finger in, and it reads your temperature. I don't think they clean the machine between detainees. And
20 then we see the nurse and guard go to the next pod, and take their temperatures, too. We see that those
21 people are in line one behind the next, too.

22 26. I also worry about our clothes and our sheets, that they aren't cleaned well. They take our
23 clothes to laundry every two or three days. When our clothes get taken to the laundry, they sometimes
24 come back really stinky. It's like they don't use laundry detergent. So many people prefer to wash their
25 own clothes, in the shower or the sink. When we get clothes that are in decent condition, like ones that
26 aren't like beggars' clothes with holes and no elastic, we wash those ourselves in the shower and try to
27 hold onto them for more time. Our sheets are the same way. They smell bad a lot of the time, too. Lots
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1 of guys here have rashes all over, I have a rash right now on my chest. It's like a ton of little spider bites
2 all over. Once, I saw an officer drop a food tray on the ground, and then grab a sheet from the laundry
3 bin to clean it up with. Then, the officer threw the sheet straight back in the laundry bin.

4 27. About a month ago, someone came into C Pod with a cough and a fever. And then another
5 person seemed to get sick, and since we can't stay far enough away from each other and don't have any
6 kind of protection or enough soap, in the end about 15 people were sick.

7 28. I got what felt like the flu, too. I got a fever, cough, and body ache. The cough was bad,
8 and I felt short of breath. I didn't want to get out of bed for days and I didn't feel strong enough to
9 walk. I just went to get food, and then back to lay down. I felt like that for maybe four days. They gave
10 us some medication, we weren't told what, and I slowly started to feel better. They didn't do any tests.
11 The original person that was put in C Pod with symptoms was removed from the pod, but only after
12 many others had gotten sick.

13 29. About three weeks ago, they brought a new person into C Pod. He told us he came from
14 Santa Rita jail. It just so happened that the same day, I went to see the nurse for my allergies. I was
15 worried, because we didn't know what kind of precautions they were taking with new people, and we
16 all are afraid of what could happen if someone with the virus comes in. So I asked the nurse what steps
17 they were taking, and about this new detainee. She told me that the person had been in quarantine for
18 two weeks before being placed in C Pod. When I went back to my pod, I asked him if he had been
19 quarantined, and he told me that he had only been in isolation for six hours after arriving at the facility.

20 30. On Friday, April 17, 2020, another new person from Santa Rita Jail was brought to Yuba
21 and put in C Pod. I talked with him, and he told me he has been at Yuba for about two weeks. He was
22 in booking by himself for five days, then he went to the F Tank, and then he was brought to C Pod.

23 31. It is incredibly frightening to be away from my daughter and my partner during this time. I
24 am terrified I will get the virus. My daughter was hospitalized in early April for something unrelated to
25 COVID-19. It was terrifying not to be there for her. I am afraid, because I'm far from my family. I
26 don't want anything to happen to me or to my family. I feel pretty desperate. There are times when I'm
27 in bed and I cry, because I'm scared and far away from my little girl. It's really hard.

1 32. If I am released, I would go stay with my partner's 23-year-old US citizen daughter in
2 Oakland to be in quarantine and protect my family. I am committed to sheltering in place as required by
3 state and local ordinances and complying with any conditions of release.

4 33. I understand that, as a class representative, I represent the interests of everyone in the class,
5 and not just myself. I understand I need to stay informed about what is happening with my case and stay
6 in touch with my attorney to give them information they need. I am committed to being a class
7 representative because I know how dangerous it is to be here, and I want all detained immigrants to
8 benefit from this case just as much as I do. I have never served as a class representative in any prior
9 action.

10
11 I, Angel de Jesus Zepeda Rivas, declare under penalty of perjury that the foregoing is true and
12 correct to the best of my recollection. I sign this from Marysville, California.

13
14 Date: April 18, 2020

//s// Angel de Jesus Zepeda Rivas

15 Angel de Jesus Zepeda Rivas
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CERTIFICATE OF INTERPRETATION AND AFFIRMATION

I, Theodora Simon, certify that I am fluent in Spanish and English and that I am competent to interpret between these languages. I further certify that I have read the foregoing to Angel de Jesus Zepeda Rivas in Spanish. I further declare that I am competent to render this interpretation and that I would testify to the same under the penalty of perjury if I were called upon to do so.

I further certify that on April 18, 2020 I read the foregoing to Angel de Jesus Zepeda Rivas and that he affirmed that the foregoing is true and correct. I have not been able to obtain a signature from Angel de Jesus Zepeda Rivas because Yuba Detention Center is located approximately two hours away from my home by car, and at the time I reviewed the foregoing declaration with him, the county where I reside was, and remains, under a “shelter in place” order.

Date: April 18, 2020

//s// Theodora J Simon

Theodora J Simon

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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 BRENDA RUBI
RUIZ TOVAR**

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Attorneys for Petitioners-Plaintiffs

*Motion for Admission *Pro Hac Vice* Forthcoming

DECLARATION OF BRENDA RUBI RUIZ TOVAR

I, Brenda Rubi Ruiz Tovar, declare the following based on my personal knowledge:

1. I was born in Colima, Mexico in 1988. I am 31 years old. I have resided in the United States since 2002, after I was granted a green card.

2. The facts stated in this declaration are true and of my own personal knowledge, except as to anything that was told to me by my attorney.

3. I am a single bisexual woman. I have one 11-year old child who is a U.S. citizen. My dad is a U.S. citizen and my mother is a lawful permanent resident. My parents live in Fresno, California. I have two siblings, one of whom is a permanent resident, and one of whom is a U.S. citizen.

4. In 2013, I was arrested for possession of a controlled substance, with intent to distribute. I plead guilty and was sentenced to three years in prison. I completed my sentence in August 2018 and I was then transferred to immigration custody. I have been detained at the Yuba County Jail since around August 12, 2018. As of today, I have been detained at Yuba for 612 days.

5. During my removal proceedings, I was granted protection under the Convention Against Torture ("CAT") because of the extreme danger to be killed and tortured in Mexico. The government appealed, and the case got sent back to the immigration judge. The judge then granted me CAT protection a second time, and the government appealed again. My case is still on appeal. I have not had any bond hearings during my case.

6. I suffer from Post-Traumatic Stress Disorder and Generalized Anxiety Disorder. When I was a child, I was sexually assaulted multiple times by an older man. Being raped at an early age has caused me long-term problems with my menstrual cycle, causing irregular periods, which remind me of the rape. The doctors have prescribed me with anti-depressants, which I take daily at Yuba County Jail.

7. Around March 9, 2020, I noticed there was an older Philippine detainee at our area who had severe medical problems that appeared to match the symptoms I've learned

1 correspond with coronavirus. She had a fever, she was sneezing and coughing, and had
2 problems breathing. She went to medical but after a while she was sent back to our population.
3 Some of us felt really bad for her, so we started taking care of her. We would put cold rags on
4 her forehead, bring her water, and try to comfort her. We would get really close to her and had
5 no gloves or anything to protect ourselves. Our priority was to make her feel better.

6 8. A day or so after I was taking care of the woman, I started coughing and had a
7 sore throat. I was really worried that I was getting coronavirus. I put a request with medical and
8 I was seen by a doctor that same day. The doctors did not test for the virus and the visit was
9 very short. They checked my blood pressure and temperature. After I got a few medications
10 (Tylenol for my headache, Robitussin for my cough, and an allergy pill) but I am still very
11 worried about the situation.

12 9. Around March 12, 2020, the Philippine woman got worse. She had a medical
13 episode and was taken to medical. She started shaking and we noticed that she could not
14 breathe. Her eyes were red. Not knowing how to help her, we tried to help her breathe, we
15 grabbed her jaw and moved it open and close to try to get her to breath. Medical staff came to
16 our dormitory and checked on her. I heard that she had a fever of 102 degrees. After some time,
17 she was rushed to the hospital. She was brought back to the jail hours later and was placed in
18 one of the three cells available for isolated detention. I believe that she had the coronavirus and
19 ICE detained her on her own as an attempt to prevent further spreading of the virus. But it did
20 not matter; many of us started showing symptoms like coughing and sore throat.

21 10. I've had symptoms since March 10. It started with a cough. When I coughed, it
22 was a dry cough and lasted throughout the day. I had a sore throat. It hurt when I swallow. At
23 night, I would start coughing uncontrollably, waking me up. I also had problems breathing. It's
24 hard to describe the feeling. When an episode happened, I felt pressure in my chest, and I could
25 not breathe normally. I would start panting trying to get short breaths in.

26 11. There has been no testing for coronavirus at the jail. On March 19, 2020, I heard
27 from another detainee that she went to medical and heard that ICE just got the coronavirus test

1 the day before, on March 18, 2020. ICE has not told us anything about the test or whether we
2 will be tested. ICE does not give us much information; we mostly know what is going on by
3 asking one another.

4 12. On Friday, March 27, 2020, I was quarantined. The day before, a female detainee
5 came back from a hearing really sick. She was coughing, had a fever, and was vomiting. I
6 believe the woman was suffering from symptoms related to coronavirus. The woman was
7 quarantined, placed away from the other detainees. The woman and I are part of the same
8 dormitory area, Pod R. The pod houses 18 detainees. On March 27, 2020, after lunch, county
9 officers came to three of us and told us to gather all our belongings because we were being
10 moved. I learned that the officers had asked women who had shown virus-related symptoms to
11 move. During quarantine, I learned that the officers wanted to determine if we were contagious
12 to other detainees, including the woman who went to court and showed symptoms.

13 13. At around 1:00 pm, two other women and I were moved to a small medical cell.
14 The cell was medium size, with two very small rooms inside, made out of brick walls and a
15 metal door. I shared one of the rooms with a female detainee and the other room was occupied
16 by the third woman. The rooms were very small. There was not enough space in the medical
17 cell to be socially-distanced from each other. The cell had one dirty toilet, with feces all around
18 it. The shower had a dirty smelly shower curtain. The three of us shared the only phone in the
19 cell. I was being quarantined but was not aware for how long. That night, a nurse took our
20 temperature, said we had no fever, and told us we had to stay in the medical cell. The next day,
21 we requested cleaning supplies because the cell was extremely dirty, smelly, and it was hard to
22 stay in there with that filth. We were given chemicals but no masks to clean it up. The nurse did
23 not come back that Saturday. On Sunday March 29, 2020, we were told that because we had no
24 fever, we could return to the dorm. We never got a coronavirus test or another fever test while
25 in quarantine.

26 14. Our dorm setup does not permit social distancing. There are nine bunkbeds and 18
27 people, meaning it is completely full. In between each bunk there is about a foot or so of

1 distance. If I am in my bed, I can reach out my hand and touch the bed to the side of me. In the
2 middle is the eating area – there are three tables. Each table has space for six people, three on
3 each side. The tables and benches are nailed to the floor and cannot be moved. During
4 mealtimes, the guards bring in trays and water, and we lined up to get our food trays. When we
5 are lined up, we are very close together.

6 15. The bathrooms and showers are at the end of the dormitory and they are
7 connected. There are two toilets, which each have their own sink. The first toilet is separated
8 from the second by a curtain and the toilets are only a few feet away from each other. Even
9 when you are in the bathroom, you do not have any privacy or space. The guards give us bars of
10 soap for the bathrooms but we have to advocate for ourselves because sometimes the soap runs
11 out. After the second toilet, there is a metal wall that goes up halfway to the ceiling. After that is
12 the shower area which is about 10 feet wide. Inside there are two shower heads. There is
13 nothing inside the shower area to divide the shower heads, not even a curtain.

14 16. All of the bunkbeds are on one side of the room. On the other side is where there
15 is a television, and a little bookshelf. There is a table that is stuck to the wall. We play puzzles
16 at that table. There is only one telephone for the whole unit which is next to that recreation area.
17 When you are on the phone, you are close enough to the bunks to be able to sit down on a bed.

18 17. Five times a week for one hour each time, our dormitory goes to a cage on the
19 roof of the jail for yard time. The yard is about the same size as the dormitory. On the right-
20 hand side there are metal bars for doing exercises. I have never seen those bars be cleaned.
21 There is also a basketball court on the roof that detainees are still using to play basketball. On
22 the left side there is a bathroom and it is disgusting, covered in poop. I do not use the bathroom
23 when I am in the yard for that reason. There is a sink next to the bathroom and a water fountain.
24 There is calcium buildup around the fountain; when the water comes out it stains the water
25 fountain. I do not use the water fountain either.

26 18. On Wednesday, April 15th, in the afternoon, I went to the yard and I noticed fleas
27 sticking to my feet, on my shirt, all over me. I do not know where they came from but I know I

1 picked them up when I went up to the yard. I started to itch all over. I put in a request to see
2 medical to get help for the itching. To this day I have not seen medical and I am still itching.

3 19. As of now, a lot of my symptoms of coronavirus have passed, but not all. I still
4 get headaches and have to get medication for it. I fear that, as the poor conditions in detention
5 continue, I will again contract the virus and my symptoms will start again.

6 20. We have asked ICE for information to know what is going on. ICE officers have
7 told me and others that “there is no virus in the county.” I do not believe them. They did give us
8 information about how to wash our hands. They gave use wipes to clean the telephone we all
9 use. ICE officers get upset when we ask for new information. Officers put a sign that there is
10 free soap available, and I’ve gotten some. It is a small bar of soap, like the ones they give at
11 hotels. I’m not sure whether the soap has the chemicals needed to get rid of bacteria and the
12 virus.

13 21. After the Philippine woman got worse, ICE brought us a bunch of chemicals to
14 clean up the jail. ICE had all of us detainees clean the open areas, bathrooms, dorms, and almost
15 all of the areas we have access to. I did not understand why they would expose all of us to the
16 virus by trying to clean it. They did not give us gloves, masks, or any protective gear. I asked for
17 a mask when I went to medical to cover my cough and the staff said that, unless you have a
18 fever, they cannot give them out. For some time, they turned off the air conditioning but didn’t
19 tell us why. The jail got really hot because we did not have air conditioning. The officers said
20 that our cable box suddenly did not work, so we could not watch the news to learn what was
21 going on with the virus. This all added to our anxiety not knowing what was going on with the
22 virus. The air conditioning and the cable are now working again.

23 22. I am really worried for my safety. I am worried that more and more detainees
24 will worsen and the virus will affect us all. I have not noticed ICE officers doing much to
25 contain the virus or ease our anxieties. They should test us if they have the test. They
26 should give us masks if they have them. There is a lot of people who cough and do not
27 cover their cough, so I worry the virus is spreading. We can clean and clean, but if people

1 keep coughing, then we cannot stop the spread of the virus. I do not feel safe inside this
2 place. I do not know what will happen to those of us who already show symptoms. More
3 and more people ask for sick calls but are not taken to the medical office. The check-ups
4 happen at the dormitories and they do the basic: they check for fever and check blood
5 pressure. Response to our sick calls are again taking longer to be responded to. One of the
6 detainees put out multiple medical requests and it took her about a week to get a response.
7 As more detainees have symptoms, there are more requests, medical gets overwhelmed and
8 their response delays.

9 23. I worry for the safety of my family. I need to be home taking care of my parents
10 and my child. My parents are older: my mother is her 50s and my father is in his 60s. My mom
11 suffers from asthma and heart problems. My dad lately has gotten weaker, often gets a cold. I
12 would like to be home to ensure that my parents are well taken care of. My son suffers from
13 allergies and, around Spring, he usually goes to severe episodes of allergic reactions. I worry for
14 their health.

15 24. If I am released, I would go live with my parents in Fresno, CA. My sister would
16 take me home. My social worker would be able to get me in touch with medical services so I
17 can get the care I need for my PTSD. I would not have to pay rent with my parents and, when
18 the BIA finishes reviewing my case, I am hopeful that they will sustain the grant of relief by the
19 Immigration Judge. If I am released, I am committed to following all public health guidelines
20 and rules, including the current shelter in place rules, to ensure the safety of myself and others.

