

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KARLENA DAWSON, et al.,

Plaintiff,

v.

NATHALIE ASHER, et al.,

Defendants.

CASE NO. C20-0409-JLR-MAT

DECLARATION OF
DREW H. BOSTOCK

I, Drew H. Bostock, hereby make the following declaration with respect to the above-captioned matter:

1. I am an Officer in Charge ("OIC") with the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") in the Seattle Field Office ("ERO Seattle"). I have held this position since December 2019. Prior to this, I was the Assistant Field Office Director from December 2017 to December 2019. I am currently assigned to the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. I have worked in various other positions within ICE since February 2007.

2. Among my responsibilities as the OIC, I manage the detained docket for the aliens who are detained at the NWIPC. This declaration is based upon my personal and professional knowledge and information obtained from various records and systems maintained by DHS and The GEO Group, Inc. in the regular course of business. I provide this declaration

1 based on the best of my knowledge, information, belief, and reasonable inquiry for the above
2 captioned case.

3 3. ICE is charged with removing aliens who lack lawful immigration status in the
4 United States. Detention is an important and necessary part of immigration enforcement. ICE
5 detains people to secure their presence both for immigration proceedings and their removal, with
6 a special focus on those who represent a risk to public safety, or for whom detention is
7 mandatory by law.
8

9
10 Northwest ICE Processing Center ("NWIPC")

11 4. The NWIPC is a private detention center run by The GEO Group, Inc. ("GEO").
12 GEO is an independent contractor that provides the facility, management, personnel and services
13 for 24-hour supervision of immigrant detainees in ICE custody at the NWIPC. GEO personnel
14 are not employed by ICE. The NWIPC operates pursuant to a performance-based contract,
15 which is a results-oriented method of contracting focused on outputs, quality, and outcomes.
16 Performance-based contracts do not designate how a contractor is to perform the work, but rather
17 establishes the expected outcomes and results that the government expects. It is then the
18 responsibility of the contractor to meet the government's requirements.
19

20 5. Medical care at the NWIPC is overseen by the ICE Health Services Corps
21 ("IHSC"), which provides medical services through a combination of U.S. Public Health Service
22 Commissioned Corps ("USPHS") officers, federal civil servants, and contract health
23 professionals.
24

25 Admissions of Detainees to the NWIPC

26 6. The NWIPC has the capacity to house 1,575 detainees and historically often
27 operates near capacity. As of the morning of March 27, 2020, however, there are 838 detainees
28

1 currently housed in the facility – i.e. the detainee population at the NWIPC is already reduced to
2 approximately 53.2% of the number of detainees usually housed at the facility.

3
4 7. The last transfer of ICE detainees the NWIPC received from the southern border
5 occurred on or about March 5, 2020 and ICE does not anticipate any further transfers from the
6 southern border in the reasonably foreseeable future both because the Migrant Protection
7 Protocols¹ have significantly reduced the overall numbers of individuals entering into ICE
8 custody from the southern border and because restrictions on border travel instituted as a result
9 of COVID 19. *See* Fact Sheet: DHS Measures on the Border to Limit the Further Spread of
10 Coronavirus, March 23, 2020, available at: [https://www.dhs.gov/news/2020/03/23/fact-sheet-](https://www.dhs.gov/news/2020/03/23/fact-sheet-dhs-measures-border-limit-further-spread-coronavirus)
11 [dhs-measures-border-limit-further-spread-coronavirus](https://www.dhs.gov/news/2020/03/23/fact-sheet-dhs-measures-border-limit-further-spread-coronavirus) (accessed March 25, 2020).
12

13 8. On March 18, 2020, ICE announced that it would immediately adjust its
14 enforcement posture to ensure safety in light of the ongoing COVID 19 pandemic to focus its
15 enforcement on public safety risks and individuals subject to mandatory detention based on
16 criminal grounds. *See* Updated ICE Statement on COVID 19, March 18, 2020, available at:
17 <https://www.ice.gov/news/releases/updated-ice-statement-covid-19> (accessed March 25, 2020).
18 For individuals who do not fall into those categories, ICE is currently exercising its discretion to
19 delay enforcement actions until after the COVID 19 crisis or utilize alternatives to detention, as
20 appropriate. *Id.*
21

22
23 9. Due to the shift in ICE's enforcement focus, ICE expects only a limited number
24 of incoming detainees at the NWIPC during the COVID 19 crisis – the majority of whom will be
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28 ¹ Under the Migrant Protection Protocols, aliens who are not nationals or citizens of Mexico who are arriving in the United States by land from Mexico may be returned to Mexico pursuant to INA § 235(b)(2)(C) for the duration of their removal proceedings.

