

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

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

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

13
14 Attorneys for Plaintiffs (continued on next page)

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

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

21 v.

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

24 Defendants.
25
26
27
28

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

**Plaintiffs' Ex Parte Application for
Leave to File Supplemental Post-
Hearing Briefing and Response to
Defendants' April 15 Notice of
Supplemental Factual Information**

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

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

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

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

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

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

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

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

Attorneys for Plaintiffs (continued from previous page)

*Admitted Pro Hac Vice

**Pro Hac Vice Application Forthcoming

1 Pursuant to Local Rule 7-19, Plaintiffs hereby apply ex parte for an order
2 granting Plaintiffs leave to file the attached Supplemental Post-Hearing Briefing
3 and the accompanying declarations (a) responding to questions posed by the Court
4 at the April 13, 2020 hearing; (b) responding to arguments made by Defendants in
5 the papers they filed the morning of the hearing, at the hearing itself, and in the
6 post-hearing papers they filed on April 15, 2020; and (c) advising the Court of
7 relevant developments subsequent to the hearing.

8 The application is made and based on the ground that this information is
9 important to fully advising the Court on the circumstances that warrant the relief
10 sought by Plaintiffs' emergency motions for preliminary injunction and class
11 certification and to correct the record with respect to incomplete or misleading
12 information submitted by Defendants at, shortly before, and subsequent to the
13 hearing. For example, in their April 15, 2020 filing, Defendants failed to provide
14 any updated information about the number of individuals detained in ICE facilities
15 who have contracted COVID-19 since the April 13, 2020 hearing. *See* Declaration
16 of Russell Hott, ECF No. 125-1 ("Hott Decl."). Further, although Defendants
17 assert that their Pandemic Response Requirements ("PRR") were "developed in
18 consultation with the [Centers for Disease Control and Prevention ("CDC")],"
19 Defendants also fail to provide the Court with any information as to *how or if* the
20 PRR comply with the CDC's recommendations. *See* Hott Decl. ¶ 14. Plaintiffs'
21 Supplemental Post-Hearing Briefing seeks to provide the Court with the relevant
22 information Defendants have failed to provide.

23 Plaintiffs' counsel has advised Defendants' counsel of their intent to file this
24 application. Defendants have notified Plaintiffs that they oppose this application.
25 Should the Court grant Plaintiffs' application, Defendants have requested the
26 opportunity to respond within three days. *See* attached declaration from Jared
27

Davidson and Exhibit A. Given the emergent nature of COVID-19 and Defendants' ongoing failure to respond reasonably to the pandemic, Plaintiffs oppose Defendants' requested response. Defendants' counsel, with whom Plaintiffs have communicated regarding this application, is:

Lindsey M. Vick
450 5th Street N.W., Rm. 5223
Washington, D.C. 20530
Telephone: 202-532-4023
Email: lindsay.vick@usdoj.gov.

Dated: April 16, 2020

Respectfully Submitted,

/s/ Timothy P. Fox
Timothy P. Fox
Elizabeth Jordan
Maria del Pilar Gonzalez Morales
CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER

/s/ Stuart Seaborn
Stuart Seaborn
Christina Brandt-Young
Melissa Riess
DISABILITY RIGHTS
ADVOCATES

/s/ William F. Alderman
William F. Alderman
Mark Mermelstein
Jake Routhier
ORRICK, HERRINGTON &
SUTCLIFFE LLP

Attorneys for Plaintiffs

/s/ Michael W. Johnson

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

/s/ Lisa Graybill

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

DECLARATION OF JARED DAVIDSON

I, Jared Davidson, declare:

1. I am an attorney with the Southern Poverty Law Center, one of the counsel for Plaintiffs in this action. I have personal knowledge of the facts stated in this declaration and if called as a witness I could testify and would testify competently to those facts.

2. On April 15, 2020, William Alderman, Plaintiffs’ co-counsel, emailed Defendants’ counsel Lindsay M. Vick, notifying Defendants of Plaintiffs’ intent to file a supplemental post-hearing brief and declarations and requesting Defendants’ position on the filing. The following day, Ms. Vick responded that Defendants did not oppose the filing “to the extent that Plaintiffs’ filing goes beyond responding to the Court’s questions at the hearing” and requesting a three-day period to respond to any new declarations or arguments.

3. In response, I informed Ms. Vick that Plaintiffs could not stipulate to Defendants' request for an extension. I notified Ms. Vick that we would note Defendants' opposition to Plaintiffs' filing. Ms. Vick then requested that Plaintiffs "specifically note that, in addition to our opposition, should the Court grant Plaintiffs' motion, Defendants are seeking a response and a 3-day period to respond." Plaintiffs have so notified the Court. *See* attached Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.
Executed at New Orleans, Louisiana on April 16, 2020.

/s/ Jared Davidson
Jared Davidson

EXHIBIT A

Coutoumanos, Leigh

From: Jared Davidson <Jared.Davidson@splcenter.org>
Sent: Thursday, April 16, 2020 12:02 PM
To: Coutoumanos, Leigh
Subject: FW: Fraihat v. U.S. Immigration and Customs Enforcement, No 19-cv-01546 JGB (SHKx)

*** EXTERNAL EMAIL ***



Jared Davidson he/him/el
Senior Staff Attorney | Criminal Justice Reform
Southern Poverty Law Center
T 504.526.1510
jared.davidson@splcenter.org | www.splcenter.org
Admitted in Louisiana, New York

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify The Southern Poverty Law Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

From: Vick, Lindsay (CIV) <Lindsay.Vick@usdoj.gov>
Sent: Thursday, April 16, 2020 8:48 AM
To: Jared Davidson <Jared.Davidson@splcenter.org>; Alderman, William F. <walderman@orrick.com>
Cc: Robins, Jeffrey (CIV) <Jeffrey.Robins@usdoj.gov>; Dichter, Anna L. (CIV) <Anna.L.Dichter@usdoj.gov>; Sarkany, Sergio F. (CIV) <Sergio.F.Sarkany@usdoj.gov>; 'Tim Fox' <tfox@creeclaw.org>; ejordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; 'Stuart Seaborn' <sseaborn@dralegal.org>
Subject: RE: Fraihat v. U.S. Immigration and Customs Enforcement, No 19-cv-01546 JGB (SHKx)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jared,

In that case, Defendants ask that Plaintiffs specifically note that, in addition to our opposition, should the Court grant Plaintiffs' motion, Defendants are seeking a response and 3-days to respond.

Thank you,

Lindsay M. Vick
Trial Attorney
District Court Section
Office of Immigration Litigation
United States Department of Justice
P.O. Box 868 Ben Franklin Station
Washington, D.C. 20044
Tel: 202-532-4023

From: Jared Davidson <Jared.Davidson@splcenter.org>

Sent: Thursday, April 16, 2020 9:27 AM

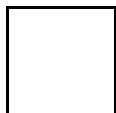
To: Vick, Lindsay (CIV) <lvick@CIV.USDOJ.GOV>; Alderman, William F. <walderman@orrick.com>

Cc: Robins, Jeffrey (CIV) <jrobbins@CIV.USDOJ.GOV>; Dichter, Anna L. (CIV) <adichter@CIV.USDOJ.GOV>; Sarkany, Sergio F. (CIV) <ssarkany@CIV.USDOJ.GOV>; 'Tim Fox' <tfox@creeclaw.org>; ejordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; 'Stuart Seaborn' <sseaborn@dralegal.org>

Subject: RE: Fraihat v. U.S. Immigration and Customs Enforcement, No 19-cv-01546 JGB (SHKx)

Counsel,

Plaintiffs cannot stipulate to Defendants' request for an extension given the emergent nature of COVID-19 and Defendants' ongoing failure to respond reasonably to the pandemic. We further note that Defendants provided the PRR one hour before oral argument and therefore we reject your position that Plaintiffs' response must be narrowed. Unless we hear otherwise, we will note Defendants oppose Plaintiffs' response.