21 25. I spoke with my attorneys about the responsibilities involved in being a class
22 representative. I understand that, as a class representative, I represent the interests of everyone
23 in the class, and not just myself. I also understand that I am responsible for staying reasonably
24 informed about the case and providing my attorneys with any information they need to
25 prosecute the case. I am committed to be a class representative because I believe it is very
26 important that all people who are facing the current dangerous conditions in detention benefit
27 from this case just as I do. I have never been a class representative in any other action.

28 DECLARATION OF BRENDA RUBI RUIZ TOVAR

1 I, Brenda Rubi Ruiz Tovar, declare under penalty of perjury that the foregoing is true and
2 correct to the best of my recollection. I sign this at Marysville, California.

3 April 18, 2020
4 Date

//s// Brenda Rubi Ruiz Tovar
Brenda Rubi Ruiz Tovar

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DECLARATION OF BRENDA RUBI RUIZ TOVAR

CERTIFICATE OF INTERPRETATION AND AFFIRMATION

I, Hector Vega, declare that I am competent to interpret from English to Spanish. I certify that on April 18, 2020, I read the above English declaration to Brenda Rubi Ruiz Tovar in the Spanish language via telephone and she confirmed the contents are true and correct to the best of her recollection. I sign this at San Francisco, CA.

I read the foregoing to Brenda Ruiz Tovar and that she affirmed that the foregoing is true and correct. I have not been able to obtain a signature from Ms. Ruiz Tovar because Yuba County Jail is located approximately three hours away from my home by car, and at the time I reviewed the foregoing declaration with him, the county where I reside was, and remains, under a “shelter in place” order.

April 18, 2020
Date

//s// Hector A. Vega
Hector A. Vega

DECLARATION OF BRENDA RUBI RUIZ TOVAR

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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
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ALFARO, DUNG TUAN DANG,

Petitioners-Plaintiffs,

v.

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MATTHEW T. ALBENCE, Deputy Director
and Senior Official Performing the Duties of
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IMMIGRATION AND CUSTOMS
ENFORCEMENT; GEO GROUP, INC.;
NATHAN ALLEN, Warden of Mesa Verde
Detention Facility,

Respondents-Defendants.

**DECLARATION OF LAWRENCE
KURIA MWAURA**

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**Motion for Admission Pro Hac Vice Forthcoming*

DECLARATION OF LAWRENCE KURIA MWAURA

My name is Lawrence Kuria Mwaura. I do hereby declare that I am competent to testify and if called to do so shall testify as follows:

1. I, Lawrence Kuria Mwaura, was born on February 5, 1993 in Kenya. I entered the United States on October 20, 2002, and was granted asylum with my mother on August 8, 2003. I was granted United States legal permanent residence on October 3, 2006. My mother, brother, and sister were also granted asylum and are now naturalized U.S. citizens. I am married to a U.S. citizen.

2. I am currently detained at Yuba County Jail in Marysville, California, where I am housed in C-Pod.

3. On May 2, 2013, I was convicted under California Penal Code Section 211 robbery in Los Angeles, California. I was sentenced to serve four years in state prison. In addition, I have a conviction under California Penal Code Section 211 dated August 13, 2013. I was sentenced to five years in prison to run concurrent with my first conviction.

4. On April 12, 2019, I was released from state criminal custody at Duel Vocational Institute ("Duel") in Tracey, CA and detained by the Department of Homeland Security, Immigration and Customs Enforcement ("ICE"). Because of my prior convictions, I was put into removal proceedings before an Immigration Judge. I applied for relief from removal through adjustment of status, as well as protection under the Convention Against Torture due to my fear of returning to Kenya. The Immigration Judge denied relief in my case, and I appealed the decision to the Board of Immigration Appeals ("BIA"). I then appealed the BIA's denial to the Ninth Circuit Court of Appeals in February 2020, where my case is now. I have a temporary stay of removal in place. My attorney told me that the opening brief in my Ninth Circuit case is due June 1, 2020. I have never had a bond hearing since I entered into ICE detention on April 12, 2019.

5. In March 2018, while at Duel in Tracey, I contracted Coccidioidomycosis, also known as Valley Fever. Every time I breathed, it felt like my lungs were being ripped apart. It

1 was extremely painful. I was hospitalized at San Joaquin Hospital in the ICU. I thought I was
2 going to die because of the damage to my lungs and how hard it was to breathe.

3 6. My doctors at San Joaquin Hospital prescribed Fluconazole to treat the mold
4 spores which caused the Valley Fever. The doctors told me that I would most likely have to take
5 medication for the rest of my life and the damage to my lungs would be permanent. I also began
6 getting my titers check to ensure that the medication was working. The doctors at Duel told me
7 I needed my titers checked every 90 days, regardless of whether I am on medication. Based off
8 what the doctors explained to me and my own research, a titer check allows doctors to monitor
9 blood cell count and see whether my Valley Fever is getting better or worse. I took Fluconazole
10 for 8 months, and my condition improved. But then it quickly worsened, and I had to be sent to
11 a lung specialist at San Joaquin, who prescribed Voriconazole. This medication made me
12 feel dizzy and light-headed, and caused strange sensations in my feet. I took Voriconazole until
13 a doctor at Yuba told me he had spoken to a lung specialist who I had never seen, and they
14 decided I no longer needed the Voriconazole. The Yuba said they would still monitor my titers.
15 My wife sent my medical documents to inform Yuba medical staff that I needed a titers check
16 every 90 days. She had to consistently ask Yuba officials before they actually checked my titers
17 when I first entered Yuba. Yuba medical staff have not checked my titer count since late
18 November or early December 2019. I told medical staff on multiple occasions that I needed
19 more frequent titer checks. I was never told what my titer level was during this last check.

20 7. The lung specialist at San Joaquin told me that I have scars on my lungs from the
21 Valley Fever, which makes my lungs extremely sensitive to cold temperatures and smoke and
22 things in the air. I still have trouble breathing when the dorms get cold here in Yuba. I always
23 wear a sweatshirt and as much clothing as the officers give me, but I still get cold and have
24 trouble breathing. I feel a pain in the bottom of my lungs which forces me to take short breaths.
25 For example, I experience this pain and difficulty breathing when I get out of the shower
26 because I am moving from a warmer temperature to a colder one.

1 8. The doctor at San Joaquin who diagnosed me also told me that Valley Fever could
2 return any time. He told me that if it returned, it could eat away at my brain, my skeletal system,
3 my nervous system, and paralyze me. I am currently terrified of contracting COVID-19 and
4 dying because my respiratory system is weak, particularly as I have scarred lungs.

5 9. The televisions in C-Pod at Yuba play the news, which consists almost entirely of
6 COVID-19 coverage. The news tells us about the importance of social distancing. However,
7 social distancing does not exist and is impossible at Yuba.

8 10. I am in an open dormitory in C-Pod. As of today, there are a total of 36 detainees
9 in the dorm with 25 bunks in total. The dorm can hold a total of 50 men. I currently sleep on the
10 bottom bunk of a two-person bunk bed. Up until yesterday evening, April 17, I had a bunkmate
11 sleeping three feet above me in the top bunk. Behind my bunk, there are two bunks within 2 feet
12 of me. There are two more bunks within 4 feet of my bunk: one to my right, and one directly in
13 front of my bunk when I lie down. As of today, 8 detainees of the 36 total detainees do not have
14 a bunk mate.

15 11. I was transferred to C-pod from F-Pod on March 27, 2020. All of the detainees
16 have been trying to ask questions of medical staff, officers, and other detainees and share to
17 determine whether there are special quarantine procedures due to COVID. We are scared that
18 someone will bring the virus in from the outside. In this way, many other detainees and I
19 believe that the new procedure for detainees transferred into Yuba is being quarantined for 14
20 days, and if their temperature reads within the normal range, they are released into a normal
21 pod, like C-pod. On April 17, 2020, the first new detainee was introduced into C-Pod since I
22 was transferred here. He told me that he came from Santa Rita Jail, spent 5 days in a small
23 booking cell in an upper floor of Yuba, and then spent 9 days in “quarantine” in F-pod. The new
24 detainee that arrived on April 17 told me that the only monitoring the medical staff did before
25 putting him with us in C-pod was to test his temperature.

26 12. At meal (also called “chow”) times, which happen three times per day, all 36
27 detainees currently in my dormitory line up to get food. We line up with about one foot or less
28

1 between each of us. The chow officer brings a cart of food and a cart of beverages into the dorm
2 from the general cafeteria. For only the last two weeks ago, the chow officer has worn a mask.
3 Before that, the chow officer did not wear a mask. Then two detainees from C-Pod volunteer as
4 “porters” and distribute the trays of food and beverages to the rest of the detainees. These
5 detainee-porters are not paid for this. The porter-detainees are each given a pair of gloves by to
6 distribute the food and beverages. They are never given any masks while distributing meals.

7 13. There is also no distance between us when we eat our meals at the tables. In the
8 dining area, there are 5 metal tables with attached benches. Three men sit at two of those tables.
9 There are an additional two tables with four attached stools, which people don’t generally use to
10 eat at. On the lower tier where the bunks are, there is a small area with two tables with benches
11 called the “day room.” Generally, there are 12 detainees who eat there. They sit elbow to elbow,
12 filling the table completely up. The remaining men—about 21 detainees—sit on their bunks and
13 eat their meals. Some of these men sit together on the same bunk and eat their meals together.

14 14. It is impossible for detainees here to maintain social distance from one another.
15 All detainees are only allowed one hour for recreation a day, five days per week. The detainees
16 are taken to the roof. The roof is a caged area of about 40 feet by 20 feet, about half the size of a
17 basketball court. Not all of the inmates can fit, so we go in groups of about 25. Even though this
18 is our “outside” time, there are no sunlight or trees, just cement walls and floor. The upper part
19 of the roof is covered with steel bars and chicken-wire.

20 15. The roof is the dirtiest area in the whole of C-Pod. I have not seen anyone clean
21 this area. The metal toilets and sink are encrusted and stink of grime and human waste. The
22 floor of the roof area is covered in dust and dirt. This is the only place for us to do exercise. I
23 can’t do any exercise near the ground—like push-ups or sit ups—because I can see the dust and
24 dirt coming up from the floor.

25 16. Detainees also cannot social distance when they use the bathroom areas. There
26 are only three shower stalls, shared among 36 men. When a detainee stands at a sink, he is one
27 and half feet from the detainee at the sink next to him. There are five toilets in total, split

1 between two toilet areas in C-pod: three toilets in a row upstairs, and two toilets next to each
2 other downstairs. The toilets have no door for privacy and only a low barrier about three feet tall
3 separating one toilet from another. The barrier starts at about two feet off the ground. When one
4 detainee is using a toilet, either standing or sitting, the detainee at the toilet next to him is only
5 three feet away.

6 17. This enclosed environment also contributes to detainees feeling hopeless and
7 trapped, without any recourse to protect ourselves from the COVID-19 pandemic. I am reading
8 a book at our library here which says that humans need a certain amount of sunlight and could
9 be susceptible to more disease if they are forced to be without sunlight for extended periods of
10 time. Being so trapped during this health crisis makes me feel extremely tense and stressed all
11 of the time. In June 2019, a psychiatrist here at Yuba told me that I fit the criteria for Post-
12 Traumatic Stress Disorder. I feel depressed and in very low spirits, desperately looking for ways
13 to lighten my mood. Other detainees have expressed to me that they feel stress, anxiety, and
14 depressed. Many men here take medication for psychological conditions, such as sleeping aides.
15 People's behavior and moods shows that they are crying on the inside.

16 18. Since I have been in C-pod, every morning a nurse enters the dorm with gloves
17 and a mask and checks all detainees' temperatures. There is not always a clear procedure during
18 the temperature check. The inconsistency means that some detainees' temperatures do not get
19 checked. On weekends, temperature check happens a little later in the day. Starting a week ago,
20 an officer accompanies this nurse into the dorm and usually one of them announces,
21 "Temperature checks, stay in your bunks." The nurse then checks detainees' temperature by
22 holding a device that looks like a price-scanner a few inches away from the detainee's forehead.
23 I have seen detainees who are in the bathroom area, the phone-booth area, or on the upper floor
24 at the tables not receive a temperature check because the officer accompanying the nurse
25 doesn't order them down.

26 19. Before a week ago, the temperature check procedure was different. An officer
27 would accompany the nurse into the open dormitory floor and announce, "Line up, temperature
28

1 check.” We would stand in line—a foot or less away from one another—and the nurse would
2 perform the forehead temperature check.

3 20. When detainees get a temperature check, there is a computer screen facing only
4 the nurse which shows the temperature. We cannot see our own temperature. The nurse does not
5 tell us our temperature, write down the temperature readings, or check our wrist band to record
6 our name and temperature.

7 21. Officers, medical staff, and other Yuba workers come in and out of Yuba and C-
8 Pod all of the time from the outside. We detainees are forced to be close to them in different
9 ways. Once an hour each day, an officer performs a check of the dorm by walking through the
10 bunks. This officer will walk in the narrow space between the bunks, meaning that that officer
11 will be within 2 feet or less of each detainee on his bunk. There are two 12-hour dorm officer
12 shifts. Whenever officers change shifts, they walk through our bunks to verify each detainee’s
13 identity. If a detainee is asleep, the officer taps their mattress firmly or taps the detainee’s foot
14 to wake him and verify his last name. Since the beginning of April 2020, officers who performs
15 this check in C-pod have worn gloves and a mask. Before then, officers would wear this
16 protection inconsistently depending on the officer.

17 22. Another way detainees have to be close to officers is when we receive mail. This
18 happens in two ways. Officers will distribute mail leaving it on our bunks. Alternatively,
19 officers will call all detainees who have mail to a table to collect their mail. They don’t call us
20 one-by-one to wait for each to get their mail and distance themselves. We all have to go up to
21 the table together to collect our mail. An officer who hands out the mail to the detainees at this
22 table wears gloves and a mask.

23 23. Officers get within three feet of us when they take our laundry three times a
24 week.

25 24. Officers walk through each bunk again twice a day to spray chemicals on the
26 ground between the bunks. Those officers wear gloves and masks.

1 25. The officers in the control booth between the Pods at Yuba do not wear masks. I
2 have seen officers take their masks and gloves off when they enter the control booth from the
3 Pods or other areas of Yuba. When we need to speak to the officers in the control booth, we
4 enter a sally port, which is within arm's reach of the officers in the booth. There is an open
5 airway between the sally port and the control booth. During those conversations, the officers are
6 not wearing gloves or masks. The officers in the sally port who handle paperwork do so without
7 wearing gloves. The officers there consistently hand paperwork directly to detainees and other
8 officers with their bare hands.

9 26. This past Monday or Tuesday, April 13 or April 14, 2020, two maintenance
10 workers came into C-Pod without masks or gloves to unclog the sinks—one on the upper floor
11 and one on the dorm floor—which have been clogged since the time I came into C-pod. Other
12 detainees who have been in C-pod longer have told me that the sinks have been clogged for
13 weeks before that. The clogged sinks were filthy and stank badly, like something was rotting in
14 them. The water drained very slowly from the sinks, leaving a dirty residue in the sinks.
15 Because there are 36 men in C-pod sharing only a few sinks, we were forced to use the clogged
16 sinks. I was on my bunk when I saw the unmasked and ungloved maintenance workers enter. I
17 had to use the restroom and walk within five feet of those workers. After the maintenance
18 workers left, the sinks still appear filthy, but they drain water better than before.

19 27. Once per day, officers spray down high-touch surfaces, such as tables, sinks,
20 toilets, showers, phone booths, and stairwells, with disinfectant. I asked the officers what is in
21 the disinfectant, and they told me it is a 10-to-1 ratio bleach-and-water solution.