1 aliens who are public safety risks and those subject to mandatory custody on criminal
2 immigration grounds.²

3
4 Safety Measures at the NWIPC: Detainee Admissions

5 10. Because ICE exercises significant authority when it detains people, ICE must do
6 so in a humane manner, with a focus on providing safe conditions and care. Conditions of
7 detention at the NWIPC are governed by the Performance-Based National Detention Standards
8 2011 (“PBNDS”). The PBNDS reflects ICE’s ongoing effort to tailor the conditions of
9 immigration detention to its unique purpose while maintaining a safe and secure detention
10 environment for detainees and staff.

11
12 11. Upon admission, the PBNDS requires that medical and mental health screening
13 shall be conducted “to identify requirements for medical care, special needs and housing, and to
14 protect the health and safety of others in the facility.” *See* PBNDS 2.1(I), (V). As a response to
15 COVID 19, IHSC has implemented certain safety protocols, including those conducted at the
16 initial medical screening, which are set forth in a separate declaration by IHSC. In addition,
17 effective March 26, 2020, IHSC is implementing temperature and prescreening checks of all new
18 detainees arriving at the NWIPC prior to entrance to the facility.

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21 12. The PBNDS requires that all incoming detainees’ personal property and valuables
22 must be inventoried and stored. *See* PBNDS 2.1(I), (V). Further, all incoming detainees must be
23 afforded the opportunity to shower and provided with clean clothing, bedding, towels and
24 personal hygiene items. *Id.*

25
26 13. GEO provides each detainee arriving at the NWIPC an instructional flyer
27 outlining proper hand washing hygiene and the importance of covering coughs along with the
28

² Aliens who come into custody of the local U.S. Border Patrol and U.S. Customs and Border Protection, either at the border or in the interior, are also transferred to the NWIPC.

1 required Detainee Handbook upon admission. In response to COVID 19, additional posters in
 2 multiple languages concerning hand washing hygiene and covering coughs have also been placed
 3 in each housing unit at the NWIPC.

4
 5 14. As of March 20, 2020, all incoming detainees to the NWIPC who do not meet the
 6 current IHSC protocol requirements for isolation monitoring due to possible COVID 19
 7 symptoms, exposure or testing, are placed in two separate housing units for 14 days of
 8 monitoring for signs or symptoms of COVID 19. One unit is designated for male detainees and
 9 another for female detainees. These housing units contain separate cells.³ Each cell may house
 10 up to four detainees, however not every cell is filled to maximum occupancy. Detainees who are
 11 admitted to the facility on the same date and who are determined to be the same risk
 12 classification level may be housed in the same cell. Detainees admitted on separate dates and
 13 those at different risk classification levels are not housed together. Detainees in the 14-day
 14 observation period are not allowed to commingle with other detainees in common areas during
 15 that 14-day period. If 14 days pass without any detainees in a cell displaying signs or symptoms
 16 of COVID 19, the detainees are released to other housing units in the facility. A separate remote
 17 medical unit has been established to monitor detainees undergoing 14-day observation in these
 18 two housing units.

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 22 Safety Measures at the NWIPC: Detainee Education, Hygiene & Sanitation

23 15. Section 1.2 of the PBNDS sets forth the detention standard for protecting
 24 detainees, staff, volunteers and contractors from injury and illness by maintaining high facility
 25 standards of cleanliness and sanitation, safe work practices, etc. Pursuant to PBNDS 1.2(V)(1),
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27
 28 ³ The NWIPC consists of 21 separate housing units: 11 open bay units, 6 celled units, and 4 mixed cell/open bay units. Open bay units generally consist of bays created by floor to ceiling side walls with no front wall or door so that front of each bay is open to the pod. Each bay usually contains two bunkbeds and can therefore house four detainees.