Jared Davidson he/him/el

Senior Staff Attorney | Criminal Justice Reform

Southern Poverty Law Center

T 504.526.1510

jared.davidson@splcenter.org | www.splcenter.org

Admitted in Louisiana, New York

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify The Southern Poverty Law Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

From: Vick, Lindsay (CIV) <Lindsay.Vick@usdoj.gov>

Sent: Thursday, April 16, 2020 8:04 AM

To: Alderman, William F. <walderman@orrick.com>

Cc: Robins, Jeffrey (CIV) <Jeffrey.Robins@usdoj.gov>; Dichter, Anna L. (CIV) <Anna.L.Dichter@usdoj.gov>; Sarkany, Sergio F. (CIV) <Sergio.F.Sarkany@usdoj.gov>; Jared Davidson <Jared.Davidson@splcenter.org>; 'Tim Fox' <tfox@creeclaw.org>; ejordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; 'Stuart Seaborn' <sseaborn@dralegal.org>

Subject: RE: Fraihat v. U.S. Immigration and Customs Enforcement, No 19-cv-01546 JGB (SHKx)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Bill,

We object to the extent that Plaintiffs' filing goes beyond responding to the Court's questions at the hearing, but we would request 3 days to respond to any new declarations or argument that Plaintiffs present.

Thank you,

Lindsay M. Vick

Trial Attorney

District Court Section

Office of Immigration Litigation

United States Department of Justice

P.O. Box 868 Ben Franklin Station

Washington, D.C. 20044
Tel: 202-532-4023

From: Alderman, William F. <walderman@orrick.com>
Sent: Thursday, April 16, 2020 12:28 AM
To: Vick, Lindsay (CIV) <lvick@CIV.USDOJ.GOV>
Cc: Robins, Jeffrey (CIV) <jerobins@CIV.USDOJ.GOV>; Dichter, Anna L. (CIV) <adichter@CIV.USDOJ.GOV>; Sarkany, Sergio F. (CIV) <ssarkany@CIV.USDOJ.GOV>; 'Jared Davidson' <Jared.Davidson@splcenter.org>; 'Tim Fox' <tfox@creeclaw.org>; 'ejordan' <ejordan@creeclaw.org>; 'Lisa Graybill' <Lisa.Graybill@splcenter.org>; 'Stuart Seaborn' <sseaborn@dralegal.org>
Subject: RE: Fraihat v. U.S. Immigration and Customs Enforcement, No 19-cv-01546 JGB (SHKx)

Hi Lindsay – Plaintiffs intend to move tomorrow for leave to file a supplemental post-hearing brief and accompanying declarations responding to questions posed by the Court at the April 13, 2020 hearing; responding to the papers you filed the morning of the hearing; responding to matters defendants stated at the hearing and will be stating in the papers we understand you'll be filing today; and advising the Court of relevant developments subsequent to the hearing. Please let us know whether we can state in the motion that defendants have no objection. Thanks, and best regards. Bill

William F. Alderman
Senior Counsel

Orrick
San Francisco 
T +1-415-773-5944
walderman@orrick.com



Securities Litigation Blog



'Stuart Seaborn'
<sseaborn@dralegal.org>

NOTICE TO RECIPIENT | This e-mail is meant for only the intended recipient of the transmission, and may be a communication privileged by law. If you received this e-mail in error, any review, use, dissemination, distribution, or copying of this e-mail is strictly prohibited. Please notify us immediately of the error by return e-mail and please delete this message from your system. Thank you in advance for your cooperation.

For more information about Orrick, please visit <http://www.orrick.com>.

In the course of our business relationship, we may collect, store and transfer information about you. Please see our privacy policy at <https://www.orrick.com/Privacy-Policy> to learn about how we use this information.

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

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

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

13
14
15 Attorneys for Plaintiffs (continued on next page)

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

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

21 v.

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

24 Defendants.
25
26
27
28

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

**Plaintiffs' Supplemental Post-
Hearing Briefing and Response to
Defendants' April 15 Notice of
Supplemental Factual Information**

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

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

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

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

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

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

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

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

26 Attorneys for Plaintiffs (continued from previous page)

27 *Admitted Pro Hac Vice

28 **Pro Hac Vice Application Forthcoming

TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3	I. Issuing Guidance Alone is not a Medically Reasonable	
4	Response to the COVID-19 Pandemic.	1
5	II. Defendants Are Currently Failing to Ensure that Detention	
6	Centers Implement the PRR Directives.....	4
7	III. Defendants Have a Long History of Failing to Oversee,	
8	Monitor and Ensure Implementation of Detention Center	
9	Policies, and Defendants Have Provided No Information on	
10	How Oversight of COVID-19 Will Be Any Different.	6
11	IV. ICE’s PRR Contradicts Important Aspects of the CDC’s	
12	Guidance.	9
13	V. ICE’S Own Reports of Confirmed Cases Establish Its Response	
14	Is Not Working.	11
15	VI. The CDC Guidance Does Not Absolve Defendants’ Failure to	
16	Implement Social Distancing, and Their Failure to Release	
17	Evinces Deliberate Indifference.	14
18	VII. Defendants’ Arguments Regarding Individual Circumstances of	
19	Facilities Are Meritless.....	17
20	VIII. This Action Does Not Preclude or Conflict with Other Cases	
21	Seeking Individualized or Other Relief Related to COVID-19.	18
22	IX. The Subclasses Addressed in this Emergency Action Do Not	
23	Expand the Class in the Original Complaint, But Rather Are	
24	Merely a Subset of that Proposed Class.	20
25	X. CONCLUSION.....	22
26		
27		
28		

TABLE OF AUTHORITIES

Case	Page
<i>Anderson v. California Dep’t of Corrs. & Rehab.</i> , No. 15-CV-02013-MEJ, 2016 WL 7013246 (N.D. Cal. Dec. 1, 2016)	18
<i>Braggs v. Dunn</i> , 317 F.R.D. 634 (M.D. Ala. 2016).....	17
<i>Brown v. Plata</i> , 563 U.S. 493 (2011).....	2
<i>Disability Rights Montana, Inc. v. Batista</i> , 930 F.3d 1090 (9th Cir. 2019)	17
<i>Farmer v. Brennan</i> , 511 U.S. 825 (1994).....	4
<i>Fraihat v. Wolf</i> , No. ED CV 20-00590 TJH (KSx) (C.D. Cal. Mar. 30, 2020).....	18
<i>Harris v. Thigpen</i> , 941 F. 2d 1495 (11th Cir. 1991)	2
<i>Helling v. McKinney</i> , 509 U.S. 25 (1993).....	20
<i>Heredia Mons v. McAleenan</i> , Case No. 1:19-cv-01593-JEB (D.D.C. Mar. 31, 2020)	19
<i>Madrid v. Gomez</i> , 889 F. Supp. 1146 (N.D. Cal. 1995).....	2, 3
<i>Mons v. McAleenan</i> , No. CV 19-1593 (JEB), 2019 WL 4225322 (D.D.C. Sept. 5, 2019)	19
<i>Parsons v. Ryan</i> , 754 F.3d 657 (9th Cir. 2014)	17, 18, 20

1	<i>Pride v. Correa,</i>	
2	719 F.3d 1130 (9th Cir. 2013)	18

One hour before oral argument, Defendants shared—for the first time—the April 10, 2020 Pandemic Response Requirements (“PRR”) for COVID-19, which themselves had been promulgated on the eve oral of argument and months after this pandemic began. Defendants now erroneously contend this guidance immunizes them from any claim of deliberate indifference and seek to further substantiate that claim in their April 15 filing. Defendants’ contention is not only flawed as a matter of law it is also belied by the dangerous—and deadly—conditions that still exist in its detention facilities notwithstanding ICE’s last-minute guidance. As detailed below, Defendants’ PRR does not remediate the myriad of other serious systemic deficiencies in ICE’s response to COVID-19, such as inadequate staffing, resources, oversight, and competence. For this reason alone, Defendants’ argument fails. But there is more. Defendants’ PRR is itself deficient and contradicts crucial aspects of the CDC’s March 23 Interim Guidance on Management of COVID-19 in Correctional and Detention facilities “CDC Guidance”). Even more alarming, Defendants are dangerously re-enacting their long history of oversight failures by failing to ensure implementation of even their own deficient PRR. Indeed, consistent with their admission at oral argument that they cannot “control” what happens in detention facilities, Plaintiffs’ evidence attached hereto depicts in harrowing details that detention facilities remain dangerously ill-equipped to combat the COVID-19 pandemic, thereby threatening the lives of Plaintiffs and the putative subclass.