22 28. There are high-touch surfaces and items that officers do not spray or otherwise
23 disinfect. For example, the shower doors are wooden and do not have handles, and detainees
24 open those doors to enter the shower by grabbing the top of the door and pulling it open towards
25 themselves. I have not seen officers disinfectant the tops of those door. The handles of brooms,
26 mops, sweepers, dustpans, plungers, and toilet-scrubbers, which detainees use very frequently to
27 clean common spaces, never get disinfected. From my own experience and what I see other
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1 detainees do, we do not use gloves to touch these items 99% of the time. The remaining 1%
2 recycle gloves from the detainee-porters who distribute meals.

3 29. The detainees are responsible for all of the daily cleaning of our bunks and the
4 common spaces. We rotate based on our bunk location to perform cleaning chores twice per
5 day. We do everything. We mop and sweep the floors, mop and clean the showers, clean the
6 sinks, and wash the walls, the stairwells, the windows, the phones, and the tables and chairs. We
7 do not wear masks and are not given masks from Yuba to do this cleaning. When I asked for a
8 mask from a nurse once, she told me, "Sorry, we don't issue masks."

9 30. There are no sanitizing wipes provided to detainees, either for use on our hands or
10 to wipe down and disinfectant surfaces or other items. Instead, we are given paper towels and 4
11 spray bottles, each with a cleaning solution in different colors and smells: one to clean the floor,
12 one to clean tiles and bathroom surfaces, one to clean the steel toilets and tables, and one for
13 windows. The bottles themselves do not have labels indicating their uses. Since I have been in
14 C-pod, I'm not aware of an officer explaining how to use the cleaning supplies. The only reason
15 I know is because I was a "porter" in F-pod before. Those cleaning solution bottles had labels
16 and I became familiar with each one's color and use. We have not been told the specific purpose
17 of the paper towels. Almost all detainees use the surface-cleaning chemical solutions to wash
18 their hands after they use the bathroom.

19 31. Before they transferred me and other detainees out of F-pod, the officers in F-pod
20 told us that they were going to use that pod as a quarantine space for new detainees and for
21 people with COVID-19. I do not know how officers would know who has COVID-19 to put
22 them in quarantine since we do not have COVID-19 tests at Yuba. A new detainee who came to
23 C-pod on April 17, 2020 confirmed to me and other detainees that F-pod is currently a
24 quarantine area.

25 32. At Yuba, an officer will open the door to the chemical room in the Pod every so
26 often when the spray bottles get low, and an assigned porter, who is always a detainee, will go
27 in the chemical room and refill the bottles. The chemical room in C-pod is located about 6 or 7
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1 feet from my bunk. Unlike in F-pod, the cleaning solution bottles here in C-pod are not labeled.
2 When I was a porter in F-pod, I would have to dilute the chemicals with water every day to
3 make them last longer. I was only able to do this because there was no Material Safety Data
4 Sheet (“MSDS”) enforcing or educating me about how to top up the spray bottles with the
5 stored chemicals. I became educated about MSDS from my experience and training as a fire-
6 fighter and in my vocational training in building maintenance at Duel. An MSDS is a folder of
7 documents stored along with chemicals provided by a chemical manufacturer. There is a
8 requirement that an MSDS must be accessible and available near the chemical storage area. Any
9 business or activity where people use these chemicals must have an MSDS accessible and
10 available. The MSDS describes the use of the chemicals and how they are allowed to be
11 changed based on the information specific to each chemical.

12 33. I am afraid that the disinfectant spray bottles in C-Pod do not have the correct
13 amount of chemicals in them and are not properly disinfecting the high-touch surfaces and other
14 items we use. This adds to me being terrified of contracting COVID-19 because the chemicals
15 are not sufficiently effective to disinfect, making them pointless to protect us from infection in
16 C-pod. On top of this, we are given cloth rags to clean the very dirty common spaces, like
17 toilets, sinks, and tables where we eat meals. These rags have never been laundered since I came
18 to C-pod. These same rags are used to clean all the areas in C-pod, transferring germs directly
19 from surface to surface, from areas like bathrooms to meal areas.

20 34. Detainees cannot keep themselves clean enough. We are not provided hand
21 sanitizer. Many detainees have told me that they cannot afford to buy their own soap from the
22 commissary. Officers have told us that we can request an “indigent kit” from them regardless of
23 how much money we have in our account. This kit contains a pen-filler to write, a comb, a
24 single-use paper packet of shampoo and of conditioner, and a small two-inch by two-inch bar of
25 soap. Sometimes the officers forget to provide a kit upon a detainee’s request, and that detainee
26 will go without being able to clean themselves. I have had to speak up on behalf of other
27 detainees who cannot afford their own soap and need to request a kit. About half the time, the

1 officer does not complete this request and we have to ask them again. I have seen some
2 detainees donate some of their soap on a weekly basis to those detainees who cannot afford their
3 own soap or do not receive the 2x2 soap from officers so that the detainee can clean himself
4 better. Officers in C-pod are inconsistent about their willingness to provide us kits with the
5 supplies we need to keep ourselves clean.

6 35. I am very scared about the hygiene of the common spaces all of the detainees in
7 C-pod have to use. For example, the corner of the showers have heavy mold that is not able to
8 be scrubbed off with the chemical spray bottles. In late December 2019 and early January 2020,
9 there was an inspection of Yuba in which government inspectors came to evaluate the
10 conditions of the jail. The rest of the detainees and I in C-Pod saw the inspectors come in. At
11 that time, the maintenance at Yuba painted those corners of the showers where there was mold
12 to cover up the mold. After the inspectors came, a few weeks later the mold ate through the
13 paint and was visible again.

14 36. The mold is still here in the corner of the showers and it terrifies me every time I
15 get in the shower. The Valley Fever which I suffered involves mold spores in my lungs, so I
16 shower as quickly as possible and try not to breath in the steam from the hot water. It is very
17 scary every time I take a shower; I dread it every day.

18 37. The air vents in C-Pod are clogged with thick dust. I can look into the vents and
19 see the dust. When the heat kicks on, the air flowing out of these vents smells like smoke. When
20 this happens, I have difficulty breathing and have to take short breaths because I can feel a
21 severe pain, like a thousand needles puncturing the bottom of my lungs. There is supposed to be
22 air being sucked in through another set of vents to recycle it, but these are so clogged with dust
23 too, that I don't think the air can be recycled properly. The dirty air vents terrify me, as I know
24 it is terrible for my lungs and dangerous to my health to breath in dirty dusty air.

25 38. I am afraid because I hear on the news that people with underlying medical issues,
26 especially respiratory issues, are most vulnerable from serious complications and dying if they
27 contract COVID-19.

1 39. There are sick detainees in my dorm who are constantly going in and out of the
2 medical dorm, where they get their vitals checked. I know they're sick because they told me
3 they put in medical requests because they experienced coughing or sneezing. People are very
4 scared that any of these symptoms could be COVID-19. We detainees know these symptoms
5 from the news constantly playing.

6 40. There are paper signs posted about COVID-19 on the glass sally port windows
7 visible to detainees. These 19 signs explain symptoms, that the virus attacks vital organs, and
8 that we should try to maintain 6 feet of distance, wash our hands frequently, and sleep turned
9 away from the detainee in the bunk next to ours. This is the only information Yuba provides us
10 detainees. I have never heard a Yuba or ICE officer explain COVID-19 or what we should do to
11 protect ourselves. I have never heard other detainees say that officers have mentioned this
12 either. This makes me feel that we are being provided as little information as possible to keep us
13 from knowing more and asking questions and making requests for protection from infection.

14 41. Detainees that I see sneezing and coughing will go in and out of the medical dorm
15 and come back to my dorm without a mask or gloves. Detainees are not given masks or gloves.
16 On April 16, 2020, one detainee went to Sacramento for court, and he was given a mask to wear
17 at that court. But when he came back to C-Pod he immediately took it off. The detainees here
18 were so surprised to see a detainee with a mask that we yelled out when we saw him come in
19 with one.

20 42. When we see Yuba staff wear masks and gloves more, but we cannot wear these
21 and have no information or protection, it makes me feel worthless. I often speak to other
22 detainees here about how they feel about our lack of protection and information. They have told
23 me it makes them feel like Yuba is abandoning us, that COVID-19 is very likely already
24 present, and that we will be left to die in here.

25 43. My worst fear about staying in detention during COVID-19 is dying among
26 strangers. I think about this all the time. I imagine Yuba officials having to contact my family
27 because I have died from COVID-19. I imagine my family having to make funeral plans for me.

1 Being unable to protect myself from infection here, especially because of my medical
2 conditions, makes me feel like nothing—like dirt.

3 44. If I am released, my wife will pick me up and take me to our home in Burbank,
4 California. I can quarantine there and protect my family. I will comply with any shelter-in-place
5 orders or restrictions set on me by the Court.

6 45. I understand that, as a class representative, I represent the interests of everyone in
7 the class, and not just myself. I understand that I need to stay informed about what is happening
8 with my case and stay in touch with my attorneys to give them the information they need. I am
9 committed to being a class representative because I know how dangerous it is to be here in
10 Yuba, and I want everyone to benefit from this case just as much as I do. I have never served as
11 a class representative in any prior action.

12 I, Lawrence Kuria Mwaura, declare under penalty of perjury that the foregoing is true and
13 correct to the best of my recollection. I sign this from Marysville, California.

14 Date: April 18, 2020

//s// Lawrence Kuria Mwaura
Lawrence Kuria Mwaura

CERTIFICATE OF AFFIRMATION

I further certify that on April 18, 2020 I read the foregoing to my client Lawrence Kuria Mwaura and that he affirmed that the foregoing is true and correct. I have not been able to obtain a signature from Lawrence Mwaura because Yuba County Jail is located approximately six hours away from my home by car, and at the time I reviewed the foregoing declaration with him, Los Angeles County where I reside was, and still remains, under a “shelter in place” order. I declare under penalty of perjury that the foregoing is true and correct.

//s// Douglas Jalaie
DOUGLAS JALAIE, ESQ.

Executed on: April 18th, 2020

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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.

**DECLARATION OF LUCIANO
GONZALO MENDOZA JERONIMO**

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19 *Motion for Admission *Pro Hac Vice* Forthcoming

DECLARATION OF LUCIANO GONZALO MENDOZA JERONIMO

I, Luciano Gonzalo Mendoza Jeronimo, declare the following based on my personal knowledge:

1. I make this declaration from my personal knowledge and, if called to testify to these facts, could and would do so competently.

2. My full legal name is Luciano Gonzalo Mendoza Jeronimo, however in detention I am being called Jeronimo Gonzalo Mendoza due to ICE error. I was born in Guatemala and I am 31 years old. I am indigenous Mayan Mam. My best language is Mam, but I also speak Spanish. I have lived in the United States since my last entry in December of 2010. I am married to Santos Paulina Carrillo Medoza ("Santa") and we have 2 children together, a nine-year-old daughter and a four-year-old son. My wife and daughter were granted asylum by an Immigration Judge in San Francisco in January of 2017. Today, they are lawful permanent residents and my son is a United States citizen, as he was born in Berkeley, CA. My family lives together in Oakland, CA. We are a very close-knit family. We attend church together and enjoy walks in the park.

3. I first entered the United States when I was around 16 years old. I was removed to Guatemala in 2009. I then met my wife and we lived together in Todos Santos, Guatemala, but because I opposed forced recruitment of indigenous men and refused to join their patrol, I was beaten by the National Civil Police and local security forces and jailed for a few days. I was badly injured. I fled Guatemala in December of 2010. I have not left the United States since that time. Based on her successful asylum claim, my wife filed a petition for me in January of 2019. We knew there was a risk I would be arrested given my removal order. However, we decided to take this risk as I cannot live safely in Guatemala. I am very afraid to return to Guatemala. I was then arrested by ICE on February 11, 2020 near my home and my prior removal order was reinstated. I received a positive reasonable fear determination by the San Francisco Asylum

1 Office on February 26, 2020 and am now in withholding-only proceedings before the San
2 Francisco Immigration Court.

3 4. Through my attorney, I have filed a request with ICE/ERO to be released from
4 detention. This has been denied 2 times because I am supposedly a flight risk.

5 5. I have only one non-violent misdemeanor conviction. In 2017, I was convicted of
6 driving without a license and seat belt in Oakland, CA. I have paid all fines. I also was arrested
7 a few times in Shelton, WA in 2008 and 2009. I believe I was arrested for driving without a
8 license, having no insurance, using a fake name and failing to stop. I was then turned over to
9 ICE custody. I have no other arrest or criminal record, but I feel very ashamed about my
10 criminal record. I am not a violent man. I am a family man. I understand the importance of
11 obeying all laws in this country and do my best to do so.

12 6. I currently have no medical conditions, but I am extremely worried about my wife
13 who still suffers depression and anxiety due to her problems in Guatemala.

14 7. Here at Yuba I am in B Pod. There are about 27 or 28 people in B Pod right now.
15 Most of us are ICE detainees, although there are a few County inmates. There are two floors,
16 one where we sleep and the second floor where we eat and congregate.

17 8. There used to be about 50 people in B Pod, but as they have moved some people
18 out, they haven't brought new people in. We were never told why people were moved out. I do
19 not know if it was because they were sick or some other reason. However, about 2 or 3 weeks
20 ago they brought new detainees in and we all got very angry and upset as we are all so worried
21 about possibly getting the virus. Now, no new detainees are coming in. But even with fewer
22 people in B Pod, it still is not possible for us to stay two meters away from each other most of
23 the time.

24 9. There are about 25 bunk beds. I estimate that the beds are not much more than
25 one meter apart. I am on the lower bunk, and the two lower bunks on either side of me are
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1 occupied. When I sleep, I'm only a meter away from two other people here. It's difficult for
2 people to get into the upper bunks, so all or almost all of the lower bunks are taken.

3 10. The area where we eat is on the second floor. There are probably about seven
4 tables, and two downstairs. When we eat, we try to stay away from each other since there aren't
5 as many people now as there were before. Some people go down to eat on their beds, and
6 people try to spread out as much as they can at different tables. But still, we are generally within
7 one meter of one another while we eat.

8 11. During the day, I am usually on my bed or in the day room passing time. There
9 are usually 10-15 people in the day room on the second floor, and we are about 4 feet away
10 from each other. It would definitely be better if there were fewer people. That would make me
11 feel safer and less afraid of getting sick.

12 12. The guard brings food to our Pod and we all line up. We stand close to each other
13 in line. The guard then reads our names and two detainees actually distribute the trays and juice
14 boxes. The detainees are wearing gloves, but not facemasks. I do not know if the gloves are
15 changed daily. I would say the guard is about 5 feet away from us when he reads our names.

16 13. I usually see about 4-5 different guards in a day. I feel very worried and scared, as
17 do many of my pod mates, since we do not know where they go when they leave the jail and
18 what they are doing, or what precautions they take when they come back to Yuba to not bring
19 the virus in. We feel very anxious that they will bring the virus to us.

20 14. They give us soap every two or three days, but it's not enough. Sometimes we ask
21 for more soap but we don't get it. We try to share it in the housing unit but it runs out. When the
22 soap runs out, we use the disinfectant that they give us to clean the bathroom to wash our hands.
23 It turns our skin white and it burns.

24 15. They haven't told us much about COVID-19. We have not been given very much
25 information about how to protect ourselves or what precautions to take, apart from a few signs
26 they posted to wash our hands when we go to the bathroom. The signs are in Spanish, and since
27
28

1 I don't really read Spanish well, I'm not sure what else they say. I do not think the officers have
2 told us to do "social distancing" or keep a safe distance away from each other or from the
3 guards. They speak English, so I may have not understood. I have heard about how critical
4 social distancing is from the outside world—from my wife and my attorney, especially, and
5 other detainees talk about it, too. They haven't given us any more information about how to
6 protect ourselves or what to do.

7 16. I have never received gloves or a mask. Staff have gloves and masks.

8 17. I'm not aware of anyone being tested for COVID-19.