1 the environmental conditions at the NWIPC must be maintained at a level that meets recognized
2 standards by the Centers for Disease Control (“CDC”), the American Correctional Association,
3 the Occupational Health and Safety Administration, the Environmental Protection Agency and
4 the Food and Drug Administration. Under the PBNDS, GEO is responsible for “developing and
5 implementing policies, procedures and guidelines that are intended to identify and eliminate or
6 control as necessary....modes of transmission of agents or vectors of communicable disease.”
7

8 *See* PBNDS 1.2(V). As a minimum of general housekeeping, the PBNDS requires that all
9 horizontal surfaces in the facility be damp dusted daily with an approved germicidal solution;
10 that all furniture and fixtures be cleaned daily; and that all floors be mopped daily with a clean
11 mop head. *See id.*
12

13 16. In response to COVID 19, GEO has informed ICE that it has enhanced cleaning
14 in all housing units, food preparation and service areas, intake rooms and other work centers with
15 increased emphasis on cleaning contact areas with disinfectant cleaners approved as effective
16 against COVID 19.
17

18 17. Soap and cleaning supplies are made available by GEO to detainees in all housing
19 units and work areas at the NWIPC. GEO has informed ICE that it has increased the amount of
20 soap, disinfectant cleaner and food service sanitizer in every housing unit in response to COVID
21 19, and that inventory levels of these supplies are monitored on each shift to ensure ready
22 availability. On March 25, 2020, GEO reported to ICE that it has not received any complaints
23 from detainees at the NWIPC regarding lack of soap.
24

25 18. GEO has informed ICE that, as a response to COVID 19, its executive staff have
26 been conducting weekly town hall meetings with detainees in every housing unit at the NWIPC
27 specifically to educate detainees on hand washing and covering coughs. At these meetings, GEO
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1 is also instructing detainees to clean tables and horizontal surfaces with San-T-10 Plus Food
 2 Service Sanitizer before each meal and a neutral disinfectant after each meal. Detainees are
 3 further instructed to clean countertops, microwave handles, door handles, exercise equipment,
 4 electronic tablets used for detainee entertainment and communication, telephones and any high
 5 risk contact areas with disinfectant cleaner. A demonstration is provided as to how to clean
 6 electronic tablets and telephones and detainees are instructed to clean them after each use.
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8 Safety Measures at the NWIPC: Visitors & Staff
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10 19. On March 13, 2020, ICE temporarily suspended social visitation at detention
 11 facilities, including the NWIPC, to prevent the spread of COVID 19. Detainees at the NWIPC
 12 continue to have communication access through telephones and electronic tablets provided in
 13 each housing unit. The electronic tablets allow for video communication.
 14

15 20. All tours of the NWIPC have been cancelled.

16 21. GEO is screening all contractors, vendors, attorneys and court visitors through a
 17 questionnaire that includes, inter alia, questions regarding whether the individual is currently
 18 experiencing any possible symptoms of COVID 19 and recent travel history. Individuals who
 19 positively report possible symptoms, possible exposure to COVID 19, or recent travel to areas of
 20 concern are prohibited from entering the NWIPC.
 21

22 22. Attorney visits at NWIPC are limited to noncontact visits unless a contact visit is
 23 absolutely necessary and has been approved by the ICE Officer in Charge or the Assistant
 24 Officer in Charge. If an attorney's request for a contact visit is approved, attorneys must wear
 25 personal protective equipment ("PPE"), including masks. Attorneys who are unable to furnish
 26 their own masks are provided surgical masks by GEO.⁴ In addition, ICE has implemented a
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⁴ Due to the general shortage of N95 masks, GEO is unable to provide private attorneys with N95 masks for contact visits.

1 daily duty officer to facilitate unmonitored attorney-client phone calls from each housing unit so
2 that detainees do not have to move throughout the facility.