Plaintiffs hereby respectfully submit this supplemental brief to address and clarify legal and factual issues raised at the telephonic hearing on April 13, 2020, and in Defendants’ Notice of Supplemental Factual Information of April 15, 2020.

I. Issuing Guidance Alone is not a Medically Reasonable Response to the COVID-19 Pandemic.

At oral argument, Defendants erroneously contended that the issuance of

1 their PRR defeats any claim of deliberate indifference to the substantial and deadly
2 risks of COVID-19. Defendants' April 15 Supplement apparently seeks to
3 substantiate that flawed argument through the Declaration of Acting Assistant
4 Director Russell Hott. Defendants' argument is not only wrong as a matter of well-
5 established law but it is also a dangerous proposition that this Court should reject.

6 As detailed in Plaintiffs' prior briefing, Defendants' failure to create an
7 adequate healthcare system constitutes deliberate indifference where there are
8 "systemwide deficiencies in the provision of medical . . . care that, taken as a
9 whole, subject [people in ICE detention] to a substantial risk of serious harm."
10 *Brown v. Plata*, 563 U.S. 493, 505 n.3 (2011). For example, deliberate indifference
11 may be shown by "systemic and gross deficiencies in staffing, facilities,
12 equipment, or procedures" that "den[y] access to adequate medical care," *Harris v.*
13 *Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991) (quotations and citations omitted),
14 as well as by inadequate infection control and quality oversight procedures, *see*,
15 *e.g.*, *Madrid v. Gomez*, 889 F. Supp. 1146, 1204-05, 1258 (N.D. Cal. 1995).

16 This well-established law demonstrates the fundamental error in Defendants'
17 contention that the PRR, in and of itself, is sufficient to fulfill their constitutional
18 obligations during the COVID-19 pandemic. Even if the PRR were comprehensive
19 and compliant with CDC recommendations (it is not, as explained in Section IV
20 below), the evidence nevertheless establishes that other serious defects in
21 Defendants' response to the COVID-19 pandemic, "taken as a whole," subject
22 Plaintiffs and the putative subclass to a substantial risk of serious harm. *Brown*,
23 563 U.S. at 505 n.3. As detailed in Plaintiffs' moving papers and their evidence in
24 support, these dangerous and systemic defects include delays in the provision of
25 care, inadequate staffing, inadequate resources, and failures of meaningful
26 oversight or monitoring of detention facilities.¹ COVID-19 is exponentially
27

28 ¹ See, *e.g.*, Plaintiffs' Memorandum in Support of Preliminary Injunction, Dkt. 81-

1 compounding these pre-existing problems, because managing the pandemic
2 demands even greater amounts of staffing, resources, and oversight.

3 Defendants have not offered any evidence—including in their April 15
4 filing—showing that ICE’s medical care system has sufficient staff, resources,
5 oversight, and basic competency to respond to the COVID-19 pandemic. In fact, at
6 oral argument, Defendants admitted that ICE has oversight responsibility over the
7 entire detention system but also admitted that they have *no control* over what
8 happens inside individual detention centers. That is precisely Plaintiffs’ point and
9 constitutes a material, if not dispositive, concession: Defendants’ admitted lack of
10 any ability to “control” the quality of medical care at the individual facilities means
11 that Defendants are in no position to ensure that constitutionally adequate care is
12 provided during the COVID-19 pandemic.² Indeed, in Defendants’ April 15 filing,
13 Acting Assistant Director Hott fails to provide any information whatsoever on how
14 Defendants actually intend to ensure implementation of the PRR. *See Madrid*, 889
15 F. Supp. at 1258 (“[a] primary component of a minimally acceptable correctional
16 health care system is the implementation of procedures to review the quality of
17 medical care being provided.”). In fact, Acting Assistant Director Hott explicitly
18 admits key areas where ICE is not conducting necessary oversight regarding
19 COVID-19, including tracking of positive cases amongst contractors in its facilities
20 and the number of confirmed cases of other detained individuals who are
21 imprisoned at the same facilities as people in ICE detention. Declaration of
22 Richard Hott (“Hott Decl.”) at ¶¶ 6,7. As Dr. Venters points out in his second
23 supplemental report: “This lack of basic tracking of deaths and illness among staff
24 and detained people in the very facilities that ICE utilizes to detain ICE detainees
25

26 1 at 12-13; Initial Declaration of Homer Venters in Support of Preliminary
27 Injunction, Dkt. 81-11 at 6, 12-14; Plaintiffs’ Reply in Support of Preliminary
28 Injunction, Dkt. 113 at 8-9; Supplemental Declaration of Homer Venters, Dkt. 113-
2 at 6-7.

² See, e.g., Supplemental Declaration of Homer Venters, Dkt. 113-2 at 6-7.

1 represents an egregious disregard for basic outbreak management.” Venters
2 Second Suppl. Decl. ¶ 8(d). These dangerous omissions are just the tip of the
3 iceberg in terms of Defendants’ oversight failures that they can—and, as the
4 custodial authority ultimately responsible for the care of detained immigrants,
5 must—correct to protect the lives of people in their custody.

6 Contrary to Defendants’ claims at oral argument, “having stripped
7 [Plaintiffs] of virtually every means of self-protection,” Defendants cannot simply
8 issue *guidance* and then “let the state of nature take its course” in ICE’s detention
9 centers. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). Such a position is as
10 dangerous as it is unconstitutional.

11 **II. Defendants Are Currently Failing to Ensure that Detention** 12 **Centers Implement the PRR Directives.**

13 At oral argument, Defendants contended that their responses to the COVID-
14 19 pandemic—including the April 10 PRR—are adequate to ensure the safety of
15 those in ICE custody. Further, Defendants’ April 15 Supplemental Factual
16 Information includes the Declaration of Acting Assistant Director Hott who
17 apparently is charged with oversight of conditions in detention centers and
18 compliance with ICE standards, including the PRR. Not only are Defendants’
19 protocols inadequate for the reasons detailed in Section IV, but Defendants are
20 wholly failing to ensure that the PRR is actually being implemented in detention
21 centers across the country. *See generally* Second Suppl. Decl. of Homer Venters in
22 Supp. of Mot. for Prelim. Inj. and Class Certification ¶ 8.

23 As set forth in harrowing detail in the attached declarations, detained
24 individuals and legal and advocacy organizations continue to state, as they have for
25 weeks, that ICE is not implementing needed measures to combat COVID-19.³
26

27 ³ *See generally*: Decls. Of Rebecca Merton (“Merton Decl.”); Francis L. Conlin
28 (“Conlin Decl.”); Linda Corchado (“Corchado Decl.”); Perla P. Esquivel (“Esquivel
Decl.”); Rose Murray (“Murray Decl.”); Andres Jimenez (“Jimenez Decl.”); Alex

1 Indeed, Freedom for Immigrants, which provides visitation programs in ICE
2 detention facilities has reported that “there has been no material changes in
3 protocols or procedures following the April 10, 2020 guidelines” in at least eight
4 different detention centers.⁴ For example, and in contravention of the PRR,
5 detention center staff are failing to: provide detainees with information on the
6 symptoms of COVID-19, or how to respond to those symptoms⁵; limit transfers of
7 detained persons⁶ (on April 10 between 80-90 people were transferred into Pine
8 Prairie facility in Louisiana⁷;) promote social distancing among staff or detainees;⁸
9 provide access to personal protective equipment, soap, hand sanitizer and cleaning
10 products;⁹ or carry out additional sanitizing procedures¹⁰ (at Etowah detainees “do
11 not have disinfectant to clean”¹¹ and “have been given no instructions by staff on
12 social distancing or other hygiene practices”¹²; at Adelanto, in a dorm containing
13 about 60 at-risk people the hand sanitizer dispenser “has been empty for more than
14

15 _____
16 Hernandez(“Hernandez Decl.”); Melvin Murillo Hernandez(“Murillo Decl.”);
17 Aristoteles Sanchez Martinez (“Martinez Decl.”) Jose Tapete Gonzalez(“Gonzalez
18 Decl.”); *see also* Freedom for Immigrants, *COVID-19 In ICE Custody: Biweekly
19 Analysis & Update* (Apr. 24, 2020), (regarding on the ground conditions in ICE
detention centers and ICE’s inadequate response to the COVID-19 pandemic
between March 23 and April 14, 2020),
<https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5e970e31c166a47008b8cc3d/1586957874230/FFI+April+14+COVID-19+FINAL.pdf>

20 ⁴ Merton Decl. ¶23.