9 18. I am scared. We could get sick at any time. I worry about what would happen if I
10 got sick while I can't be with family. I think about this a lot. And I'm worried for my family.
11 My detention is very challenging for my wife as we have no family or friends to help, which of
12 course is now even more difficult with the shelter-in-place order. My wife is an essential worker
13 as she is in the food industry. I worry about what would happen if she were to get sick, and
14 worry about being so far from my children.

15 19. If I am released my wife will pick me up and care for me. I will self-quarantine
16 for 14 days in a separate room in our home in Oakland, CA and then follow any other shelter-
17 in-place order or requirements set by the government or this Court. I do not want my young
18 children, my wife or myself to be infected with the virus. I will do everything possible to make
19 sure that we are all safe and healthy. If I am released, I am committed to following all public
20 health guidelines and rules, including the current shelter in place rules, to ensure the safety of
21 myself and others.

22 20. I understand that, as a class representative, I represent the interests of everyone in
23 the class, and not just myself. I understand I need to stay informed about what is happening with
24 my case and stay in touch with my attorney to give them information they need. I am committed
25 to being a class representative because I know how dangerous it is to be here, and I want
26 everyone to benefit from this case just as much as I do.

1 21. I would like to fight for the rights of all detained immigrants in Yuba County who
2 are currently detained and are at risk of contracting COVID-19

3 22. I have never served as a class representative in any prior action.

4 I, Luciano Gonzalo Mendoza Jeronimo, declare under penalty of perjury that the
5 foregoing is true and correct to the best of my recollection. I sign this at Marysville, California.

6 Date: April 20, 2020

//s// Luciano Gonzalo Mendoza Jeronimo
Luciano Gonzalo Mendoza Jeronimo

CERTIFICATE OF INTERPRETATION AND AFFIRMATION

I, Angela Martin, certify that I am fluent in Mam, Spanish and English and that I am competent to interpret between these languages. I further certify that I have read the foregoing to Luciano Gonzalo Mendoza Jeronimo in Mam. I further declare that I am competent to render this interpretation and that I would testify to the same under the penalty of perjury if I were called upon to do so.

I further certify that on April 20, 2020 I read the foregoing to Luciano Gonzalo Mendoza Jeronimo and that he affirmed that the foregoing is true and correct. I have not been able to obtain a signature from Luciano Gonzalo Mendoza Jeronimo because Yuba County Jail is located approximately two hours away from my home by car, and at the time I reviewed the foregoing declaration with him, the county where I reside was, and remains, under a “shelter in place” order.

Date: April 20, 2020

//s// Angela Martin
Angela Martin

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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 CORAIMA
YARITZA SANCHEZ NUÑEZ**

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*Motion for Admission *Pro Hac Vice* Forthcoming

DECLARATION OF CORAIMA YARITZA SANCHEZ NUÑEZ

I, Coraima Yaritza Sanchez Nuñez, declare the following based on my personal knowledge:

1. I make this declaration from my personal knowledge and, if called to testify to these facts, could and would do so competently.

2. My full name is Coraima Yaritza Sanchez Nuñez. I was born in Michoacán, Mexico. I am 26 years old. I was brought to the United States when I was around one (1) year old, in approximately 1993. I have never left the United States since I entered as a baby. I have only known the United States and went to elementary, middle and high school in this country. My family is settled in Sonoma County. I am married to a U.S. citizen. I have an older brother who has Deferred Action for Childhood Arrivals (“DACA”) status and a younger sister who is a U.S. citizen. I also held DACA status since approximately 2013 but it was revoked in approximately 2018. With my DACA work authorization, I proudly worked as a Full-Time Lead Teller at Chase Bank for just under five (5) years.

3. On March 12, 2018, I was convicted of a felony DUI pursuant to California Vehicle Code Section 23153(b) for drinking and driving in 2017. I was put on probation and for almost one and half years, I tested negative for alcohol during probation visits. Unfortunately, I violated probation in 2019. I was not driving but I did make a mistake since I was not supposed to drink *any* alcohol during the probation period.

4. I know that once I successfully complete probation, I can move to reduce the felony to a misdemeanor and through evidence of my discretion, have a good chance of re-applying for DACA. If successful, I would have status again and probably be able to move to terminate removal proceedings against me.

5. I was detained by ICE inside Sonoma County jail when I was released from jail after violating my probation. I was detained first in San Francisco and then transferred to the Mesa Verde Detention Facility. I retained counsel to represent me for both removal proceedings and a bond redetermination hearing.

6. A bond hearing was held in front of Immigration Judge Nelson of the San Francisco Immigration Court on October 17, 2019. The Immigration Judge did not take

1 testimony from me, she just asked for arguments from my attorney and the government
2 attorney. My attorney summarized the facts and why I was not a danger to society and not a
3 flight risk. She also presented a letter from a rehabilitation center that said that I had a reserved
4 spot to ensure my rehabilitation upon release. Nevertheless, the Judge determined I was a
5 danger to society and denied my release. My family and I decided to not to appeal because of a
6 lack of resources and because of the difficulty in gauging the outcome.

7 7. Still detained at Mesa Verde, removal proceedings against me continued. At the
8 time I was still not married and the only form of relief I applied for was asylum and withholding
9 of removal, and withholding of removal under the Convention Against Torture in the
10 alternative. My Individual Hearing took place on November 13, 2019. Despite evidence,
11 country conditions, letters in support and credible testimony, Judge Nelson denied all my claims
12 on the date of the individual hearing. I timely appealed to the Board of Immigration Appeals by
13 mailing the notice on December 6, 2019. My appeal is still pending at the Board of Immigration
14 Appeals.

15 8. I also recently married while detained. My husband is a U.S. citizen and will be
16 filing form I-130, Petition for Alien Relative, in order to begin the Immigrant Visa process on
17 my behalf. I know that my criminal history is not a bar to admissibility and other than my
18 unlawful presence in the United States, there are no bars to admissibility for my U.S. legal
19 permanent residence.

20 9. I have been detained since August 2019 and soon it will be one (1) year since I
21 have been detained.

22 10. I have always suffered from asthma and complications. I have suffered asthma
23 attacks after simply being exposed to dust or animal hair. Anytime I suffer from a cold or flu, I
24 have difficulty breathing because of my asthma. At the Mesa Verde detention center, I have
25 been issued an inhaler and nasal spray to deal with my asthma. I was also prescribed medication
26 to deal with the wheezing associated with my asthma. Even without significant exertion, I can
27 suffer from my asthma. The last time I was hospitalized due to an asthma attack was
28 approximately 6 years ago.

1 11. At Mesa Verde, there are no soap dispensers in the communal restrooms. On April
2 17, 2020, the facility installed a soap dispenser at the entrance of our dorm. The facility gives us
3 one hotel-size shampoo bottle and one bar soap every other day. We are expected to rely on
4 those items for all our multiple hygiene needs, including washing our hands, bathing, and
5 cleaning our personal products. I do not believe that one hotel-size shampoo bottle and one bar
6 soap is enough to keep proper hygiene.

7 12. I am currently housed in Dorm B with approximately 48 other female detainees. A
8 few detainees in my dorm are responsible for cleaning our dorm and communal restrooms—this
9 responsibility falls solely on detainees and not facility staff. Based on my observations, the
10 detainees use the hotel-size shampoo bottles, toothpaste, and lotion to clean the dorm and
11 restrooms. Those detainees clean the restrooms once in the morning and once in the afternoon.
12 Facility staff do not clean the dorms, communal areas, or restrooms. There are two restrooms in
13 Dorm B—one on each side of the dorm. Each restroom has approximately 5 sinks, 5 toilet
14 stalls, and 5 showers. The sinks are close enough that if I am standing at the sink to wash my
15 hands, I am shoulder to shoulder with the detainee standing at the next sink. The showers are
16 small stalls with plastic curtains. There is black mold in the showers and around the sink area.

17 13. The facility was not providing us with facemasks until yesterday. All detainees in
18 my dorm received facemasks yesterday but we have not been provided with any other form of
19 personal protective equipment. On a few occasions, I have observed detainees who clean our
20 dorm and restrooms wear gloves but only while they clean. Most facility staff do not wear
21 facemasks. I have only seen a few staff members wear face masks. I know that one of the
22 recommendations from healthcare professionals to avoid the spread of COVID-19 is to wear a
23 facemask and I am surprised that most facility staff do not wear facemasks despite entering in
24 and out of the facility.

25 14. In the facility, we are also not able to engage in proper social distancing. The bunk
26 beds are spaced less than 6 feet from each other because I am able to reach over to touch the
27 other bed. I currently sleep on a top bunk and, while there is no detainee sleeping in the bottom
28 bunk, there are detainees sleeping in the bunks next to mine. When we go to the dining hall, we

1 are required to stand in line right next to each other. There is no way that we can socially
2 distance. The same is true when we sit down to eat. Each table seats approximately 4 to 5
3 detainees, and we all sit next to each other when we eat. The tables are close to each other and
4 are bolted down to the floor. The chairs are affixed to the tables. The tables are less than 6 feet
5 apart from each other. I have never heard facility staff instruct us to sit apart from each other or
6 stand 6 feet apart from others while we are in line. This is extremely concerning to me because I
7 keep hearing in the news that one of the ways to avoid contracting COVID-19 is to engage in
8 social distancing but it is impossible for me to do that in the facility.

9 15. Since the pandemic, the only change I have observed is that the facility installed a
10 napkin dispenser and soap dispenser at the entrance of our dorm. The dispenser holds dry
11 napkins that we can use to wipe things down. I do not know how this is useful because the
12 napkins are not anti-bacterial wipes and but instead regular napkins that only serve to clean up
13 spills.

14 16. About two weeks ago, there was a new detainee that entered our dorm. After
15 speaking with her and other detainees, I learned that she had been transferred to Mesa Verde
16 from Yuba County Jail and was not quarantined or isolated before being placed in our dorm.
17 Sometime in March, there was also a large group of new detainees that entered our Dorm.

18 17. I live in fear of COVID-19 infection and because of that, I have started a hunger
19 strike by not partaking in the general meals. I started the hunger strike on April 9, 2020. I know
20 that those who have serious underlying medical conditions, including asthma like me, are at
21 higher risk for severe illness from COVID-19. I really do feel like I am in a death trap and it's
22 just a matter of time before infection will harm me. The purpose of the hunger strike is to call
23 attention to the inhumane conditions we are living in inside the facility, including not receiving
24 antibacterial soap, cleaning supplies, protective equipment, poor medical care, and calling for
25 our liberation from immigration detention. Facility staff have threatened those of us who are
26 participating in the hunger strike with stripping us from our commissary privileges. There were
27 close to 40 detainees in my dorm who started the hunger strike with me but because of the
28 threats, there are now around 5 detainees, including myself, participating in the strike. On at

1 least two occasions, two different facility officers walked through our dorm and threaten to
2 revoke our commissary if we participated in the hunger strike. I heard one of those officers tell
3 us, "I don't know why you are starving yourself when ICE doesn't care about what happens to
4 you." I depend on access to the commissary to purchase hygiene items like shampoo,
5 conditioner, toothpaste and deodorant. I also use the commissary to purchase food. We only get
6 access to the commissary once a week—on Thursdays. I am more worried that if I don't
7 advocate for our rights by participating in the hunger strike, I may die from COVID-19. This is
8 why I continue to participate in the hunger strike. However, other detainees have backed down
9 from participating in the hunger strike because of the threats and fears of losing their
10 commissary privileges.

11 18. I am really worried for myself and all immigrant detainees. Being stuck in a
12 congregate setting in immigration detention feels like a death trap because we cannot engage in
13 social distancing, we are forced to make do with the hotel-sized shampoo bottles and bar soaps,
14 and we are not provided with any protective equipment to prevent the spread of the virus. I also
15 know that having asthma puts me at a greater risk of COVID-19 complications.

16 19. If I am released, I would go live with my family in Sonoma County until my
17 husband and I find our own place to live. I am also committed to sheltering in place as required
18 by state and local ordinances.

19 20. I spoke with my attorneys about the responsibility involved in being a class
20 representative. I understand that, as a class representative, I represent the interests of everyone
21 in the class, and not just myself. I understand I need to stay informed about what is happening
22 with my case and stay in touch with my attorney to give them information they need. I am
23 committed to being a class representative because I know how dangerous it is to be here, and I
24 want everyone to benefit from this case just as much as I do. I would like to fight for the rights
25 of all detained immigrants in Yuba County and Mesa Verde who are currently detained and are
26 at risk of contracting COVID-19. I intend to vigorously pursue the claims that have been made
27 in the lawsuit on behalf of all others in the same situation and I will participate in this litigation
28

1 as my counsel and I determine is appropriate. I intend to remain involved with this case and
2 represent the proposed class of detained immigrants if I am released from custody.

3 21. I have never served as a class representative in any prior action.

4 I, Coraima Yaritza Sanchez Nuñez, declare under penalty of perjury that the foregoing is true and
5 correct to the best of my recollection. I sign this from Bakersfield, California.

6 Date: April 18, 2020

//s// Coraima Yaritza Sanchez Nuñez
Coraima Yaritza Sanchez Nuñez

CERTIFICATE OF AFFIRMATION

I certify that this declaration is based on information told to me by Coraima Yaritza Sanchez Nuñez and that she affirmed that the foregoing is true and correct. I have not been able to obtain a signature from Coraima Yaritza Sanchez Nuñez because Mesa Verde Processing Center is located approximately 2.5 hours away from my home by car, and at the time I reviewed the foregoing declaration with her, the county and state where I reside was, and remains, under a “shelter in place” order.

Date: April 18, 2020

//s/ Angelica Salceda
Angelica Salceda

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10 UNITED STATES DISTRICT COURT
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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,

17 Petitioners-Plaintiffs,

18 v.

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

24 Respondents-Defendants.

**DECLARATION OF JAVIER
ALFARO**

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19 **Motion for Admission Pro Hac Vice Forthcoming*

DECLARATION OF JAVIER ALFARO

I, Javier Alfaro, declare under the penalty of perjury that the following is true and correct to the best of my knowledge:

1. I was born on January 8, 1981. I have lived in the United States since 2000 without leaving. I am currently in removal proceedings after a January 2020 arrest by immigration authorities at the Fresno County courthouse. My removal proceedings follow from a conviction which resulted in my losing my Temporary Protected Status, without my knowledge.

2. I live in Mendota, California. I have lived at the same address in Mendota for more than seven years. I live with my wife and three children: a daughter who is 15 years old; a son who is eight years old; and my baby girl, who was born in June 2019. I also have two other children who do not live with me; one lives in El Salvador.

3. I have lived in Mendota for practically the entire time that I have lived in the United States. The only other place I lived was in Virginia where my wife and I lived for three months just before the birth of my eldest daughter because I was having difficulty finding work in Mendota.

4. I met my wife in around 2003 while we were working in the farms in Salinas. I love her very much. My children are the reason I live. They are very important to me. It is extraordinarily difficult for me that I am not with my infant daughter in particular because she is so young.

5. I want to be a good father to my children, make sure that they have a good education, ensure that they have a strong grounding in their faith, and make sure that they are happy. I try to spend time with them, playing with them, taking them places where they want to go, and making sure that they value themselves and the choices they make in their lives.

6. I am regretful of the mistakes that I have made in my life as I know that this is why I am not with my family. I hope to be released and given another opportunity. If I am released, I want to dedicate myself fully to my family.

1 7. I have worked in farms, as a driver, and as a long-distance trucker over the past
2 20 years. My work has been fairly regular over this time. I have consistently paid taxes.

3 8. I first was granted Temporary Protected Status (TPS) when El Salvador was
4 designated for TPS in 2001. I have consistently renewed my TPS status. Recently, I consulted a
5 *notario* who told me that, because of litigation in the case of *Ramos v. Nielsen*, TPS-holders
6 from El Salvador did not need to formally submit papers in order for their TPS to be extended.
7 This was the same *notario* who had helped me fill out my applications previously, so I trusted
8 that this was accurate information. Moreover, I never received any notice that my TPS had been
9 withdrawn. Therefore, up until my arrest by ICE, I believed that my TPS was current.