3 23. ICE and GEO employees have received multiple instructions and reminders
4 concerning the importance of hand washing and covering coughs to prevent the spread of
5 COVID 19 and extra hand sanitizer has been provided to employees throughout the NWIPC.
6 ICE has provided its own employees with disinfectant wipes so they may conduct extra daily
7 cleaning of high contact areas within their work spaces (door handles, phones, computers, etc.) in
8 addition to the daily cleaning provided by GEO maintenance staff.
9
10

11 24. ICE and GEO are currently collaborating on a process to implement temperature
12 checks of all employees and staff for GEO, ICE, and the Executive Office for Immigration
13 Review ("EOIR") at the NWIPC. ICE plans to begin implementing these measures on March
14 27, 2020.
15

16 25. ICE and GEO employees have been instructed to stay home in the event that they
17 are sick, experiencing any possible symptoms of COVID 19, or have been in close contact with
18 someone diagnosed with COVID 19. Staff have also been asked about recent travel to areas with
19 COVID 19 outbreaks, such as New York. Both GEO and ICE employees who are ill or believe
20 they may have been exposed to COVID 19 are instructed to follow the advice of their personal
21 care providers. While GEO is not required to report to ICE if any of its employees at the
22 NWIPC have been tested or diagnosed with COVID 19, both parties have a solid working
23 relationship and GEO is voluntarily providing that information to ICE. To date, no ICE or GEO
24 employees or staff at the NWIPC have reported testing positive for COVID 19.
25
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27 26. ICE has instituted a telework program for its employees at the NWIPC to
28 minimize the number of employees present at the facility.

- a. Currently, ERO Tacoma has implemented a 50% telework program – meaning that only half of ERO employees are present at the NWIPC at any one time. Teleworking ERO employees rotate on a two-week basis. This does not include some limited support staff whose duties are not conducive to telework and are necessary for the functioning of the office.
- b. The Tacoma ICE Office of the Principal Legal Advisor (“OPLA”), which provides legal services and represents the Department before EOIR, has instituted a maximum telework program. All OPLA employees have been asked to telework unless it is absolutely necessary for them to be in the office. This does not include some limited support staff whose duties are not conducive to telework and are necessary for the functioning of the office, i.e. those required to open and scan incoming legal mail.

Safety Measures: Removal Proceedings at the Tacoma Immigration Court

27. Removal proceedings before the Tacoma Immigration Court, which is collocated within the NWIPC, currently continue to proceed at this time.

28. Multiple measures have been implemented by EOIR and ICE in response to COVID 19. On March 18, 2020, EOIR issued a memo regarding *Immigration Court Practices During the Declared National Emergency Concerning the COVID-19 Outbreak*. See <https://www.justice.gov/eoir/file/1259226/download> (accessed March 25, 2020). This memorandum sets out specific safety measures implemented by EOIR in response to COVID 19, including but not limited to:

- a. Requiring all persons having business before an immigration court notify an employee at the security screening checkpoint of certain types of recent travel;

whether they have asked to self-quarantine; whether they, or someone with whom they have contact with has had contact with, has been diagnosed with COVID 19 in the last 14 days.

- b. Reminding immigration judges that the presence of represented aliens at hearings may be waived; that continuances may be granted upon a showing of good cause.
- c. Encouraging parties to resolve cases through written pleadings, stipulations and joint motions.
- d. Directing that hearings amenable to being conducted by telephone or videoteleconference ("VTC"), especially for cases involving detained aliens, should be conducted through those mediums to the maximum extent possible.

Id.

29. As of this week, EOIR is conducting all hearings at the Tacoma Immigration Court via VTC. In such hearings, the Immigration Judge sits separately in one courtroom and the detainee-respondent appears via VTC from a separate courtroom within the facility. ICE attorneys also appear separately via VTC from either their office or from home. Private bar attorneys have been provided the opportunity to appear telephonically.

30. Similarly, ICE has established a method by which private bar attorneys may contact ICE attorneys to request reconsideration or stipulations to bond in particular cases and on a case by case basis. As a result, ICE has agreed in certain cases to stipulate to bond thereby avoiding the necessity of holding a bond hearing.

Alternative Measures: Release from Detention

31. Early last week, ERO Tacoma began conducting a discretionary review of certain detainees' cases identified by IHSC, based on their medical records, as detainees who meet the

1 current CDC criteria as at-risk due to COVID-19. Such a review process is labor intensive as it
2 requires not only identification by IHSC that a detainee falls within an at-risk category, but also a
3 review of each detainee's immigration and criminal history to determine whether they are subject
4 to various mandatory custody provisions. If an identified detainee is not subject to mandatory
5 custody, a case-by-case analysis is then conducted to determine whether each detainee is a
6 danger and/or flight risk such that release is not appropriate.
7

8 32. As a result of this ongoing review process, ICE has already released six detainees
9 from custody, including two of the named Plaintiffs, as discussed further below.
10