21 ⁵ Decls. of Merton ¶8; Conlin ¶19; Esquivel¶¶6-8; Hernandez ¶3.

22 ⁶ Decls. of Merton ¶¶7.b.; 9, Conlin ¶¶ 16, 20; Hernandez ¶ 16; Murray ¶¶ 9, 23.

23 ⁷ Murray Decl. ¶9.

24 ⁸ Decls. of Merton ¶¶ 7.b.; Corchado ¶¶ 11, 12, 15, 19; Esquivel ¶¶ 3-4, 11;
25 Gonzalez ¶¶ 4, 7-8; Hernandez ¶¶ 5-7; Murray ¶¶ 10, 14, 17, 24; Sanchez Martinez
¶¶ 8-10; Jimenez Decl. 13.

26 ⁹ Decls. of Merton ¶¶ 5-11; Conlin ¶¶ 7, 25; Corchado ¶¶ 11, 12, 17; Esquivel ¶ 10;
27 Gonzalez ¶¶ 6, 8, 10-11; Hernandez ¶¶ 8-12; Murillo ¶¶ 6-8; Murray ¶¶ 11, 16, 22,
28 Sanchez Martinez ¶¶ 11, 13-14.

¹⁰ Decls. of Conlin ¶ 21; Corchado ¶¶ 11, 12, 17; Hernandez ¶ 4; Murillo ¶ 8,
Sanchez Martinez ¶¶ 11; Jimenez Decl. ¶¶ 7, 9.

¹¹ Hernandez Decl. ¶ 10.

¹² *Id.* ¶ 13.

1 two weeks” and cleaning crews are “just cleaning with water” because there is no
2 disinfectant.¹³)

3 While the situation on the ground reveals a chaotic and dangerous response
4 to COVID-19, ICE’s own leadership seems to be equally unclear of what directives
5 should be followed. For example, as recently as April 14, 2020 Defendants
6 submitted a declaration from Patrick Gartland, Facility Administrator for Folkston
7 ICE Processing Center in Georgia which lacks any mention of the PRR, much less
8 that it is being implemented at this facility.¹⁴ These ongoing examples of ICE’s
9 failure to oversee implementation of its own guidance echo the troubling history
10 set forth directly below of ICE failing to ensure that detention centers comply with
11 its own standards.

12
13 **III. Defendants Have a Long History of Failing to Oversee, Monitor**
14 **and Ensure Implementation of Detention Center Policies, and**
15 **Defendants Have Provided No Information on How Oversight of**
16 **COVID-19 Will Be Any Different.**

17 Defendants have submitted to the Court several documents purporting to
18 provide protocols for detention centers to follow in connection with the COVID-19
19 pandemic. Defendants have not, however, submitted any declarations establishing
20 that these protocols are actually being followed in detention centers. This is
21 consistent with Defendants’ long history of issuing various directives without any
22 structure in place to ensure compliance, and those directives have subsequently
23 been shown not to have been implemented.

24 OIG reports provide ample evidence that ICE systematically fails to ensure
25 that facilities follow ICE’s own standards. In 2018, OIG concluded that “ICE’s
26 difficulties with monitoring and enforcing compliance with detention standards

27 ¹³ Gonzalez Decl. ¶¶ 10-11)

28 ¹⁴ ECF 29-1, Decl. of Patrick Gartland, *Benavides v. Gartland*, No. 5:20-cv-46
(S.D. Ga.) attached as exhibit F to the Jordan decl.

1 stretch back many years and continue today.”¹⁵ Even in instances where
2 monitoring has occurred, ICE fails “to ensure that identified deficiencies are
3 consistently corrected.”¹⁶

4 Defendants have likewise failed to monitor and ensure implementation of its
5 own directive to provide accommodations to people with disabilities. On
6 December 15, 2016, ERO issued an accommodation directive, which included
7 specific procedures to be followed in connection with providing accommodations
8 to people with disabilities in ICE custody.¹⁷ Once again, ICE failed to monitor and
9 ensure the implementation of this directive. For example, staff at the Adelanto
10 Detention Center, one of the largest ICE facilities in the country, failed to identify,
11 track or provide disability-related accommodations.¹⁸ ICE’s failure to ensure that
12 detention centers implement the accommodation directive has resulted in the denial
13 of essential services for people who are blind or deaf, who are detained without
14 being provided effective communication.¹⁹

15 ¹⁵ See Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-18-67: ICE’s*
16 *Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained*
17 *Compliance or Systemic Improvements*, at 4 (June 26, 2018),
18 <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>
(Compl. ¶ 176 n.75); Office of Inspector Gen., U.S. Dep’t of Homeland Sec.,
19 *OIG-19-18: ICE Does Not Fully Use Contracting Tools to Hold Detention Facility*
20 *Contractors Accountable for Failing to Meet Performance Standards*, at 5 (Jan. 29,
2019), [https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-](https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf)
21 [Jan19.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf); (Compl. ¶ 160 n.45).

22 ¹⁶ Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-18-67* at 11.

23 ¹⁷ U.S. Immigr. & Customs Enf’t, *Directive 11071.1 Assessment and*
24 *Accommodation for Detainees with Disabilities*, (Dec 15, 2016).

25 ¹⁸ See Disability Rights Cal., *There is No Safety Here: The Dangers for People with*
26 *Mental Illness and Other Disabilities in Immigration Detention at GEO Group’s*
27 *Adelanto ICE Processing Center*, at 40 (Mar. 5, 2019),
28 [https://www.disabilityrightsca.org/system/files/file-](https://www.disabilityrightsca.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf)
[attachments/DRC_REPORT_ADELANTO-](https://www.disabilityrightsca.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf)
[IMMIG_DETENTION_MARCH2019.pdf](https://www.disabilityrightsca.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf)

¹⁹ See *id.* at 42 and Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-*
18-86, Management Alert- Issues Requiring Action at the Adelanto ICE Processing
Center in Adelanto, Cal. at 6 (Sept. 27, 2018),
<https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf>

1 Similarly, on September 4, 2013, Defendants issued a new directive
2 regarding the use of segregated housing in ICE facilities. This directive, like the
3 April 10 PRR, included specific protocols that detention centers were supposed to
4 implement.²⁰ Nevertheless multiple reports, including reports issued by
5 Department of Homeland Security (DHS) offices, have repeatedly documented the
6 failure by detention centers to implement the segregation directive.²¹ Most
7 significantly, for over five years after issuance of this directive, Ellen Gallagher,
8 former policy advisor for DHS' Office of Civil Rights and Civil Liberties,
9 investigated and documented hundreds of examples of ICE's inappropriate use of
10 solitary confinement.²² As recently as June 2019, the Office of Inspector General
11 (OIG) continued to find significant violations of Enforcement Removal operation's
12 (ERO) segregation directive noting that "[three out of four facilities investigated]
13 identified serious issues with the administrative and disciplinary segregation of
14 detainees [...] These practices violate ICE detention standards and infringe on
15 detainee rights."²³

16 As these examples startlingly foreshadow, ICE cannot and will not ensure
17 that its April 10 PRR is followed, nor can it ensure that the other systemic
18 deficiencies in its COVID-19 response—*e.g.*, inadequate staffing and resources—
19

20 ²⁰ U.S. Immigr. & Customs Enf't, *Directive 11065.1 Review of the Use of*
21 *Segregation for ICE Detainees* at 1 (Sept. 4, 2013),
https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf

22 ²¹ *See, e.g.*, Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-17-119:*
23 *ICE Field Offices Need to Improve Compliance with Oversight Requirements for*
24 *Segregation of Detainees with Mental Health Conditions*, (Sept. 29, 2017),
25 <https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-17-119-Sep17.pdf>;
Letter from Dana Gold, Senior Counsel, Gov't Accountability Project, et al. to The
Hon. Elijah Cummings, Chairman, House Committee on Oversight, et al., at 2
(June 27, 2019), [http://wordpress-350926-1087337.cloudwaysapps.com/wp-](http://wordpress-350926-1087337.cloudwaysapps.com/wp-content/uploads/2019/06/Congressional-Letter-OIG-CRCL-Failures.pdf)
[content/uploads/2019/06/Congressional-Letter-OIG-CRCL-Failures.pdf](http://wordpress-350926-1087337.cloudwaysapps.com/wp-content/uploads/2019/06/Congressional-Letter-OIG-CRCL-Failures.pdf).