10 9. In 2018, I was convicted of one felony count of California Penal Code § 273.5. I
11 plead guilty on the date of a scheduled preliminary hearing because I wanted to return home to
12 my children. I did not understand what the consequences would be for my TPS. I was not
13 advised of the consequences by my attorney. I only understood that there would be
14 consequences when I was arrested by ICE. Now?

15 10. The conviction related to an incident with a woman who was not my wife. I
16 regret deeply that I had been unfaithful to my wife, and I am so grateful that my wife has
17 forgiven me for my mistakes. If I could go back and undo the damage that I have caused in my
18 own life and for my family, I never would have had that relationship.

19 11. I'm seeking to terminate my removal proceedings because of the unlawful way I
20 was arrested. My immigration attorney is also currently seeking post-conviction relief related to
21 my conviction. If I am successful in securing post-conviction relief, I believe I should be able to
22 regain my TPS. I will also be seeking other forms of immigration relief, including a U visa,
23 asylum, and non-LPR cancellation of removal.

24 12. On January 14, 2020, I was arrested by ICE at the Fresno County Courthouse
25 when I went to a hearing in connection with my case. Inside the courthouse, and outside of the
26 courtroom door, one man and one woman in civilian clothing stopped me. They asked me my
27

1 name and nothing else. I told them my name. They then put me up against the wall and put
2 handcuffs on me.

3 13. I told the agents that I was going to court and had an obligation to attend my
4 hearing. I was surprised that they ultimately told me that they were immigration authorities.
5 When they told me they were from ICE, I said I did not have an immigration problem. I told
6 them that I had legal status to be in the United States, as I believed that my TPS was still
7 current. They told me that my authorization to be in the United States had expired. They
8 grabbed my identification documents from my pants pocket after my arrest, but otherwise did
9 not ask me questions.

10 14. After my arrest, the agents brought me to a van and drove me to another building
11 near the court, and that evening brought me to Mesa Verde Detention Center in Bakersfield. I
12 have been detained at Mesa Verde Detention Center since that day.

13 15. At Mesa Verde Detention Center, I am in C Block. I have been in C Block since
14 I arrived.

15 16. There is space for 100 detainees in C Block, and it has been full or almost full
16 since I arrived. I think that there are now about 98 or 99 people in our unit; I think there is only
17 one bed or two beds free.

18 17. Since I arrived in January, it has seemed that within hours of someone leaving, a
19 new person comes in to take their place. This happened last week with the few departures, and
20 the new people who came in to replace them. One person left and another person took his bunk
21 within hours of the person leaving. We do not know if the people coming to our unit have been
22 exposed to the coronavirus, but it makes us nervous.

23 18. We sleep in one big dormitory room in bunk beds. There are fifty bunk beds and
24 they are bolted to the ground. They are so close to one another that I can reach out my arms and
25 touch another bunk bed. I sleep on the bottom bunk and if I sit up, I will bump my head on the
26 upper bunk.

1 19. I know that there are people who are more likely to get very sick from
2 coronavirus, and it doesn't seem that they are protected in any way here in the detention center.
3 For instance, there are older people in our big dormitory room and they sleep on the bunk beds
4 like everyone else. There are two people who are in their seventies in the dorm.

5 20. Most of what I know about the coronavirus I have learned from watching the
6 news. The authorities at the detention center have not shared much with us. They have told us
7 that we should wash our hands with soap and water, but they have not mentioned "social
8 distancing" to us. I learned about "social distancing" from watching the news in the detention
9 center.

10 21. Even if the authorities had told us about social distancing, it doesn't seem like
11 there would be any way to practice social distancing in the detention center. We interact with
12 dozens of other detainees on a regular basis and in close quarters. We are right up against one
13 another all day every day—when we sleep, when we eat, when we go to the yard for recreation,
14 and when we go to the bathroom.

15 22. There is no space or separation, and the authorities have not done anything to
16 stagger the times that we eat or limit access to the bathrooms or other common spaces. When
17 we watch television, people sit right next to one another. We all eat our meals together, and
18 every one of the four seats at a fixed table – bolted to the ground – is full. The bathroom stalls
19 and sinks are so close to one another that you are always within arm's reach of the person in the
20 next stall or at the next sink.

21 23. I worry that it is not very clean and sanitary here in our common spaces. My
22 fellow detainees are responsible for cleaning the common spaces, and I believe that they are
23 paid a dollar a day for their work in cleaning the bathrooms or the cafeteria area. I have
24 sometimes helped people clean, and the guards do not give a sufficient amount of time to clean
25 the common spaces, even now despite the pandemic. I think it usually is only around ten or
26 fifteen minutes to clean the cafeteria area, for instance, and that is not enough time. We use and
27

1 re-use the same little towel over and over again to dry our hands or wipe surfaces, and it smells
2 and is unsanitary.

3 24. There was a protest last week outside in the recreation yard where we were
4 screaming that we wanted our freedom. We used socks – which is all we had – as masks to
5 show that we did not have the most basic things that we needed to protect ourselves. I
6 participated in this protest.

7 25. We also had a hunger strike and I participated in this hunger strike; our whole
8 unit did. I thought it was important to participate because I wanted to be free and was afraid that
9 I and other detainees were all going to get coronavirus because of the conditions inside the
10 detention centers. We were seeking protection for everyone through this protest. We were
11 getting the food from the commissary, using our own money, but we refused to eat in the
12 cafeteria. I helped shared food from the commissary for others who did not have money, and
13 those who were older and sick; other detainees did too so that we would all support one another.
14 For about 72 hours, we refused to eat meals at the cafeteria.

15 26. We had to stop the protest because the authorities from the detention center
16 threatened that they were going to prevent us from using the commissary if we refused to eat in
17 the cafeteria. Besides food, we used the commissary to buy shampoo, soap, toiletries, coffee and
18 other things. I often have to buy soap and cleaning supplies from the commissary because
19 otherwise I would not have enough to stay clean or clean my things. The detention center
20 authorities were even going to deny us things that we had already ordered and purchased with
21 our own money. We decided that we had no other option but to stop the protest, especially
22 because we were worried about those who were older and sick and needed the food, and were
23 more at risk from the coronavirus.

24 27. In the yard, where we have recreation, we have typically all gone out at the same
25 time. Over the last week, the authorities at the detention center have only allowed 50 of us to go
26 out at the same time. However, this was after the protest at the detention center. It does not
27

1 seem like the restriction was a response to the need for social distancing, but instead a response
2 to the protest so that we would not be engaged in other protests.

3 28. I have had some health issues, including high cholesterol, which I take medicine
4 for because of the risk of heart problems associated with it. I have taken medication for my high
5 cholesterol for years. I have also had some other illnesses since I have been here, including
6 headaches and cold-like symptoms a few weeks ago.

7 29. I have never been tested for the coronavirus and I don't know of anyone at the
8 detention center who has been tested for the coronavirus. I have asked around and I don't think
9 that anyone has been tested. I have had my temperature taken, but not often. I think the last time
10 that I had my temperature taken is when I went to the medical unit a few weeks ago.

11 30. I have also never heard of anyone here who has been isolated or quarantined.
12 There are new people who have arrived, from other detention facilities or prison, for example,
13 and I don't think they were quarantined before they joined our unit.

14 31. On Friday, for the first time, authorities here gave each of us masks. They did not
15 explain to us why they were giving us masks or how or when to wear them, but they gave us
16 each one. Some of the staff wear masks or other protective equipment here, but not everyone.

17 32. I am very worried about my health and the health of other people at the detention
18 center because of the risk of the coronavirus. I know that we all just want to return home to our
19 families. I am worried about what will happen to me. I know that I need to stay healthy to be
20 able to come home to my children. I don't know that I have the power to stay healthy here in the
21 detention center; it seems so much of what I need to do is out of my control.

22 33. If I am released from detention, my sister-in-law would be able to pick me up
23 and I would live with my family at the address where I have lived for many years.

24 34. I spoke with my attorney about what it means to be a class representative in this
25 case. I understand that I am representing the interests of other people who are detained and not
26 just my own interests. I also know that it is my responsibility to stay reasonably informed about
27 the case and provide my attorneys with the information they need to prosecute the case. I am

1 committed to play the role of a class representative because I know that it is not just me who is
2 suffering, but everyone else who is detained with me. This is my first time serving as a class
3 representative.

4 I, Javier Alfaro, declare under penalty of perjury that the foregoing is true and correct to the best
5 of my recollection. I sign this at Bakersfield, California.

6 April 19, 2020
Date

//s// Javier Alfaro
Javier Alfaro

CERTIFICATE OF INTERPRETATION AND AFFIRMATION

I, Emilou MacLean, declare that I am competent to interpret from English to Spanish. I certify that on April 19, 2020, I read the above English declaration to Javier Alfaro in the Spanish language via telephone and he confirmed the contents are true and correct to the best of his recollection. I have not been able to obtain a signature from Mr. Alfaro because Mesa Verde Detention Center is located approximately five hours away from my home by car, and at the time I reviewed the foregoing declaration with him, the county and state where I reside was, and remains, under a “shelter in place” order. I sign this in San Francisco, California.

April 19, 2020
Date

//s// Emilou MacLean
Emilou MacLean

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANGEL DE JESUS ZEPEDA RIVAS,
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MENDOZA JERONIMO, CORAIMA
YARITZA SANCHEZ NUÑEZ, JAVIER
ALFARO, DUNG TUAN DANG,

Petitioners-Plaintiffs,

v.

DAVID JENNINGS, Acting Director of the
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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 DUNG TUAN DANG

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18 *Attorneys for Petitioners-Plaintiffs*

19 *Motion for Admission *Pro Hac Vice* Forthcoming

DECLARATION OF DUNG TUAN DANG

1
2 1. My name is Dung Tuan Dang. I was born in Vietnam in 1970. I make this
3 declaration based on my personal knowledge, except as to any matters that were reported to me
4 by my attorney.

5 2. I am currently detained at the Mesa Verde Detention Facility in Bakersfield,
6 California. I have been detained here since June 7, 2019.

7 3. I have not had a bond hearing because I am subject to mandatory detention. This
8 means that in over 10 months, no immigration judge has reviewed whether I can be released
9 from custody on a bond or some other conditions.

10 4. I entered the United States as a lawful permanent resident in October 30, 1989. I
11 have resided in the United States since that time—over thirty years. This is my home.

12 5. I am an Amerasian. My father was a U.S. soldier during the Vietnam War and my
13 mother was Vietnamese. I do not know the identity of my father. My mother abandoned me
14 when I was 4 months old. I do not know her identity. I was taken in by a Vietnamese family
15 who later adopted me and then they brought me to the United States under the Homecoming
16 Act. My adopted sister, two adopted brothers, adopted mother, and adopted father all reside in
17 San Jose California, where I also resided before my last arrest. They are all naturalized U.S.
18 citizens. I am single and do not have any children. I worked for the last 25 years with my father
19 doing gardening and landscaping with his business.

20 6. I suffered a lot of trauma as a young person in Vietnam, and it's haunted me ever
21 since coming to the United States. For a long time, I was not able to ask for help dealing with
22 the pain and depression. This has led me to make a lot of poor decisions out of anger and out of
23 fear that I truly regret. The incident for which I was convicted and the later probation violation
24 stemmed from these problems. I am finally ready to accept help now. Recently, I was diagnosed
25 with Persistent Depressive Disorder and Alcohol Abuse Disorder by a licensed psychologist.
26 The psychologist recommended dual diagnosis treatment upon my reentry and suggested
27
28

1 several Vietnamese counseling/treatment programs in the Bay Area. I am committed to getting
2 the treatment I need when I am released. My adopted family will support me and, if necessary,
3 help pay for this treatment. Now I have a plan and am ready to get this treatment.

4 7. On November 20, 2019, the immigration judge terminated my lawful permanent
5 resident status on the basis of my criminal conviction. In 2014, I was convicted of Penal Code
6 section 245(a)(4) (assault with a deadly weapon), a felony, and Penal Code section 594(a)/(b),
7 (misdemeanor vandalism), in San Jose, California. I was at first given 3 years probation and
8 given an 8-month county jail sentence. Then, in 2016, I admitted a probation violation for
9 trespass, disturbing the peace, a DUI, and failure to report. I was scared to report after missing
10 an appointment. For the probation violation, I was given the low term of a two-year prison
11 sentence, but, with all of my credits, I only had to serve approximately 6 months and 23 days in
12 prison. I was then picked up by ICE and taken to Mesa Verde Detention Facility.

13 8. The immigration judge also denied my application for Withholding of Removal
14 and Relief under the Convention Against Torture. I was stoned and beaten as a child because
15 my father was a U.S. soldier, then arrested for no reason and shackled by my legs in wooden
16 shackles, then forced as a 13-year-old into a forced labor camp under terrible conditions. I
17 escaped after 6 months and hid in an abandoned bunker in the mountains with other Amerasian
18 children. Despite this persecution and torture, the Judge denied my application to stay in the
19 U.S. I appealed my case to the Board of Immigration Appeals and the appeal is still pending. I
20 plan on filing a Petition for Review in the Ninth Circuit if the appeal is denied. I will continue to
21 fight my case as long as possible because I am deeply afraid of going back to Vietnam.

22 9. Even if my removal order is upheld, I do not believe that I will be actually
23 removed to Vietnam because I came to the U.S. prior to 1996. I understand that only a very few
24 Vietnamese who came to the U.S. prior to 1996 have been actually removed to Vietnam and
25 that most Vietnamese ordered removed are allowed to stay under an Order of Supervision,
26 where they check-in periodically with ICE.

1 10. I would like to be released to my family because I am terrified of dying of
2 COVID-19. Where I am detained at Mesa Verde, I cannot take basic steps to protect myself
3 from the virus, and I am afraid that if I catch it, I will suffer severe consequences without being
4 able to receive adequate medical care.

5 11. I am housed in unit C. There are currently around 100 people in the unit. The
6 numbers in the unit change because people come and go; some days all of the beds are full.
7 Other times, there are maybe one to two beds that are empty. I don't have a cell or private living
8 quarter-it is a dorm setting with bunk beds. I sleep on the bottom and someone else sleeps on
9 the top.

10 12. New people have come into Dorm C recently who are coughing and sound sick. It
11 makes me scared to hear them. I do not know if they have the coronavirus or not.

12 13. Our living quarters are so close that if I am standing next to my bunk bed, I can
13 touch the other bunks on both sides of me.

14 14. The room I am housed in is set up into two bigger partitions. There are 24 double
15 bunks on one side, and 25 double bunks on the other side. There are bathrooms in the middle.
16 On each side of the dorm there are two urinals and three toilet stalls. In the morning there is a
17 line for the bathrooms. There is no distancing when you are in line. When you stand to go pee at
18 a urinal, and if someone else is peeing at the same time, they are standing right next to you –
19 they could be inches away depending on the size of the person. The closed toilet stalls are
20 separated by wood panels. The panels do not go all the way up to the ceiling. If someone stands
21 in the stall next to you, you can see their head. They are the same distance away as the distance
22 between the urinals. In the restroom area there are five sinks for washing your hands and
23 brushing your teeth. The sinks are in an open area without dividers. The distance between the
24 sinks is about a hand length if you stretch your fingers out wide.

1 15. There are five showers for each side of the dorm. They are separated by panels
2 that are the same height as those for the toilet stalls. When you shower you can see the person's
3 head next to you showering.

4 16. The detainees at the facility are "hired" to clean the bathrooms once daily, as well
5 as other parts of the dorm. We get paid \$1 per day. I am in charge of mopping one side of the
6 dorm underneath the bunkbeds. I get a mop, gloves, and some kind of cleaning solution. I have
7 to wear my own shoes.