11 Named Petitioner-Plaintiffs

12 33. To provide context for the reasons why each of the nine named petitioners is in
13 custody or has recently been released since the filing of this pending motion, ICE has conducted
14 a preliminary review of their case histories and each follows.
15

16 34. Alfredo Espinoza-Esparza is a 41-year old native and citizen of Mexico with four
17 prior voluntary returns from the United States. He was taken into custody by U.S. Border Patrol
18 Agents in Spokane, WA on October 30, 2019 after receiving an anonymous tip concerning
19 undocumented workers employed at a local restaurant. It appears Espinoza-Esparza has an
20 active criminal warrant out of Nebraska for a minor 2009 offense but extradition was declined.
21 At the time this instant motion was filed, Petitioner Espinoza-Esparza was detained under INA §
22 236(a). He had withdrawn his bond request at a bond hearing before an Immigration Judge
23 ("IJ") on November 13, 2019 without prejudice for renewal and had not requested another bond
24 hearing. He currently has an appeal pending at the Board of Immigration Appeals ("BIA"). As
25 long as that appeal remains pending, he remained eligible to request another bond hearing,
26 however, no bond request was made. After having been identified by IHSC as having a medical
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1 condition that places him at higher risk for severe illness due to COVID-19 according to CDC
 2 guidelines, ICE reviewed his case and determined that he could be released. ICE released
 3 Petitioner Espinoza-Esparza on his own recognizance (“OREC”) and enrolled him in ICE’s
 4 Alternatives to Detention (“ATD”) program on March 25, 2020.
 5

6 35. Norma Lopez Nunez is a 65-year old native and citizen of Mexico with multiple
 7 prior removals and approximately five convictions for illegal reentry (2006, 2007, 2008, July
 8 2015 and October 2015), at least one of which resulted in a 35-month sentence. In addition, she
 9 has a 1986 felony burglary conviction and a 1986 felony aggravated felony forgery conviction,
 10 which appears to have involved forging the name of a deceased recipient of Social Security
 11 benefits for almost 10 years. Petitioner Lopez Nunez was taken into ICE custody in California
 12 on May 27, 2016 and subsequently transferred to the NWIPC on April 28, 2017. While in
 13 custody, she has been designated as a *Franco-Gonzalez* class member⁵ due to mental health
 14 concerns but deemed competent by the IJ. She was initially denied bond at a bond hearing
 15 conducted pursuant to *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) (“*Rodriguez* bond
 16 hearing”) on March 17, 2017 after an IJ found her to be an extreme flight risk. She was denied
 17 bond again on September 6, 2017 at a *Franco* bond hearing. Her bond appeal was subsequently
 18 dismissed by the BIA. She was denied bond a third time at a subsequent *Rodriguez* bond hearing
 19 on March 14, 2018. Her case was set back to the master calendar docket because her attorney
 20 indicated she wished to withdraw her application for relief but she subsequently changed her
 21 mind. Her attorney then withdrew, causing further delay. At the request of the Northwest
 22 Immigrant Rights Project (“NWIRP”), a second judicial competency hearing was conducted on
 23 December 3, 2018, after which Petitioner Lopez Nunez was deemed not competent. She was
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⁵ *Franco Gonzalez v. Holder*, 2014 WL 5475097, *3 (C.D. Cal. 2014) (“*Franco*”).