26 ²² *Id.*

27 ²³ Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-19-47: Concerns*
28 *About ICE Detainee Treatment and Care at Four Det. Facilities* at 5 (June 3,
2019) [https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-](https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf)
[Jun19.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf)

1 will be corrected. Indeed, Acting Assistant Director Hott's April 15 Declaration is
2 deafeningly silent as to how ICE actually intends to oversee implementation of the
3 PRR's "expectations." Emergency relief is necessary to ensure that this troubling
4 history of failed oversight does not repeat itself to the detriment of the lives of
5 Plaintiffs and the putative class.

6 **IV. ICE's PRR Contradicts Important Aspects of the CDC's**
7 **Guidance.**

8 As detailed in Dr. Venters's attached second supplemental declaration, the
9 PRR contradict and omit critical aspects of the CDC Guidance including:

10 **Transfers:** To limit the spread of COVID-19, the CDC Guidance provides
11 (at 14) that all transfers of detained persons should be suspended, and should only
12 occur when "absolutely necessary." The PRR's recommendation to limit transfers
13 (at 13), however, only applies to "non-ICE populations," and thus does not limit
14 transfers of Plaintiffs and members of the subclasses. *See also* Venters Second
15 Suppl. Decl. ¶ 6(d).

16 **Detained persons who have come in close contact with COVID-19:** The
17 CDC Guidance (at 4) defines "quarantine," which addresses confinement of people
18 who have had "close contact" with a COVID-19 case. To safeguard people in
19 quarantine, and to try to prevent the spread of the disease, the CDC Guidance (at
20 19-21) includes specific protocols that must be followed in quarantined areas,
21 covering such topics as cohorting of close contacts, use of facemasks by
22 quarantined people, use of personal protective equipment) ("PPE") by staff, *etc.*
23 ICE's PRR, however, has a single paragraph addressing quarantine of close
24 contacts (at 12), omitting all of the specific safety protocols found in the CDC
25 Guidance. *See also* Venters Second Suppl. Decl. ¶ 1(b).

26 **Staff who have come in close contact with COVID-19:** ICE's PRR omits
27 several critical aspects of the CDC Guidance concerning contact between critical
28

1 staff and suspected or known cases of COVID-19. Venters Second Suppl. Decl. ¶
2 1(a).

3 **Facility COVID-19 mitigation plans:** Although ICE's PRR (at 4) states
4 that each detention facility is required to have a COVID-19 mitigation plan in
5 place, Dr. Venters (who has reviewed policies and procedures in detention settings
6 around the nation) has found that many facilities do not have such a plan, and thus
7 have already failed to meet many basic elements of the COVID-19 responses
8 recommended by the CDC. Venters Second Suppl. Decl. ¶ 2.

9 **People with risk factors:** ICE's PRR omits risk factors identified in the
10 CDC Guidance and contradicts the risk factors listed in recent ICE guidance.
11 Further, although the PRR recognizes (at 3) that people with risk factors face a
12 higher mortality rate and a higher risk for more serious COVID-19 illness, it does
13 not include any measures to protect those people from being infected unless and
14 until they are in a quarantine area or are symptomatic, and does not provide for
15 increased surveillance of these persons. Finally, the PRR creates an unwieldy and
16 unrealistic process for facilities to notify ICE of high-risk detained persons,
17 requiring facilities to send emails about every one of the many individuals with
18 risk factors. As a result, this process will move slowly, and far fewer detainees
19 with risk factors will actually be released—if any at all. Venters Second Suppl.
20 Decl. ¶¶ 3-5.

21 **Social distancing:** ICE's PRR fails to address social distancing in critical
22 areas of detention centers, including intake pens, clinical and medication lines,
23 bathroom and shower areas, sally ports, and staff areas. *Id.* ¶ 6(a).

24 **Communications with detained people:** The PRR omits guidance on the
25 importance of communicating with detained people about changes to their daily
26 routine and how they can contribute to risk reduction, both of which are explicitly
27 identified by the CDC Guidance. *Id.* ¶ 6(b).

1 **Cleaning and disinfecting protocols:** The PRR omits many critical aspects
2 of cleaning and disinfection set forth in the CDC Guidance. *Id.* ¶ 6(c).

3 **Washing hands:** The PRR requires everyone in detention facilities to wash
4 their hands for 20 seconds, but does not explain how to do this in facilities that
5 utilize metered faucets. *Id.* ¶ 6(e).

6 **Respiratory protection program:** ICE’s PRR omits provisions from the
7 CDC Guidance requiring a respiratory protection program ensuring that staff and
8 detained people are fit tested for respiratory protection they will need. *Id.* ¶ 6(f).

9 **Post-release planning:** ICE’s PRR fails to address critical post-release
10 planning recommended by the CDC in order to protect public health as the person
11 is returned to their community. *Id.* ¶ 7. This is essential in light of ICE’s docket
12 review. *Id.*

13 Again, even if the PRR were fully compliant with the CDC, Defendants’
14 failure to correct other serious systemic defects in response to COVID-19 would
15 constitute deliberate indifference. Yet, these examples of variations from the CDC
16 demonstrate that even Defendants’ very best efforts—which are coming over a
17 month after COVID-19—are dangerously deficient.

18 **V. ICE’S Own Reports of Confirmed Cases Establish Its Response Is**
19 **Not Working.**

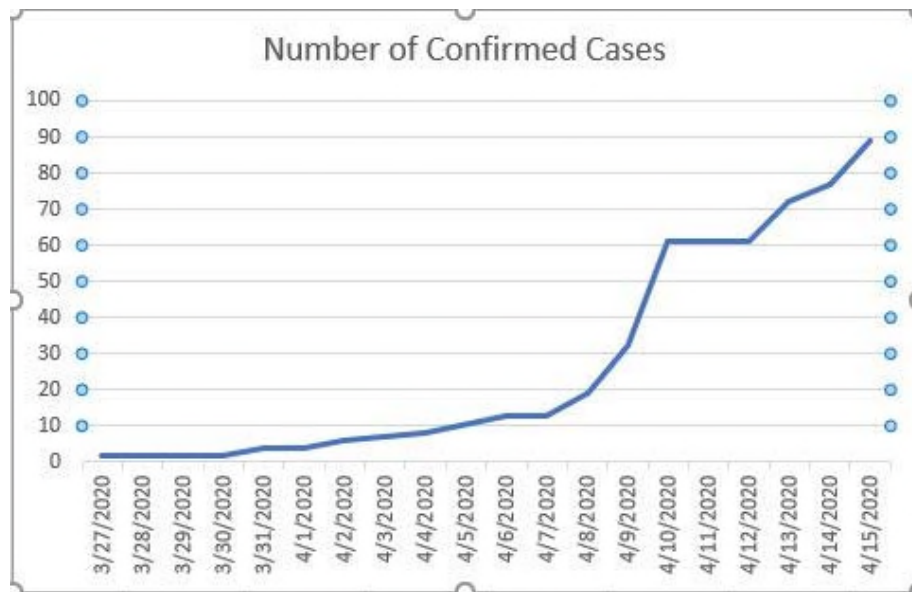
20 Defendants argued at the April 13 hearing that the fact ICE has not reported
21 any COVID-19 cases at over 100 of its detention facilities shows that its guidance
22 on how to deal with the pandemic “is working.” But that assessment is belied not
23 only by the logical error on which it rests (correlation does not establish causation),
24 but also by the actual facts. Any number of reasons (e.g., lack of testing),
25 unrelated to whether ICE’s practices meet constitutional standards, can obviously
26 explain why the number of confirmed cases is high at some facilities, moderate at
27 some and not yet apparent at others. And, notwithstanding that ICE’s guidance is
28