8 17. To eat, the guards take us downstairs to the chow hall. We get in line, collect a
9 tray, get our seat, and eat. We are inches apart when we are in line. Two detainees are hired to
10 pass out the food trays. They wear gloves but no masks as they are passing out the food. There
11 is no barrier between the servers and those in line. The people serving the food are an arm's
12 length distance or less from the detainees lined up to receive trays. The distance can be as little
13 as one foot away.

14 18. There are 4 chairs connected to each table and there is no room for social
15 distancing. You are essentially shoulder to shoulder with the person seated next to you at the
16 table. The table (and its seats) is bolted to the floor and cannot be moved. The distance from one
17 table to the next is less than six feet. No changes have been made to make sure there are fewer
18 people eating at the tables.

19 19. Social distancing is impossible in this facility.

20 20. We do not have Kleenex or hand sanitizer anywhere in unit C.

21 21. I participated in a hunger strike about a week ago with other detainees because we
22 were all scared that we were not being protected from coronavirus. Our goal was to get public
23 attention and management attention and have people released from custody. Everybody but
24 about ten people in Dorm C participated. We skipped meals for 3 days starting April 10th and
25 ending on Monday night, April 13th. This didn't lead to any changes to make us safer. The
26 detention center has made no effort to keep us apart at a safe distance from each other. No
27
28

1 masks have been distributed. They have not told us how to make mask ourselves. Some guards
2 wear masks. Others don't.

3 22. I believe I am especially at risk because of my health conditions. I have latent
4 Tuberculosis and take medication for this called Isoniazid. I was on medication for latent
5 Tuberculosis when I was in prison as well. My attorney informed me that this condition puts me
6 at higher risk of having severe symptoms of COVID and requiring hospitalization.

7 23. My attorney tried to get me released because of my medical condition and the
8 coronavirus. He contacted my deportation officer at ICE in Bakersfield. He said they told him
9 they reviewed my medical records but denied my release after the review.

10 24. Other medical conditions I have is that I cough every morning and have yellow
11 mucous that comes out of my nose and mouth. This condition has persisted for the last 1 ½
12 years. I also have bad allergies, and congestion all the time. I have difficulty breathing out of
13 my nose since I am always congested. I also believe that I have high blood pressure but am not
14 on any medication for that. I am not sure what other medical conditions I have. I have asked for
15 my records for a long time now and they were not given to me. My attorney demanded them,
16 and they were just given to my attorney on April 16, 2020. Now I understand that my latent
17 tuberculosis puts me at high risk for coronavirus.

18 25. Just as I did with the hunger strike, I would like to continue to fight for the rights
19 of all detainees who are at risk of contracting the coronavirus. I understand that, as a class
20 representative, I represent the interests of everyone in the class, and not just myself. I
21 understand I need to stay informed about what is happening with my case and stay in touch with
22 my attorneys to give them the information they need. I am committed to being a class
23 representative because I know how dangerous it is to be here, and I want everyone to benefit
24 from this case just as much as I do. I have never served as a class representative in a prior
25 action.

1 26. If released from custody, I will stay with my adopted family in their house in San
2 Jose which includes my adopted sister who works as a project manager at Kaiser, my adopted
3 mother and my adopted father. They have told me that they will gladly take me in. I will
4 quarantine upon release for 14 days. They have a space in the house where I can quarantine
5 from them. I will follow all shelter in place orders in California and Santa Clara County.

6 27. If released from custody I will be on PCRS (Post Release Community
7 Supervision) for about 2 more years. The first thing I will do if released is to contact PCRS
8 which I understand is run by the Santa Clara County Probation Department. I will follow and do
9 whatever they say. I don't want to ever go back to jail, prison, or immigration detention. I also
10 will refrain from drinking any alcoholic beverages.

11 28. If released from custody and lose my appeal with the Board of Immigration
12 Appeals, I understand that I will be under an Order of Supervision with ICE. I will be required
13 to check-in and follow certain other requirements. I will do whatever they tell me to do.

14 29. If released from custody, I would follow any conditions of supervision ordered by
15 this Court as well.

AFFIRMATION

I, Michael K. Mehr, certify that Mr. Dang's sister, Nga Hong Dang, translated the above to Mr. Dang in Vietnamese and that she is competent to translate from English to Vietnamese. I further certify that on April 18, 2020, Mr. Dang affirmed that the foregoing is true and correct. I have not been able to obtain a signature from Mr. Dang because Mesa Verde Processing Center is located approximately three and a half hours away from my home by car, and at the time I reviewed the foregoing declaration with him, the county and state where I reside was, and remains, under a "shelter in place" order.

/s/ Michael K. Mehr
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 ALFARO, DUNG TUAN DANG,

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 INC.; NATHAN ALLEN, Warden of Mesa
 Verde Detention Facility,

Respondents-Defendants.

CASE NO.

**DECLARATION OF WILLIAM S.
 FREEMAN IN SUPPORT OF
 MOTION OF CLASS
 CERTIFICATION**

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19 **Motion for Admission Pro Hac Vice Forthcoming*

1 I, William S. Freeman, declare as follows:

2 1. I am an attorney admitted to practice in California. I am Senior Counsel at the
3 American Civil Liberties Union Foundation of Northern California (“ACLUF-NC”), counsel for
4 Petitioners in this action. I submit this declaration in support of Petitioners’ Motion for Class
5 Certification. I have personal knowledge of the facts stated in this declaration.

6 2. The ACLUF-NC is a non-profit corporation that is tax-exempt under § 501(c)(3)
7 of the Internal Revenue Code. It is a nonpartisan organization dedicated to defending the civil
8 liberties and civil rights guaranteed by the federal and state constitutions. The ACLUF-NC does
9 not receive government funding. The ACLUF-NC litigates civil rights cases, frequently in
10 conjunction with private counsel, combining our expertise in civil rights and impact litigation
11 with the resources and experience of the private bar.

12 3. I have been an active member of the State Bar of California since 1978. I
13 received a J.D. degree from Harvard Law School in 1978, where I served as an editor of the
14 Harvard Law Review, and a B. A. degree, *summa cum laude*, from Harvard College in 1974.
15 During my career I have focused on complex civil litigation, including serving as lead counsel
16 on over 30 class actions in state and federal court.

17 4. Prior to my current position with the ACLUF-NC, I worked as a Trial Attorney in
18 the Civil Division of the United States Department of Justice in Washington, D.C. (1978-81); an
19 associate (1981-86) and partner (1986-2010) of the law firm Cooley LLP in San Francisco and
20 Palo Alto, California; and a partner of the law firm Jones Day in Palo Alto, California (2010-
21 16).

22 5. I have held my current position with the ACLUF-NC since January 2017. During
23 that time, I have participated in a broad variety of cases in federal and state courts seeking to
24 vindicate the rights of ACLUF-NC clients. I have served as lead or co-lead counsel for certified
25 classes in each of the following cases:

- 26 a. *Saravia v. Sessions* (280 F.Supp.3d 1168 (N.D.Cal. 2017), *affirmed*, 905 F.3d
27 1137 (9th Cir. 2018)) (preliminary injunction issued to prevent government from

1 detaining immigrant teenagers without hearing based on allegations of gang
2 affiliation).

- 3 b. *Sanchez v. California Department of Transportation* (Alameda Superior Court,
4 No. RG16842117) (injunctive and damages action challenging Caltrans' seizure
5 and destruction of property of unhoused persons residing on its rights-of-way;
6 settlement currently pending court approval).

7 6. The following additional cases are also representative of my civil rights work on
8 behalf of plaintiffs:

- 9 a. *Sacramento Regional Coalition to End Homelessness, et al. v. City of*
10 *Sacramento*, (U.S.D.C., Ed.D. Cal., Case No. 2:18-CV-00878-MCE-AC
11 (injunction issued prohibiting enforcement of city ordinance restricting
12 panhandling as violation of First Amendment rights).
13 b. *Asian Americans Advancing Justice-Los Angeles v. Padilla* (San Francisco
14 Superior Court, No. CPF-18-516155; First District Court of Appeal No. A155392,
15 2019 WL 5689985 (11/4/2019)) (writ of mandate requiring Secretary of State to
16 increase provision of facsimile ballots to non-English proficient voters).
17 c. *Harris v. City of Fontana* (San Bernardino Superior Court, No. CIVDS1710589)
18 (writ of mandate issued invalidating city's restrictions on cultivation of marijuana
19 for personal use).

20 7. Other members of the ACLUF-NC who are representing Plaintiffs and the
21 putative class in this litigation are Sean Riordan and Angélica Salceda, each of whom has deep
22 experience representing plaintiffs in civil rights cases. Both are members in good standing of
23 the California State Bar and of the Bar of this Court. Mr. Riordan graduated from the U.C.L.A.
24 School of Law in 2007 and has worked at ACLU-NC since September 2018. Previously, he
25 worked for the Office of the Federal Public Defender for the Eastern District of California
26 between January 2015 and July 2018 and for the American Civil Liberties Union Foundation of
27 San Diego and Imperial Counties between October 2008 and December 2014. Mr. Riordan also

1 clerked for a judge in the Central District of California from September 2007 to September
2 2008. Ms. Salceda graduated from U. C. Berkeley School of Law in 2013 and has worked at
3 ACLU-NC since August 2013.

4 8. I am not aware of any conflict among potential class members in this case.

5 9. I am not aware of any conflict between ACLUF-NC and any members of the
6 potential class that would prevent ACLUF-NC from representing the class.

7 I declare under penalty of perjury that the foregoing is true and correct. Executed this 20 day of
8 April 2020 in Hillsborough, California.

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10 /s/ William S. Freeman
11 William S. Freeman
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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.

**DECLARATION OF BREE
 BERNWANGER IN SUPPORT
 OF MOTION FOR CLASS
 CERTIFICATION**

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Attorneys for Petitioners-Plaintiffs

**Motion for Admission Pro Hac Vice Forthcoming*

1 I, Bree Bernwanger, declare:

2 1. I have personal knowledge of the matters in this Declaration and if asked to testify
3 thereto could do so competently.

4 2. I am an attorney and have been licensed to practice law in the State of New York
5 since 2012 (NY 5036397). I have passed the California Bar Examination and my application for
6 admission to practice in California is currently pending. I am seeking admission in this matter
7 *pro hac vice* in this action pursuant to the exception to Northern District Local Rule 11(b),
8 permitting attorneys residing in California to secure admission *pro hac vice* by order of the
9 assigned judge. I am a Senior Staff Attorney in the Immigrant Justice program at the Lawyers'
10 Committee for Civil Rights of the San Francisco Bay Area ("LCCR"), where I manage all
11 litigation and systemic-reform advocacy related to immigrants' rights. From 2017-2019, I also
12 managed LCCR's full removal defense docket, primarily involving asylum, withholding of
13 removal, and Special Immigrant Juvenile Status cases, and mentored pro bono attorneys
14 representing immigrants in removal proceedings and seeking asylum affirmatively at the
15 Asylum Office.

16 3. Founded in 1968, LCCR is a 501(c)(3) nonprofit organization working to protect
17 and promote the rights of people of color, immigrants, and low-income people in California.
18 With the help of our pro bono attorney network, we provide free legal aid to impacted
19 communities, engage in impact litigation, and advocate for policy change on our three main
20 issue areas: Immigrant, Racial, and Economic Justice. LCCR's Immigrant Justice program
21 focuses on the direct representation of asylum seekers and unaccompanied immigrant children
22 and impact litigation defending and advancing the rights of immigrants.

23 4. I received a J.D. from Georgetown Law in 2010. I began my career working on
24 civil rights impact litigation and policy as a pro bono fellow at the New York Civil Liberties
25 Union (2011). I then worked as a litigation associate at the law firm of Sidley Austin LLP in
26 New York (2011-2013). In both roles, I worked on complex civil litigation. I also have served
27

as a Clinical Fellow in Albany Law School's clinical program (2014-2015), where I taught and supervised students handling family and immigration matters, and as the Director of the Unaccompanied Immigrant Children and Immigrant Families Project at Fordham Law School (2015-2017), where I was developed and supervised student and alumni pro bono efforts on behalf of detained immigrant families and was involved in policy advocacy related to unaccompanied immigrant children and immigrant families. Through a partnership between Fordham Law and the Dilley Pro Bono Project (DPBP), I served as Managing Attorney for DPBP from August 2016-January 2017, where I was responsible for the provision of pro bono representation to thousands of families in the South Texas Family Residential Center, the nation's largest immigration detention center. I supervised a staff of attorneys and legal assistants as well as a rotating team of volunteers. I also monitored detention conditions and participated in systemic advocacy on behalf of detained families. When I joined LCCR, I remained affiliated with Fordham Law as an Adjunct Professor. In January 2018, I began teaching *Immigration, Enforcement, and Protection*, a January-term seminar course on the intersection between immigration enforcement and humanitarian protection.

5. LCCR has a long history of litigating cutting-edge immigrants' rights issues, including as class counsel. During my time at LCCR, I have served as co-counsel for certified classes in the following cases:

- a. *Unknown Parties v. Nielsen*, 4:15-cv-00250, 2020 WL 813774, --- F.Supp.3d ---- (D. Ariz. Feb. 19, 2020) (permanent injunction issued after holding that conditions of confinement in civil immigration detention in Border Patrol's Tucson Sector violated substantive due process).
- b. *J.L. v. Cissna*, 374 F.Supp.3d 855 (N.D. Cal. 2019) (denying government's motion to dismiss class action challenge to unlawful policy that would foreclose class of California immigrant youth from humanitarian immigration relief); *sub nom J.L. v. Cuccinelli*, No. 18-cv-04914-NC,

2019 WL 6911973 (approving classwide settlement agreement prohibiting Defendants from imposing policy and setting adjudication timeline for class members' petitions for humanitarian immigration relief).

6. LCCR has an extensive history litigating class action cases and immigrants' rights cases. The below following cases are representative of LCCR's work as co-counsel on behalf of plaintiffs in class action and immigrants' rights cases.

a. *Sanchez v. California Department of Transportation* (Alameda Superior Court, No. RG16842117) (injunctive and damages class action challenging Caltrans' seizure and destruction of property of unhoused persons residing on its rights-of-way; settlement currently pending court approval).

b. *Uelian de Abadia-Peixoto, et al., v. DHS*, 3:11-cv-4001-RS (N.D. Cal.) (in 2014, secured class-wide settlement agreement that limits the Department of Homeland Security's ability to shackle detained immigrants during their bond and merits hearings).

c. *Martins v. USCIS*, 3:13-cv-00591 (N.D. Cal.). (in 2013, secured nationwide settlement in a case challenging a USCIS policy and practice of misapplying FOIA exceptions to withhold asylum seekers' interview notes).

7. Additional class co-counsel from LCCR include Tifanei Ressler-Moyer and Hayden Rodarte. Tifanei Ressler-Moyer is a Thurgood Marshall Civil Rights Fellow at LCCR, a position she has held since 2019. Previously, she was an attorney at Disability Rights California, where she served as class co-counsel in *Mays v. Sacramento*, No. 2:18-cv-02081 (E.D. Cal.), a class action challenge to conditions of confinement in the Sacramento County Jail. Tifanei is a 2010 graduate of the University of Cincinnati and in 2016 earned her J.D. from New England Law School. She has been admitted to practice in California since 2018 (SB #319721). Hayden

1 Rodarte is a Justice Catalyst Fellow at LCCR, a position he has held since 2019. He holds a
2 B.A. (2013) and an M.A. (2014) from Stanford University and a J.D. (2019) from Yale Law
3 School. He has been admitted to practice in California since 2019 (SB #329432).

4 8. LCCR is committed to dedicating the resources necessary to adequately and fairly
5 represent the Proposed Class in collaboration with co-counsel the San Francisco Public
6 Defender's Office, the ACLU Foundation of Northern California, the ACLU Foundation of
7 Southern California, Lakin & Wille, and Cooley LLP.