1 then given a court appointed attorney, otherwise known as a Qualified Representative ("QR").
2 The QR withdrew a bond request at the last bond hearing before the IJ on December 18, 2018
3 and it does not appear that the QR has ever requested another bond hearing. After two individual
4 hearings, the IJ denied all applications for relief and ordered Lopez Nunez removed on July 31,
5 2019. The BIA dismissed her appeal on February 21, 2020. She filed a petition for review
6 ("PFR") and a motion for stay of removal with the United States Court of Appeals for the Ninth
7 Circuit on March 16, 2020 and an automatic temporary stay is currently in effect.
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10 36. Marjoris Ramirez-Ochoa is a 43-year old native and citizen of Cuba. She was
11 originally paroled into the United States in 1984 and applied for adjustment of status under the
12 Cuban Adjustment Act. While her application was pending, she returned to Cuba and was
13 paroled back into the United States on July 3, 2002. Her application for adjustment was denied
14 on February 12, 2003, thereby terminated her parole. According to court records, Petitioner
15 Ramirez-Ochoa appears to have a 2002 conviction for shoplifting, 2005 and 2006 convictions for
16 petit theft and a 2016 conviction for theft in the third degree. On April 3, 2019, she was
17 convicted of felony robbery in the second degree, an offense that involved the use of a firearm.
18 She was sentenced to six months and released directly to ICE custody on April 4, 2019. She was
19 placed in removal proceedings and charge as an arriving alien inadmissible under INA §
20 212(a)(7)(A)(i)(I). At a bond hearing on October 8, 2019, the IJ found no jurisdiction for bond
21 as Petitioner Ramirez-Ochoa is detained under INA § 235(b). On March 5, 2020, the IJ issued a
22 written decision denying all applications for relief and ordered her removed to Cuba. Petitioner
23 Ramirez-Ochoa has reserved appeal but, as of today, has not yet filed a Notice of Appeal with
24 the BIA. She currently has an outstanding criminal warrant out of Snohomish County for
25 another second degree robbery.
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1 37. Maria Gonzalez-Mendoza is a 48-year old native and citizen of Mexico whose
2 original date of entry without inspection is unknown. She was apprehended by Border Patrol in
3 AZ on July 28, 2019 while engaging in alien smuggling. According to DHS records, Petitioner
4 Gonzalez-Mendoza was observed by Border Patrol Agents picking up illegal aliens at an
5 unpopulated area near the interstate in an area known for drug and human smuggling. The alien
6 passengers Plaintiff Gonzalez-Mendoza picked up were wearing camouflage clothes and booties
7 on their feet, tactics commonly used by illegal entrants to conceal their movements. She was
8 placed in removal proceedings, charged with inadmissibility pursuant to INA § 212(a)(6)(A)(i)
9 (entry without inspection), and transferred to the NWIPC on August 23, 2019. She is currently
10 detained under INA § 236(a). However, she was denied bond on November 18, 2019 after an
11 found her to be a flight risk. Her bond appeal is currently pending with the BIA. At this time,
12 her removal proceedings remain pending and she is scheduled for an individual hearing before an
13 IJ on March 31, 2020.

14 38. Joe Hlupheka Bayana is currently believed to be a 54-year old native and citizen
15 of Zimbabwe whose real name is Mketwa Phiri. He was admitted to the United States on May
16 23, 1993 on a nonimmigrant visa in the false name of Joe Bayana on a fraudulently obtained
17 South African passport. After entry, he obtained several visa extensions in that alias. After an
18 arrest, he was placed in removal proceedings on April 19, 2002 in the name Joe Bayana and
19 charged as being a South African national removable pursuant to INA § 237(a)(1)(B) (visa
20 overstay). On May 16, 2002, Petitioner Bayana presented a copy of the South African passport
21 to the IJ in support of his request for bond and was granted bond. On January 7, 2003, Bayana –
22 who never admitted to the IJ his true identity – admitted and conceded the allegations and
23 charges contained in the Notice to Appear and accepted an order of voluntary departure to South
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1 Africa. He subsequently failed to depart voluntarily and the order automatically converted to an
2 order of removal as a matter of law. He then failed to report in to DHS for removal twice. He
3 was taken into ICE custody on July 19, 2004 following release from jail on trespassing charges.
4 However, he had to be released on an Order of Supervision ("OSUP") on November 19, 2004
5 after ICE was unable to obtain a South African travel document to effect his removal. Since that
6 time, Bayana has been arrested approximately 22 times for charges ranging from trespassing,
7 larceny, drugs, assault and harassing communications. He was taken into ICE custody several
8 times following these arrests, but each time had to be released because ICE was unable to obtain
9 a South African travel document. From August 30, 2012 until April 5, 2018, he failed to report
10 in to ICE as required by the terms of his OSUP and he remained an immigration fugitive during
11 those years. In April 2018, Petitioner Bayana walked into the ICE Seattle Field Office in
12 Tukwila, WA accompanied by an attorney from NWIRP and asked for a new OSUP document
13 so that he could apply for work authorization. At that time, he still did not reveal his true
14 identity, and ICE required him to fill out a travel document application to South Africa. On
15 October 17, 2018, ICE revoked his release and took him into custody anticipating that it would
16 be receiving a South African travel document to effect his removal. Once in custody, Petitioner
17 Bayana filed a habeas petition on January 25, 2019. While the habeas petition was pending, ICE
18 was notified by the South African government that the real Joe Hlupheka Bayana was deceased.
19 ICE was provided with photographs, identity documents and fingerprint cards for the real Joe
20 Hlupheka Bayana. Despite multiple interviews under oath, however, Petitioner Bayana
21 continued to insist that he was the South African named Joe Bayana until ICE confronted him
22 with the results of a forensic fingerprint comparison. At that time, he finally revealed that he is
23 actually Mketwa Phiri, a citizen of Zimbabwe. On May 15, 2019, his habeas was dismissed with
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1 prejudice. From February 2019 to December 2019, Petitioner was documented as a failure to
2 comply because he refused to sign the travel document issued by Zimbabwe. He filed a motion
3 to reopen ("MTR") his removal proceedings and that motion was denied by the IJ on June 10,
4 2019. The BIA denied his appeal on November 22, 2019. He currently has a PFR pending and
5 temporary stay. A motion to dismiss the PFR and an opposition to the stay was filed by the
6 Government on February 12, 2020. ICE is currently in the process of conducting a one year post
7 order custody review ("POCR"), as required by the regulations, to determine whether Plaintiff
8 Bayana should be released.
9