1 supposed to uniformly govern the COVID-19 response at all facilities, the actual
2 rate of growth in confirmed cases varies widely among facilities. Without effective
3 systems and processes that mitigate the virus's spread throughout the entire
4 detention system, the varying profiles of people entering different facilities and the
5 varying risk factors and personal habits of people within each facility can have a
6 substantial impact on the spread of the virus within each. Nor is it probative of the
7 effectiveness of ICE's guidance to note that Adelanto, for example, has not yet
8 reported any confirmed cases, when that same guidance has not prevented the
9 spread of the virus to 15 confirmed cases so far at Otay Mesa.

10 ICE's argument has the logic backwards. While the absence of as-yet-
11 confirmed cases at a particular facility tells us nothing about the effectiveness of
12 ICE guidance, the presence of confirmed—and rapidly spreading—cases at other
13 facilities does. In the single day between April 9 and April 10, the overall number
14 of confirmed cases reported by ICE on its website nearly doubled, from 32 to 61.
15 Between April 10 and April 13, the number continued to rise, doubling at three
16 facilities (from 3 to 6 at Florence, from 1 to 2 at LaSalle and from 1 to 2 at Pine
17 Prairie), increasing by 50% at Stewart (from 4 to 6) and increasing from 10 to 12 at
18 Otay Mesa.²⁴ In the two days since the hearing, the total number of confirmed
19 cases has again jumped, from 72 to 89, including increases from 1 to 5 at Adams
20 County, from 7 to 11 at Buffalo and from 12 to 15 at Otay Mesa. The chart below
21
22
23
24
25
26
27

28 ²⁴ ECF 122-1; Jordan Decl. Ex. A and B.

illustrates the exponential rise in confirmed cases at immigration detention centers:



ICE's guidance, and more importantly its actual practices, have not prevented these increases. Nor did they prevent the introduction of newly-reported cases at other facilities. And even these numbers don't tell the real story of ICE's failure to contain the virus, since the reported number of cases doesn't reflect the lag time between infection and symptoms; it doesn't reflect the lack of timely testing; it doesn't reflect the admitted chasm between suspected and confirmed cases (e.g., ICE itself notes that, while there were 6 confirmed cases at Stewart as of April 10, there were 30 suspected cases, Bretz Decl., ECF 121-3 at 14); and it doesn't reflect the fact that large numbers of immigrants being taken from facilities and removed from the country have tested positive when arriving at their destinations. Indeed, approximately 75 percent of the deported people on a single flight to Guatemala were found to have the virus on arrival and likely infected others before leaving ICE detention. Jordan Decl., Ex. C.

When ICE's numbers eventually catch up to reality, they will confirm a level of devastation that could have been avoided but for ICE's deliberate indifference, but it will be too late to save the victims of that indifference. Every day of continuing indifference, unless halted by this Court's prompt injunctive relief and

careful monitoring of ICE's compliance, further compromises the health and safety of the people in ICE detention.

VI. The CDC Guidance Does Not Absolve Defendants' Failure to Implement Social Distancing, and Their Failure to Release Evinces Deliberate Indifference.

At oral argument, Defendants also erroneously suggested that their failure to implement medically necessary social distancing procedures are justified by the CDC's observation that social distancing may be difficult in the carceral setting. This argument is meritless. While the CDC Guidance notes that social distancing may be "challenging" and that "[n]ot all strategies will be feasible in all facilities," the CDC Guidance also makes clear that social distancing "is a cornerstone of reducing transmission of . . . COVID-19" and that social distancing should be "intensif[ied] . . . for higher-risk individuals," such as Plaintiffs and the putative class. Far from absolving Defendants, the CDC Guidance actually further evinces Defendants' deliberate indifference. Defendants are aware that social distancing is not feasible in its facilities, yet Defendants continue to refuse to release high-risk individuals into settings where they can exercise the social distancing measures crucial to their health and safety. Unlike individuals in prisons and jails, Plaintiffs here are in civil detention and Defendants have broad discretion to release them. In their April 15 Supplement, Defendants again rehash their flawed arguments about how some high-risk individuals subject to mandatory detention cannot be released, yet this argument is belied by both the law and evidence.²⁵

Further, although the CDC Guidance does not address release, numerous corrections authorities ranging from the city level up to the Federal Bureau of Prisons have understood release as an essential tool to stem the spread of coronavirus, resulting in the release of thousands of individuals from prisons and

²⁵ Pls.' Reply in Supp. of Mot. for Prelim. Inj., ECF No. 113 at 7.

jails across the country.²⁶ The Federal Bureau of Prisons, under the direction of Attorney General William Barr, has identified over 4,000 individuals within its custody as “priority” for release, and has already expanded its criteria for reviewing those eligible for release.²⁷ Governors from multiple states have issued executive orders calling for the release of individuals within their state corrections systems in order to prevent the spread of COVID-19 behind bars.²⁸ In his Executive Order, Governor Murphy of New Jersey explicitly acknowledged the importance of social distancing, calling for release “in order to protect these

²⁶See, e.g., Dillon Richards, *Pardon and Parole Board considering more inmate commutations to fight spread of coronavirus*, KOCO News (Apr. 13, 2020), <https://www.koco.com/article/pardon-and-parole-board-considering-more-inmate-commutations-to-fight-spread-of-coronavirus/32132968#>; Joshua Sharpe, *Georgia to release some inmates due to COVID-19 fears*, The Atlanta Journal-Constitution (Mar. 31, 2020), <https://www.ajc.com/news/local/breaking-georgia-release-some-inmates-due-covid-fears/np6zhBrLP1oe2jOkUmWVoL/>; Linh Ta, *Iowa’s prisons will accelerate release of approved inmates to mitigate COVID-19*, The Times Republican (Mar. 23, 2020), <https://www.timesrepublican.com/news/todays-news/2020/03/iowas-prisons-will-accelerate-release-of-approved-inmates-to-mitigate-covid-19/>; Leslie Rubin, *W.Va. taking steps to reduce inmate population amid COVID-19 pandemic*, WCHS (Apr. 1, 2020), <https://wchstv.com/news/coronavirus/wva-taking-steps-to-reduce-inmate-population-amid-covid-19-pandemic>; Daliah Singer, *In Colorado prisons and jails, a piecemeal approach to the threat of coronavirus*, The Colorado Sun (Apr. 4, 2020), <https://coloradosun.com/2020/04/04/colorado-prisons-jails-coronavirus-covid-criminal-justice/>; A Message From Secretary Kevin A. Carr, Wisconsin Dep’t of Corrections (Apr. 2, 2020), available at [https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/COVID19.aspx](https://doc.wi.gov/Pages/COVID19(Coronavirus)/COVID19.aspx); Scott Buffon, *Coconino County jail releases nonviolent inmates in light of coronavirus concerns*, Arizona Daily Sun (Mar. 20, 2020), https://azdailysun.com/news/local/coconino-county-jail-releases-nonviolent-inmates-in-light-of-coronavirus/article_a6046904-18ff-532a-9dba-54a58862c50b.html.

²⁷ See Josh Gerstein, *Virus-wracked federal prisons again expand release criteria*, Politico (Apr. 11, 2020), <https://www.politico.com/news/2020/04/11/federal-prison-release-criteria-coronavirus-179835>.