8 9. Neither LCCR nor its co-counsel in this case will receive remuneration from the
9 representative Plaintiffs or class members in this case.

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

11 Executed this 18th day of April, 2020 in Berkeley, California:

12 
13

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

15 Petitioners-Plaintiffs,

16 v.

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

23 Respondents-Defendants.
24
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26
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CASE NO.

**DECLARATION OF MARTIN S.
SCHENKER IN SUPPORT OF
MOTION FOR CLASS
CERTIFICATION**

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Attorneys for Petitioners-Plaintiffs

**Motion for Admission Pro Hac Vice Forthcoming*

1 I, Martin S. Schenker, declare as follows:

2 1. I am a partner with the law firm of Cooley LLP, co-counsel of record in the above-
3 captioned matter for named Plaintiffs Angel De Jesus Zepeda Rivas, Brenda Ruiz Tovar,
4 Lawrence Mwaura, Luciano Gonzalo Mendoza Jeronimo, Coraima Yaritza Sanchez Nuñez,
5 Javier Alfaro, Dung Tuan Dang, and the purported Class. I have knowledge of the following,
6 and if called as a witness, I could and would testify competently thereto.

7 2. Cooley LLP has a robust Commercial Class Action Litigation practice with
8 practitioners highly experienced in class certification procedures, the negotiation and creative
9 structuring of class action settlements and, when necessary, trial of these class actions. Attached
10 hereto as **Exhibit A** is a true and correct copy of Cooley LLP's Commercial Class Action
11 Litigation page, located at [https://www.cooley.com/services/practice/commercial-class-action-](https://www.cooley.com/services/practice/commercial-class-action-litigation)
12 litigation and accessed on April 17, 2020.

13 3. In addition, Cooley LLP's Pro Bono practice includes impact litigation in a wide
14 variety of contexts. For example, in December 2011, Cooley LLP and the Prison Law Office filed
15 a class action lawsuit against Fresno County on behalf of all then-present and future prisoners in
16 the Fresno County Jail to challenge the adequacy of medical and mental health care and safety
17 conditions in the jail. In May 2015, a settlement agreement was reached, resulting in a consent
18 decree with a comprehensive plan to improve the quality and accessibility of health care and safety
19 in the Fresno County Jail. In 2017, Cooley LLP and the American Civil Liberties Union
20 represented a class of undocumented children in a class action lawsuit against federal immigration
21 authorities (discussed further below). Attached hereto as **Exhibit B** is a true and correct copy of
22 Cooley LLP's Pro Bono Firm Resume.

23 4. I am a partner in the Business Litigation practice group at Cooley LLP. I received
24 a bachelor's degree with highest honors from UC Davis in 1978, a master's degree from the
25 London School of Economics and Political Science in 1979, and a J.D. *magna cum laude* from
26 Harvard Law School in 1983. During my last year in law school, I worked with the Southern
27 Poverty Law Center for approximately six months investigating conditions in the State of

1 Alabama's juvenile detention facilities, including spending a month working out of the Center's
2 offices in Montgomery, Alabama, and thereafter analyzing potential Constitutional challenges to
3 conditions in those facilities. After receiving my J.D., I clerked for the Honorable Mariana R.
4 Pfaelzer on the federal district court in Los Angeles for one year, and have been in private practice
5 as a litigator for over 30 years. I joined Cooley as a partner in 1999. I am a member of the California
6 Bar and am admitted to practice law before all state and federal courts in the State of California
7 and the United States Courts of Appeals for the Ninth Circuit.

8 5. My practice focuses on complex business litigation, and I have significant trial
9 experience. I have litigated numerous "bet the company" cases and multiple cases with hundreds
10 of millions, and even billions, of dollars at stake, and have tried many cases in both state and
11 federal courts. I have been selected for *Northern California Super Lawyers* lists for 2006-2017.

12 6. In 2017, Cooley LLP, the American Civil Liberties Union, and Holly S. Cooper
13 represented a class of undocumented children in a class action lawsuit entitled *Saravia v. Sessions*
14 *et al.*, Case No. 3:17-CV-03615-VC (N.D. Cal.). I served as co-lead counsel in that action. The
15 case challenged the federal government's use of substantiated claims of gang affiliation to detain
16 children who had previously been released to sponsors. On November 20, 2017, the United States
17 District Court for the Northern District of California issued a preliminary injunction requiring the
18 teenagers be given notice of the reasons for their arrests, access to the evidence being offered
19 against them, and a prompt hearing in front of a judge. On October 1, 2018, the preliminary
20 injunction was affirmed by the Ninth Circuit.

21 7. The Cooley team in this case also includes Timothy Cook and Francisco Unger,
22 both members of the Massachusetts Bar. Timothy Cook's practice focuses on complex civil
23 litigations in state and federal courts and in arbitration proceedings. He is admitted to practice law
24 before all Massachusetts state courts and the United States District Court, District of
25 Massachusetts. He received his J.D. *magna cum laude* from Boston College Law School in 2013,
26 and his B.A. *magna cum laude* from Union College in 2010. Francisco Unger's practice focuses
27 on complex civil litigation and securities enforcement matters. He received his J.D. Yale Law
28

1 School in 2017, and his B.A. from Princeton University in 2012.

2 I declare under penalty of perjury under the laws of the State of California that the foregoing
3 is true and correct. Executed this 17th day of April 2020 at Napa, California.

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6 /s/ Martin S. Schenker
7 Martin S. Schenker
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DECLARATION OF MARTIN S. SCHENKER IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

EXHIBIT A

Commercial Class Action Litigation

One of the most active class action practices in the US with experience covering every need

Why Cooley

- 60+ litigators nationwide who have litigated state and federal class actions involving consumer protection, fraud, wage and hour, RICO, health care, finance and banking, copyright, Internet transactions and payment processing, privacy, antitrust, mass torts and statutory violations
- On average, we handle 50+ unrelated, new class actions every year, giving us a level of experience that is hard to top
- 25+ motion to dismiss wins in privacy and data breach class actions in recent years
- Unique insight into the needs of retail and consumer products companies gained from our representation of 700+ companies in this space
- Defended 60+ different California Song Beverly Credit Card Act and federal Fair and Accurate Credit Transaction Act ("FACTA") class actions for retailers and online businesses arising from credit card transactions, including the defeat of class certification for StubHub in an action brought under the Fair Credit Reporting Act for the alleged violation of FACTA, the first such action filed against an online business
- Served as defense counsel in two of the most important class actions for the food & beverage and oil/gas industries according to Law360
- Our litigators have won large, complex and highly-publicized cases, including a class action where the proposed class would have included nearly 50% of the American population
- We know class certification procedures inside and out and our work shows it - we scored a huge win by defeating class certification in what could have involved one of the largest classes ever
- We are skilled in the negotiation and creative structuring of class action settlements - we were the first firm to negotiate unique style of cy pres remedy setting up privacy rights foundation to resolve a major class action
- Leaders in defending companies in class actions involving the collection of personal identification information at the point-of-sale
- Focused experience representing food& beverage companies in class actions alleging product mislabeling, false advertising, deceptive marketing, fraud, and unjust enrichment

"Smart and effective in their briefing and arguments, and they know how to take off their gloves and litigate."

– Client quote, Legal 500

Recognition

- BTI: Class Actions Powerhouse
- Chambers USA: Commercial Litigation
- Legal 500 US: Commercial Litigation
- Law360: Litigation Powerhouse
- Daily Journal: Top Women Lawyers (Class Action Co-Chair)
- Law360: Six-Time Privacy Practice Group of the Year; Seven-Time Privacy MVP (cyber/data/privacy Chair)
- The Recorder: Privacy Litigation Department of the Year (2015, 2017)
- Washington Business Journal: A Top Washington Lawyer for Corporate Litigation and for Employment Litigation

Litigation Powerhouse

Law360 praises Cooley for its first-class litigation work and dominant victories.

[Read more >](#)

"Their capacity to handle really complex matters and arguments is very impressive."

– Chambers USA

Commercial Class Action Litigation

The prevalence of commercial class actions (those not involving securities violations) has dramatically increased over the past several years and has become a growing threat to many businesses. The stakes are high and potential exposure is significant, particularly in cases with potentially large classes of plaintiffs.

Cooley has in-depth experience representing companies, across many industries, in various types of commercial class actions. In both state and federal courts, including the Judicial Panel on Multidistrict Litigation, our lawyers have litigated matters involving consumer protection, fraud, wage and hour, RICO, healthcare, finance and banking, copyright, products liability, internet transactions and payment processing, privacy, antitrust, mass torts and statutory violations.

We work closely with clients to obtain favorable resolutions as early and as efficiently as possible, whether by obtaining pre-certification or post-certification dismissals, defeating class certification motions, negotiating favorable settlements before or after class certification, or litigating cases through trial and appeal.

Areas of Practice

- Antitrust
- California Song Beverly Credit Card Act and federal Fair and Accurate Credit Transaction Act
- Consumer protection statutes
- Contract
- Copyright
- Digital rights
- Employment
- Fair Credit Reporting Act, Truth-in-Lending Act and Federal Electronic Funds Transfers Act
- False and deceptive advertising
- Fraud
- Gift cards
- Healthcare
- Internet
- Mass torts
- Privacy/cyber security
- RICO
- Telephone Consumer Protection Act (TCPA)
- Wage and hour

Representative Matters

- Defeated class cert in **Google** Gmail class actions, which implicated billions of emails exchanged with 400+ million Gmail users
- Settled one of the largest right of publicity class actions ever filed for **Facebook**, where the proposed class would have included nearly 50% of the American population
- Landmark appellate victory for **Sony** in a case involving an issue of first impression related to the Video Privacy Protection Act (VPPA)
- Obtained dismissal of claims and denial of class certification in several federal consumer class actions brought against **E*TRADE** alleging violations of the Truth-in-Lending Act and California's consumer protection statute, §17200
- Complete victory for **eBay**, obtaining dismissal of all claims in data breach class action
- Secured two separate settlements for **Sony** with the direct and indirect purchasers of lithium batteries in a multi-year antitrust class action
- Negotiated unique style of cy pres remedy, resolving Beacon privacy class action for **Facebook**
- Resolved more than a dozen class actions for **eBay** and its subsidiaries involving state auction laws, consumer fraud and protection statutes, online payment processing and ticket resales
- Appointed Lead and Liaison Counsel for **CenturyLink** in multidistrict litigation involving 75+ consolidated lawsuits and 600+ defendants concerning allegations of improper collection of "access charges" for wireless calls
- Obtained a published appellate decision in a class action against **The TJX Companies** and retailers doing business in California brought under the Song Beverly Credit Card Act, which limited the statute's reach to purchase transactions and a one-year limitations period

EXHIBIT B

Cooley

Pro Bono

Commitment

Commitment to the community is an important part of our culture at Cooley. We strive to give generously of our time, talents and resources to the communities in which we practice, and pro bono work is one of the primary ways we fulfill that goal. We give pro bono matters the same staffing, attention and resources as other matters. We assign pro bono matters the same weight and credit as other matters when evaluating attorneys' contributions to the firm. We encourage attorneys in all practice groups and at all levels of practice to be actively involved in our pro bono work.

Pro Bono Facts

- 68,000+ pro bono hours annually
- 800 attorneys participated in 2019
- 900 pro bono clients served

Representative Matters

- *Chavez v. County of Santa Clara* and *Mays v. County of Sacramento*: Together with co-counsel, Cooley brought and favorably settled two lawsuits challenging solitary confinement practices and other persistent harmful and unconstitutional conditions in northern California jails. In March 2019, a federal judge approved a settlement that required significant reforms in Santa Clara County jails, including improved screening for and access to mental and medical health resources and alternatives to solitary confinement. Under a June 2019 settlement in *Mays v. County of Sacramento*, Sacramento County was also required to change its practices around solitary confinement, improve its medical and mental healthcare systems, and take steps to prevent the unnecessary incarceration of people with mental illness.
- *Saravia v. Sessions*: Cooley and the ACLU obtained an injunction, which led to the release of 30 teenagers from federal custody and protection for a class of similarly situated teens. The injunction was upheld by the Ninth Circuit in October 2018. The teens had been transported across the country—without notice to their families or attorneys—and illegally detained in jail-like facilities based on unsubstantiated claims of gang affiliation.
- *Hall v. Mims*: Cooley and co-counsel Prison Law Office and Disability Rights California brought and ultimately successfully settled a class action lawsuit alleging that conditions at the Fresno County Jail constituted cruel and unusual punishment because prisoners were denied adequate medical, dental and mental health care, and were vulnerable to attack by other prisoners because of inadequate security. The lawsuit also alleged that prisoners with disabilities were not provided reasonable accommodations in violation of the Americans with Disabilities Act. The consent decree included a remedial plan addressing each of these issues.
- *LaFollette v. Padilla*: Cooley and co-counsel ACLU challenged the process for rejecting ~40,000 absentee ballots in California based on perceived signature mismatches. A state court ruled that voters must receive notice and an opportunity to remedy. While the case was on appeal, California lawmakers wrote these requirements into law.
- *Long Island Housing Services v. Village of Mastic Beach*: Cooley and co-counsel Lawyers' Committee for Civil Rights Under Law successfully settled a case against the Village of Mastic Beach on Long Island for unlawfully pursuing code enforcement activities in a racially discriminatory manner against low-income tenants.
- *Mejia-Jacobo v. Suhr*: Cooley and co-counsel Asian Americans Advancing Justice—Asian Law Caucus represented a monolingual Spanish-speaking domestic violence survivor who was mistakenly arrested for assault after the San Francisco Police Department failed to provide her with an interpreter. The suit resulted in strengthening the city's language access policies and a substantial monetary settlement for our client.
- *Lopez-Venegas v. Holder*: Cooley and the ACLU settled a class action lawsuit to redress deceptive tactics used by immigration enforcement officers who denied plaintiffs their constitutional right to see a judge and have a fair hearing in connection with signing voluntary return documents. The government was subject to compliance monitoring under the consent decree for several years.

Cooley Pro Bono

Ongoing Litigation

- *Sines v. Kessler*: Cooley filed a complaint in federal court on behalf of plaintiffs injured in violence stemming from a rally planned by neo-Nazis and white supremacists in Charlottesville in August 2017. The case survived a motion to dismiss and trial is scheduled for late 2020.
- *Hecox v. Little*: Cooley, the American Civil Liberties Union, the ACLU of Idaho and Legal Voice filed a lawsuit in April 2020 challenging Idaho's recently-passed law that bans transgender and many intersex women and girls from participating in school sports. The lawsuit was filed on behalf of a track athlete at Boise State University who is transgender and a junior at Boise High School who is cisgender and concerned about being subjected to invasive sex verification testing under the new law.
- *Lucas R. v. Azar*: In June 2018, Cooley filed a class action lawsuit, together with co-counsel National Center for Youth Law and others, to ensure due process and safe conditions for detained immigrant children. The litigation is ongoing.

Other Areas of Pro Bono Practice

- Amicus briefs: Cooley regularly files amicus briefs in district courts and appellate courts around the country on issues of special importance. Recently Cooley has represented nonprofit organizations on amicus briefs in cases addressing family separation, sanctuary jurisdictions, DACA rescission, the "travel ban," LGBTQ rights, and the standard of review in innocence cases.
- Immigration: Cooley assists individuals pursuing asylum, Special Immigrant Juvenile status (for abused and neglected children), and special forms of immigration relief for domestic violence survivors.
- Innocence: Cooley represents several individuals seeking post-conviction relief and regularly represents the Innocence Network in filing amicus briefs related to the reliability of scientific evidence and other important issues.
- LGBTQ Advocacy: Cooley's pro bono practice supports the rights of the LGBTQ community through litigation, amicus briefs, individual representation in matters ranging from name changes to asylum applications, and transactional assistance to LGBTQ advocacy and support organizations.
- Nonprofit Advising: Cooley attorneys represented over 400 nonprofit organizations last year on a wide variety of legal issues, allowing those nonprofits to focus their efforts and resources on carrying out their missions.