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11 39. Leonidas Plutin Hernandez is a 59-year old native and citizen of Cuba who
12 applied for admission to the United States at the Del Norte Port of Entry on August 18, 2019
13 without valid entry documents. At that time, he claimed fear of return and was issued a Notice to
14 Appear ("NTA") under the Migrant Protocol Program. However, he was not returned to Mexico
15 and he was subsequently removed from the MPP program. As a result, his NTA was cancelled
16 and he was processed as an expedited removal under INA § 235(b) awaiting a credible fear
17 interview. After several transfers to ICE facilities on the southern border, he was transferred to
18 the NWIPC on March 1, 2020. On March 18, 2020, ICE served a new NTA placing him in
19 removal proceedings and charging him as an arriving alien inadmissible pursuant to INA §
20 212(a)(7)(A)(i). After having been identified by IHSC as having a medical condition that places
21 him at higher risk for severe illness due to COVID-19 according to CDC guidelines, ICE
22 reviewed his case and determined that he could be released. On March 25, 2020, ICE released
23 Petitioner Plutin Hernandez on humanitarian parole pursuant to 8 C.F.R. § 212.5(b).
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27 40. Kelvin Melgar-Alas is a 40-year old native and citizen of El Salvador who is
28 believed to have originally entered the United States without inspection in 1990. He adjusted to

1 lawful permanent resident status in 2001. In 2008, he was convicted of distribution of
2 methamphetamine in violation of 21 U.S.C. § 846, 841(a)(1),(b)(1) and sentenced to 120 months
3 in prison. In 2013, Petitioner Melgar-Alas was convicted of a RICO offense in violation of 18
4 U.S.C. § 1962(d) for his membership and participation in the Mara Salvatrucha, or MS-13 gang.
5 In his plea, Petitioner Melgar-Alas agreed that he was a “shot caller” of the Hollywood clique of
6 the MS-13 from 1995 to May 2009 and that, in that role, he agreed with other members of the
7 MS-13 that the gang would engage in “numerous acts of violence and other crimes, including
8 drug trafficking and extortion by threat of violence.” He was sentenced to 27 months in prison
9 and as released directly to ICE on July 18, 2018. He was placed in removal proceedings and
10 charged with removability pursuant to INA §§ 237(a)(2)(B)(i) (controlled substance offense) and
11 237(a)(2)(A)(iii) (aggravated felony), to wit INA §§ 101(a)(43)(B) (drug trafficking) and
12 101(a)(43)(J) (RICO conviction). Due to his aggravated felony convictions, his eligibility for
13 relief from removal is extremely limited. On February 25, 2019, the IJ denied his motion to
14 terminate and applications for relief and ordered him removed to El Salvador. The BIA denied
15 his motion to remand and dismissed his appeal on August 7, 2019. He currently has a PFR
16 pending and stay issued by the Ninth Circuit. On February 6, 2020, he had a bond hearing
17 conducted pursuant to *Aleman Gonzales v. Sessions*, 323 F.R.D. 616, 3:18-cv-01869-JSC (N.D.
18 Cal. July 20, 2018) (“*Aleman* bond”) and the IJ denied bond finding him to be both a danger and
19 a flight risk. His bond appeal is currently pending at the BIA.