²⁸ See, e.g., Ky. Exec. Order No. 2020-267 (Apr. 2, 2020) https://governor.ky.gov/attachments/20200402_Executive-Order_2020-267_Conditional-Commutation-of-Sentence.pdf (“In order to prevent the spread of COVID-19 and to promote and secure the safety and protection of individuals in state custody and state corrections staff, it is necessary to reduce the inmate population in the overcrowded state prison facilities in Kentucky. The Justice and Public Safety Cabinet presented written application and proposal for the early release and commutation of sentences of 186 inmates identified as at higher risk for severe illness or death due to their medical conditions per guidelines issued by the Centers for Disease Control and Prevention.”).

1 particularly vulnerable individuals from a heightened risk of death and serious
2 injury” due to the inherent “challenges associated with maintaining traditional
3 social distancing in correctional settings.”²⁹ Governor Inslee of Washington
4 announced that nearly 1,000 people will be released early from Washington state
5 prisons as a “necessary step[to] strategically provide for more physical distancing
6 within the state’s correctional facilities.”³⁰ The California Department of
7 Corrections and Rehabilitation (CDCR) announced on March 31 that it would
8 expedite the parole for 3,500 individuals within its custody in order to “allow the
9 department to increase physical distancing” to mitigate the spread of COVID-19.³¹
10 Mayor De Blasio of New York City has ordered the release of hundreds of
11 individuals detained on Rikers Island to stem the spread of the virus, including
12 those who are medically vulnerable.³² Approximately 1,700 inmates have been
13 released from Los Angeles County jails alone in order to slow the spread of
14 coronavirus.³³ Notably, all of these individuals are in correctional detention or
15 prison, as opposed to Plaintiffs and the putative class, who are in civil detention.
16 As noted in Plaintiffs’ original briefing, both ICE and this Court are empowered to
17

18 ²⁹ N.J. Exec. Order No. 124 at 2 (Apr. 10, 2020), available at
19 <http://d31hzhk6di2h5.cloudfront.net/20200410/c0/64/ce/2c/0ef068b5d2c6459546c33a46/EO-124.pdf>.

20 ³⁰ *Inslee announces strategies for reducing the number of individuals incarcerated*
21 *to address COVID-19 in DOC system*, Office of the Governor (Apr. 13, 2020),
[https://www.governor.wa.gov/news-media/inslee-announces-strategies-reducing-](https://www.governor.wa.gov/news-media/inslee-announces-strategies-reducing-number-individuals-incarcerated-address-covid-19-doc)
[number-individuals-incarcerated-address-covid-19-doc](https://www.governor.wa.gov/news-media/inslee-announces-strategies-reducing-number-individuals-incarcerated-address-covid-19-doc).

22 ³¹ Cal. Dep’t of Corrections & Rehab., *CDCR Announces Plan to Further Protect*
23 *Staff and Inmates from the Spread of COVID-19 in State Prisons* (Mar. 31, 2020),
[https://www.cdcr.ca.gov/news/2020/03/31/cdcr-announces-plan-to-further-protect-](https://www.cdcr.ca.gov/news/2020/03/31/cdcr-announces-plan-to-further-protect-staff-and-inmates-from-the-spread-of-covid-19-in-state-prisons/)
[staff-and-inmates-from-the-spread-of-covid-19-in-state-prisons/](https://www.cdcr.ca.gov/news/2020/03/31/cdcr-announces-plan-to-further-protect-staff-and-inmates-from-the-spread-of-covid-19-in-state-prisons/).

24 ³² Julia Marsh & Ben Feuerherd, *NYC jail population lowest since World War II*
25 *after coronavirus releases*, NY Post (Mar. 26, 2020),
26 [https://nypost.com/2020/03/26/nyc-jail-population-lowest-since-world-war-ii-after-](https://nypost.com/2020/03/26/nyc-jail-population-lowest-since-world-war-ii-after-coronavirus-releases/)
[coronavirus-releases/](https://nypost.com/2020/03/26/nyc-jail-population-lowest-since-world-war-ii-after-coronavirus-releases/).

27 ³³ Justin Carissimo, *1,700 inmates released from Los Angeles County in response*
28 *to coronavirus outbreak*, CBS News (Mar. 24, 2020),
[https://www.cbsnews.com/news/inmates-released-los-angeles-county-coronavirus-](https://www.cbsnews.com/news/inmates-released-los-angeles-county-coronavirus-response-2020-03-24/)
[response-2020-03-24/](https://www.cbsnews.com/news/inmates-released-los-angeles-county-coronavirus-response-2020-03-24/).

1 release medically vulnerable people during the COVID-19 pandemic.³⁴
2 Consequently, the absence of an explicit recommendation for release in the CDC
3 Guidance does not prevent ICE or this Court from exercising their authority to
4 release individuals from ICE custody, just as it did not stop the authorities cited
5 above.

6 **VII. Defendants’ Arguments Regarding Individual Circumstances of**
7 **Facilities Are Meritless.**

8 Defendants’ contended at oral argument that the differing needs and varying
9 responses at ICE facilities precludes a finding of commonality or deliberate
10 indifference is unfounded. “[A] proper understanding of the nature of [P]laintiffs’
11 claims clarifies the issue of commonality.” *Parsons v. Ryan*, 754 F.3d 678 (9th
12 Circ. 2014). The true question here is not whether each proposed class member has
13 suffered an actual injury—or whether each ICE facility has responded
14 appropriately to the COVID-19 pandemic—but whether ICE’s “action or
15 inaction—including a failure to correct a structural deficiency within the agency”
16 subjects the proposed class members to the same substantial risk of harm. *See*
17 *Braggs v. Dunn*, 317 F.R.D. 634, 656 (M.D. Ala. 2016). It does. Indeed, ICE itself
18 has acknowledged that it has central medical oversight responsibility. *See, e.g.*, PI
19 Opp’n at 2 (“ICE has constantly monitored and reviewed and modified its COVID-
20 19 guidance . . . with respect to immigration detention centers nationwide . . .”).
21 As the ultimate custodial agent, ICE is responsible for providing nationwide
22 supervision, ensuring that each of its facilities has proper rations and resources and
23 that each detainee receives the appropriate medical care.

24 As detailed above, courts recognize systemic deliberate indifference when
25 there are myriad and interconnected defects in a detention system that, in their
26 totality, subject whole classes of people to a substantial risk of serious harm. *See*

27 ³⁴ *See* Plaintiffs’ Memorandum in Support of Emergency Motion for Preliminary
28 Injunction (“PI Motion”), ECF 81-1 at 14.

1 *Disability Rights Montana, Inc. v. Batista*, 930 F.3d 1090, 1097 (9th Cir. 2019);
2 *Parsons*, 754 F.3d at 677. Courts also routinely enjoin authorities who are
3 responsible for oversight of whole detention systems to remediate systemic defects
4 in their provision of medical care, such as increasing staffing and monitoring
5 system-wide. *See, e.g., Braggs v. Dunn*, 383 F. Supp. 3d 1218, 1228 (M.D. Ala.
6 2019) (entering immediate and permanent injunction regarding staffing and other
7 problems with mental health care practices in Alabama prisons).

8 **VIII. This Action Does Not Preclude or Conflict with Other Cases**
9 **Seeking Individualized or Other Relief Related to COVID-19.**

10 Individuals in ICE custody around the country have sought release through
11 individual and group habeas petitions and temporary restraining orders—including
12 members of the putative subclasses and even three of the Named Plaintiffs here.
13 *See* Declaration of Elizabeth Jordan, ECF 113-1, Appendix 1. The systemic relief
14 Plaintiffs request here does not conflict with the individualized relief sought in
15 these separate actions. First, the relief sought here is not habeas relief or any
16 individualized result in any particular case. *Fraihat v. Wolf*, No. ED CV 20-00590
17 TJH (KSx), at *3 (C.D. Cal. Mar. 30, 2020), ECF No. 18 (noting that a Named
18 Plaintiff's individual habeas relief does not solve this pending class action). Rather,
19 Plaintiffs seek a sufficient and urgently needed *process* for identifying necessary
20 precautions and implementing them in light of the pandemic, as well as the
21 remediation of systemic defects in Defendants' COVID-19 response.