Recent Accolades

- Lawyers' Committee for Civil Rights of the San Francisco Bay Area "James T. Caleshu Award" (2020)
- American Bar Association "Pro Bono Publico Award" (2018)
- Swords to Plowshares "Pro Bono Law Firm of the Year" (2017)
- Casa Cornelia "La Mancha Pro Bono Publico Award" (2017)
- OneJustice "Champion of Justice Award" (2017)
- Advancing Justice-Asian Law Caucus "Pro Bono Honoree" (2017)
- Northern California Innocence Project "Pro Bono Award" (2017)
- Appleseed Network "Pro Bono Partner Award" (2017)
- Legal Services for Children 2016 "Pro Bono Leadership Award"
- Disability Rights California 2016 "Pro Bono Achievement Award"
- ABA Section of Litigation 2015 "John Minor Wisdom Public Service and Professionalism Award"
- The State Bar of California 2015 "President's Pro Bono Service Award"
- Human Rights Campaign 2015 "National Ally of Justice Award"
- Washington Legal Clinic for the Homeless 2015 "Outstanding Firm Award"
- Jewish Family Services of San Diego 2015 "President's Community Partnership Award"
- The Legal Aid Society of New York's 2014 "Pro Bono Publico Award"
- Centro Legal de la Raza 2013 "Pro Bono Champion Award"
- Legal Aid Society of San Diego 2013 "Law Firm of the Year"

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UNITED STATES DISTRICT COURT
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SAN FRANCISCO DIVISION

ANGEL DE JESUS ZEPEDA RIVAS,
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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.

**DECLARATION OF GENNA
ELLIS BEIER IN SUPPORT OF
MOTION FOR CLASS
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18 *Attorneys for Petitioners-Plaintiffs*

19 **Motion for Admission Pro Hac Vice Forthcoming*

1 I, Genna Ellis Beier, declare as follows:

2 1. I am an attorney admitted to practice in California. I am a litigation and appeals
3 specialist at the San Francisco Office of the Public Defender. I submit this declaration in
4 support of Petitioners' Motion for Class Certification. I have personal knowledge of the facts
5 stated in this declaration.

6 2. The San Francisco Office of the Public Defender (SFPD) is a government agency
7 funded by the City and County of San Francisco that provides zealous representation to indigent
8 community members. The Public Defender, Manohar Raju, is the only elected Public Defender
9 in the state of California. In 2017, the SFPD launched an Immigration Defense Unit, now
10 comprised of nine attorneys and five support staff, which represents detained non-citizens with
11 cases before the San Francisco Immigration Court. The goal of the unit is to work toward
12 ensuring universal access to counsel for detained immigrants facing deportation in the San
13 Francisco Immigration Court. The unit regularly visits detainees at Yuba County Jail and Mesa
14 Verde ICE Processing Center, and builds relationships with their families and communities as
15 part of a holistic defense model. We represent clients in applications for immigration relief
16 before the Immigration Court, the Board of Immigration Appeals (BIA), and the Ninth Circuit
17 Court of Appeals. We also file habeas corpus petitions in federal district court, and post-
18 conviction relief motions in California state superior courts. Since its inception, the immigration
19 unit has provided representation to more than 200 immigrants detained the Yuba County and
20 Mesa Verde Detention Center.

21 3. I have been an active member of the State Bar of California since 2014. I received
22 a J.D. degree from University of California at Berkeley School of Law, where I founded and co-
23 chaired the Berkeley Immigration Group (BIG), a student organization that lends support to
24 immigrant advocacy efforts. I graduated with a B.A. degree, *cum laude*, from Pomona College
25 in 2008. During my legal career, I have focused exclusively on representing immigrants and
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1 refugees in their legal proceedings to secure lasting relief from removal. My immigration
2 practice has centered on complex removal defense and litigation.

3 4. Prior to my current position with the SFPD, I worked as a deportation defense
4 attorney at the private firm, Van Der Hout, LLP (2014-2018), where I represented hundreds of
5 non-citizen clients in immigration matters before U.S. Citizenship & Immigration Services
6 (USCIS), the Immigration Court, the BIA, the Ninth Circuit, and federal district court.

7 5. I have practiced deportation defense at the SFPD since June of 2018. During that
8 time, I have represented dozens of non-citizen clients in their removal proceedings. Since June
9 of 2019, I have served as the team lead for agency and Ninth Circuit appeals and federal court
10 litigation. I currently represent seven non-citizens in their pending matters before the BIA, and
11 six individuals with pending Petitions for Review before the Ninth Circuit. I have served as lead
12 or co-lead counsel for in each of the following cases:

- 13 a. *Avilez v. Barr*, et al., 19-cv-08296-CRB, 2020 WL 1704456 (N.D. Cal.
14 Apr. 8, 2020) (writ of habeas corpus granted to immigrant detainee,
15 ordering bond hearing at which government bears the burden to justify his
16 continued detention).
- 17 b. *Primero Garcia v. Barr*, et al., 20-cv-01389-NC, 2020 WL 1139660 (N.D.
18 Cal. Mar. 9, 2020) (temporary restraining order granted to immigrant
19 detainee to prevent government from removing petitioner while he pursues
20 motion to reopen).
- 21 c. *Landeros Jimenez v. Wolf*, et al., 5:19-cv-07996-NC, Dkt. 25 (N.D. Cal.
22 Mar. 6, 2020) (motion to enforce and temporary restraining order granted
23 to order direct release of immigrant detainee).

24 6. Other members of the SPFD who are representing Plaintiffs in this litigation are
25 Francisco Ugarte and Emilou Maclean, each of whom has deep experience representing
26 plaintiffs in immigration and civil rights cases. Both are members in good standing of the
27 California State Bar and of the Bar of this Court. Mr. Ugarte graduated from the CUNY School

1 of Law and has worked at the SFPD since August 2014. Previously, he worked for Dolores
2 Street Community Services between March 2008 and July 2014 and for Leonard Carder, LLP
3 between November 2005 and March 2008. Ms. Maclean graduated from Georgetown
4 University Law Center in 2006. She has worked at SFPD since September 2019. Previously, she
5 represented plaintiffs in immigration and civil rights cases at the Center for Constitutional
6 Rights and the National Day Laborer Organizing Network.

7 7. I am not aware of any conflict among potential class members in this case.

8 8. I am not aware of any conflict between SFPD and any members of the potential
9 class that would prevent SFPD from representing the class.

10 I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day
11 of April 2020 in Oakland, California.

12 /s/ Genna Ellis Beier
13 Genna Ellis Beier
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UNITED STATES DISTRICT COURT
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ANGEL DE JESUS ZEPEDA RIVAS,
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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.

**DECLARATION OF JORDAN
WELLS IN SUPPORT OF
MOTION FOR CLASS
CERTIFICATION**

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18 *Attorneys for Petitioners-Plaintiffs*

19 **Motion for Admission Pro Hac Vice Forthcoming*

1 I, Jordan Wells, declare as follows:

2 1. I am a staff attorney at the American Civil Liberties Union of Southern California
3 (“ACLU SoCal”), counsel for Plaintiffs-Petitioners in this putative class action. I submit this
4 declaration in support of Plaintiffs’-Petitioners’ Motion for Provisional Class Certification. I
5 have personal knowledge of the facts stated in this declaration.

6 2. I was admitted to the practice of law in New Jersey in 2013, in New York in
7 2014, and in California in 2019. I am a 2013 graduate of the New York University School of
8 Law, *cum laude*, where I was a McKay Scholar.

9 3. In October 2018, I began working at ACLU SoCal, a nonprofit, nonpartisan
10 organization dedicated to defending civil liberties and civil rights guaranteed by the federal and
11 state constitutions. ACLU SoCal has extensive expertise in class litigation, immigrants’ rights
12 litigation, and First Amendment litigation. I am presently lead counsel in a *habeas* appeal
13 challenging retaliatory actions by United States Immigration and Customs Enforcement in
14 response to my client’s criticism of the agency. *See Bello Reyes v. McAleenan*, No. 19-CV-
15 3630-SK, 2019 WL 5214051 (N.D. Cal. July 16, 2019), *appeal docketed*, No. 19-16441 (9th
16 Cir. Feb. 18, 2020).

17 4. From 2013 to 2018, I was an attorney at the New York Civil Liberties Union
18 (NYCLU), ACLU SoCal’s sister affiliate in New York.

19 5. At the NYCLU, I litigated a wide range of civil liberties cases:

20 a. I assisted in preparing class action lawsuits and was appointed class
21 counsel in *Ligon v. City of New York*, No. 12-CV-2274 (Mar. 28, 2012
22 S.D.N.Y.), a successful complex class action in the Southern District of
23 New York that sought to end unconstitutional stops, frisks, and arrests.

24 b. I was party or *amicus* counsel in numerous *habeas corpus* actions at the
25 trial court and appellate levels of the state and federal judiciary.

26 Representative matters include *Sajous v. Decker*, No. 18-CV-2447, 2018
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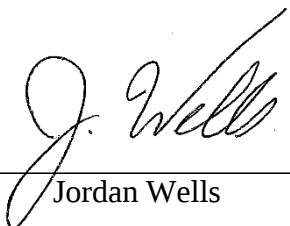
WL 2357266 (S.D.N.Y. May 23, 2018) (lead counsel in widely cited case establishing a framework for evaluating due process challenges to ICE detention); *Lora v. Shanahan*, 804 F.3d 601, 608 (2d Cir. 2015) (*amicus* counsel in appeal holding prolonged immigration detention absent a bond hearing violates due process); *People ex rel. Wells v. DeMarco*, 168 A.D.3d 31, 88 N.Y.S.3d 518 (N.Y. App. Div. 2018) (lead counsel in appellate decision holding New York law enforcement officers have no authority to make immigration arrests).

c. I was party or *amicus* counsel in numerous First Amendment cases. Representative matters include *Charles v. City of New York*, No. 12-cv-6180, 2017 WL 530460 (E.D.N.Y. Feb. 8, 2017) (party counsel; decision denying qualified immunity in case challenging retaliatory arrest); *United States v. Erie Cty.*, 763 F.3d 235, 236 (2d Cir. 2014) (intervening party counsel; decision upholding public's fundamental right of access to judicial documents); *Barboza v. D'Agata*, 151 F. Supp. 3d 363, 370 (S.D.N.Y. 2015) (party counsel in successful damages action arising from arrest under unconstitutionally overbroad criminal statute regulating speech).

6. I am not aware of any conflict among potential class members in this case.

7. I am not aware of any conflict between ACLU SoCal and any members of the potential class that would prevent ACLU SoCal from representing the proposed class.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 20 day of April 2020 in Fresno, California.



Jordan Wells

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DAVID JENNINGS, Acting Director of the
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 INC.; NATHAN ALLEN, Warden of Mesa
 Verde Detention Facility,

Respondents-Defendants.

CASE NO.

**DECLARATION OF JUDAH LAKIN
 IN SUPPORT OF MOTION FOR
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**Motion for Admission Pro Hac Vice Forthcoming*

1 I, Judah Lakin, declare as follows:

2 1. I am an attorney admitted to practice in California. I am a partner at Lakin &
3 Wille LLP, counsel for Petitioners in this action. I submit this declaration in support of
4 Petitioners' Motion for Class Certification. I have personal knowledge of the facts stated in this
5 declaration.

6 2. I received my J.D. from University of California, Berkeley School of Law in
7 2015, my M.Ed. from Rhode Island College in 2009, and my B.A. from Brown University in
8 2004. From 2015-2016, I served as a deportation defense attorney with Dolores Street
9 Community Services in San Francisco representing clients in immigration court and on appeal
10 before the immigration agencies and the federal courts. From 2016-2017, I served as a judicial
11 law clerk for the Honorable Judge Richard A. Paez on the U.S. Court of Appeals for the Ninth
12 Circuit. From 2017-2019, I was an associate at Van Der Hout LLP, where I practiced
13 immigration law before federal agencies and the federal courts. I have been a partner at Lakin &
14 Wille LLP since I co-founded the firm in 2019.

15 3. I have extensive experience in complex immigration matters, including expertise
16 in immigration detention.

17 4. I currently serve as co-class counsel in the certified class action, *Aleman Gonzalez*
18 *v. Sessions*, 325 F.R.D. 616 (N.D. Cal. June 5, 2018), *affirmed sub. nom. Aleman Gonzalez v.*
19 *Barr*, -- F.3d --, 2020 WL 1684034 (9th Cir. Apr. 7, 2020) (preliminary injunction ordering the
20 government to provide prolonged detention bond hearings for all individuals detained pursuant
21 to 8 U.S.C. § 1231(a)(6) in the Ninth Circuit).

22 5. The following cases are also representative of my work in the federal courts on
23 behalf of noncitizen petitioners and plaintiffs:

24 a. *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019) (enjoining ICE
25 from re-arresting petitioner and holding that it would be a violation of due
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1 process to permit ICE to re-arrest petitioner without a hearing in front of a
2 neutral adjudicator).

3 b. *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018) (enjoining
4 ICE from re-arresting petitioner and holding that there are serious
5 questions going to the merits of petitioner's claim that the Constitution
6 requires periodic bond hearings for noncitizens in removal proceedings
7 who have been detained for lengthy periods and petitioner's claim that she
8 has a vested liberty interest in her conditional release such that she may
9 not be re-detained absent due process).

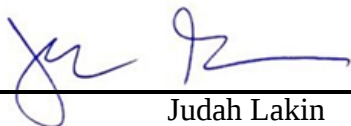
10 c. *Sliusar v. Whitaker*, 761 F. App'x 718 (9th Cir. 2019) (holding that an
11 immigration judge must consider all of the documentary evidence in the
12 record, regardless of its type, before ruling on requests for withholding of
13 removal and Convention Against Torture protection even if she finds a
14 related asylum application to be frivolous).

15 6. My law partner, Amalia Wille, also represents Petitioners and the putative class in
16 this litigation. She is a member of the California State Bar. She received her J.D. from
17 University of California, Berkeley School of Law in 2013, and her B.A. from Georgetown
18 University in 2006. From 2013-2019, she was an associate attorney at Van Der Hout LLP,
19 where she practiced in complex immigration matters before the immigration agencies and
20 federal courts. She also currently serves as co-class counsel in *Aleman Gonzalez v. Sessions*,
21 325 F.R.D. 616 (N.D. Cal. June 5, 2018).

22 7. I am not aware of any conflict among potential class members in this case.

23 8. I am not aware of any conflict between Lakin & Wille LLP and any members of
24 the potential class that would prevent Lakin & Wille LLP from representing the class.

1 I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th
2 day of April 2020 in Oakland, California.

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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] ORDER GRANTING
PETITIONERS-PLAINTIFFS'
MOTION FOR PROVISIONAL
CLASS CERTIFICATION**

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Attorneys for Petitioners-Plaintiffs

**Motion for Admission Pro Hac Vice Forthcoming*

1 The Court has considered the parties' briefing, evidence, and arguments as well as the
2 authorities cited in support of their positions. Upon due consideration, the Court hereby
3 GRANTS Plaintiffs' Motion for Provisional Class Certification. The Court provisionally certifies
4 the following proposed class and subclasses for the purpose of issuing the preliminary injunction
5 Plaintiffs seek:

- 6 1. **Class:** All civil immigration detainees at Yuba County Jail and Mesa Verde ICE
7 Processing Facility.
- 8 2. **YCJ Subclass:** All civil immigration detainees at Yuba County Jail.
- 9 3. **Mesa Verde Subclass:** All civil immigration detainees at Mesa Verde ICE
10 Processing Facility.

11 **IT IS SO ORDERED.**

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13 Dated: _____, 2020

14 United States District Judge
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