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24 41. Jesus Gonzalez Herrera is a 46-year old native and citizen of Mexico who came
25 into ICE custody following a conviction on July 22, 2019 in Idaho for burglary. According to
26 arrest and court records, Plaintiff Gonzalez Herrera was the driver of a stolen vehicle that left the
27 roadway, hit a power pole and flipped, resulting in injuries to his partner and two minor children.
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1 In return for his plea to burglary, charges for leaving the scene of an accident involving
2 death/injury were dismissed. He was transferred to the NWIPC on July 26, 2019 and is charged
3 with inadmissibility pursuant to INA § 212(a)(6)(A)(i) (entry without inspection). He is
4 currently detained under INA § 236(a). At a bond hearing on February 13, 2020, his attorney
5 from NWIRP withdrew his bond request before the IJ without prejudice. At an individual
6 hearing on March 24, 2020, Petitioner Gonzalez Herrera admitted to the IJ under oath that he had
7 he had been drinking alcohol and speeding at the time of the accident that injured his pregnant
8 partner and children; that he fled the scene of the accident; and that his children were
9 hospitalized as a result of the accident. At the conclusion of that hearing, the IJ determined that
10 he did not merit a favorable exercise of discretion, denied his applications for relief, and ordered
11 him removed. Petitioner Gonzalez Herrera has reserved appeal and is still within the 30-day
12 appeal window. Until his removal order becomes administratively final, he remains detained
13 under INA § 236(a) and may request a bond hearing before the Immigration Judge. ICE would
14 not oppose a request for a bond hearing before an Immigration Judge.

18 42. Karlana Dawson is a 48-year old native and citizen of Jamaica who was initially
19 encountered in 1993 when she attempted to enter the United States from Canada using a U.S.
20 birth certificate under a different identity. She was placed in exclusion proceedings in 1993 and
21 ordered deported in absentia by an IJ on February 23, 1994. On July 20, 2010, she was
22 convicted of Importing Hashish Oil in violation of 21 U.S.C. §§ 952(a), 960 under an alias and
23 received a 63 month sentence. She was ordered removed by an IJ on the Institutional Hearing
24 Program ("IHP") docket, i.e. while she was still serving her criminal sentence, on May 30, 2013.
25 Her appeal was rejected by the BIA and she was removed to Jamaica on April 24, 2014. On
26 February 8, 2019, Petitioner Dawson applied for admission at the San Ysidro Port of Entry
27
28

1 falsely claiming to be a U.S. citizen by birth and presented an Ohio identity card in a false
 2 identity. She was referred for secondary inspection where she subsequently admitted her true
 3 identity and claimed fear of return to Jamaica. She was placed in removal proceedings following
 4 a credible fear interview pursuant to an NTA issued on March 18, 2019 charging her as an
 5 arriving alien inadmissible pursuant to INA § 212(a)(7)(A)(i). Due to her aggravated felony
 6 drug trafficking conviction, her eligibility for relief is extremely limited. In April 2019, ICE
 7 denied her request for parole. On June 10, 2019, the IJ denied her applications for relief and
 8 ordered her removed on Jamaica. The BIA dismissed her appeal on December 2, 2019. She
 9 currently has a PFR pending and a temporary stay of removal issued by the Ninth Circuit. On
 10 January 28, 2020, Petitioner Dawson filed an application for a u-visa and the application
 11 currently remains pending before USCIS. Petitioner Dawson has filed a motion with the Ninth
 12 Circuit asking to hold her PFR in abeyance while the application is adjudicated. To the best of
 13 the Department's knowledge and belief, that motion has not been ruled on.

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

16 Executed this 27th day of March, 2020,

17 DREW H
 18 BOSTOCK

Digitally signed by DREW H
 BOSTOCK
 Date: 2020.03.27 12:11:02
 -07'00'

19 Drew H. Bostock
 20 Officer in Charge
 21 U.S. Department of Homeland Security
 22 U.S. Immigration and Customs Enforcement
 23 Tacoma, WA