22 Second, to the extent any individual habeas action may also raise issues of
23 access to care for those individuals, those claims would not conflict with or be
24 precluded by the class-based claims regarding access to needed care on a systemic
25 basis. *See Pride v. Correa*, 719 F.3d 1130, 1137 (9th Cir. 2013) (holding that an
26 individual inmate's claim for injunctive relief for his individual medical care was
27 not precluded by class action which sought systemic reform relating to same
28

1 general subject matter); *Parsons*, 754 F.3d at 677-78 (“Since *Plata*, we have relied
2 on this fundamental distinction to hold that where a California prisoner brings an
3 independent claim for injunctive relief solely on his own behalf for specific
4 medical treatment denied to him, *Plata* does not bar the prisoner's claim for
5 injunctive relief.” (quotation omitted)); *Anderson v. California Dep’t of Corrs. &*
6 *Rehab.*, No. 15-CV-02013-MEJ, 2016 WL 7013246, at *4 (N.D. Cal. Dec. 1,
7 2016) (same).

8 Nor does this case conflict with cases seeking other kinds of systemic relief
9 related to ICE’s response to COVID-19. In their “Notice of Supplemental
10 Authorities” Defendants claim that the relief sought in *Heredia Mons v.*
11 *McAleenan* somehow conflicts with the systemic relief sought here. ECF 121 at 4
12 n.1.³⁵ But the *Mons* case focuses on ICE’s New Orleans Field Office’s failure to
13 comply with directives regarding conducting parole determinations, not on medical
14 conditions within ICE facilities around the country. See Memorandum in Support
15 of Plaintiffs’ Emergency Motion for Preliminary Injunction, *Heredia Mons v.*
16 *McAleenan*, Case No. 1:19-cv-01593-JEB, at 6 (D.D.C. Mar. 31, 2020), ECF 61-1.
17 The *Heredia Mons* plaintiffs seek, through their emergency preliminary injunction,
18 expedited parole reassessments for a class of arriving aliens who are eligible for
19 parole and are detained within the jurisdiction of ICE’s New Orleans Field Office.
20 *Id.* See also *Mons v. McAleenan*, No. CV 19-1593 (JEB), 2019 WL 4225322, at *8
21 (D.D.C. Sept. 5, 2019) (defining class). This relief is quite distinct from that sought
22

23
24 ³⁵ Defendants also suggest that plaintiffs’ counsel cannot adequately represent the
25 proposed subclasses because they are involved in other litigation regarding ICE’s
26 response to COVID-19, including the *Mons* case, in which one of the firms,
27 Southern Poverty Law Center, is also counsel. But Defendants fail to explain what
28 the conflict is between the subclasses, when the relief sought is different.
Furthermore, counsel does not lack adequacy merely because they are involved in
litigation on related topics. Finally, the attorneys representing the *Mons* class on
behalf of Southern Poverty Law Center are not the same as those seeking
appointment as class counsel here. *Compare* No. 1:19-cv-01593-JEB (attorney
list).

here, which does not address the parole process at all. Even though the ultimate outcome of both cases for a particular individual might be release from ICE custody, the cases are directed at entirely different processes. The case (and emergency motion) at hand is the only proposed class action addressing ICE's overall procedures for identifying and implementing urgently needed precautionary measures in Detention Facilities on a system-wide basis.³⁶

Further, the class-based relief sought here neither conflicts with nor addresses the same issues as those involved in the *Flores v. Meese* litigation, 2:85-cv-04544-DMG-AGR (C.D. Cal.), which addresses a class of minors who are in ICE custody, or the *O.M.G. v. Wolf* litigation, 1:20-cv-00786-JEB (D.D.C.), which covers individually joined families detained at Family Residential Centers. As discussed at oral argument, Plaintiffs' emergency request for preliminary injunction addresses imminent needs for precautionary measures in *adult* detention, which is not covered by either of the aforementioned cases.

IX. The Subclasses Addressed in this Emergency Action Do Not Expand the Class in the Original Complaint, But Rather Are Merely a Subset of that Proposed Class.

In light of the Court's questions at oral argument, Plaintiffs take this opportunity to further clarify the relationship between the class Plaintiffs seek to represent in the Complaint as a whole and the subclasses that Plaintiffs seek to certify in the Emergency Preliminary Injunction Motion. The Complaint covers anyone in immigration detention facilities run by or contacting with ICE who could be affected by the poor standard of medical care offered there—that is to say, everyone in immigration detention. See Complaint, ECF 1, ¶¶ 204, 600. Mere

³⁶ Plaintiffs are aware that litigation has been filed seeking expedited consideration of individual release requests for persons detained at the Adelanto Detention Center. See *Adelanto Covid Litigation*, Case No. 5:20-cv-00768-TJH-PVC. However, that action does not address ICE's system-wide policies and procedures for ensuring appropriate assessments, which are at issue in the motion for preliminary relief at hand.

1 exposure to a substantial risk of serious harm is, “in its own right, a constitutional
2 injury.” *Parsons*, 754 F.3d at 680; *see also Helling v. McKinney*, 509 U.S. 25, 33
3 (1993). Additionally, the Disability Subclass in the Complaint covers “all
4 qualified individuals with a disability, as that term is defined in 29 U.S.C. § 705(9),
5 who are now, or will in the future be, subjected to the Disability Practices as a
6 result of Defendants’ failure to adequately administer, monitor, and oversee
7 conditions at Detention Facilities.” *See* Complaint ¶¶ 505, 616. Thus, *all* persons
8 with qualifying disabilities in Detention Facilities are members of the proposed
9 subclass in the Complaint because they are all subject to the challenged Disability
10 Practices.

11 Because the Complaint covers all people being held in immigration
12 detention, the much smaller number of people in the Emergency Subclasses who
13 are at particular risk of serious harm from COVID-19 is merely a subset of the
14 large class pled in the Complaint. Emergency Subclass One consists of “[a]ll
15 people who are detained in ICE custody who have one of the Risk Factors placing
16 them at heightened risk of severe illness and death upon contracting the COVID-19
17 virus” (listing relevant risk factors), and Emergency Subclass Two consists of
18 “[a]ll people who are detained in ICE custody whose disabilities place them at
19 heightened risk of severe illness and death upon contacting the COVID-19 virus”
20 (listing relevant disabilities). Plaintiffs’ Notice of Motion and Motion for
21 [Emergency] Class Certification, ECF 83 at 4-5. Emergency Subclass One is thus
22 entirely within the main proposed class in the Complaint and Emergency Subclass
23 Two is thus entirely within the proposed disability subclass in the
24 complaint. Thus, the provisional certification of two subclasses in connection with
25 the emergency motion for preliminary relief does not expand in any way the scope
26 of the proposed class or subclasses in the Complaint—and merely addresses
27 subsets of the proposed class at immediate risk due to COVID-19.
28

X. CONCLUSION

For these reasons, Plaintiffs respectfully request that Court grant the requested preliminary injunction.

DATED: April 16, 2020

Respectfully submitted,

/s/ Jared Davidson

Jared Davidson

Lisa Graybill

Shalini Goel Agarwal

Maia Fleischman

SOUTHERN POVERTY LAW
CENTER

/s/ Timothy P. Fox

Timothy P. Fox

Elizabeth Jordan

Maria del Pilar Gonzalez Morales
CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER

/s/ Stuart Seaborn

Stuart Seaborn

Christina Brandt-Young

Melissa Riess

DISABILITY RIGHTS
ADVOCATES

Attorneys for Plaintiff

/s/ William F. Alderman

William F. Alderman

Mark Mermelstein

Jake Routhier

ORRICK, HERRINGTON &
SUTCLIFFE LLP

/s/ Michael W. Johnson

Michael W. Johnson

Dania Bardavid

Leigh Coutoumanos

Jessica Blanton

Joseph Bretschneider

WILLKIE FARR & GALLAGHER
LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

13
14
15 Attorneys for Plaintiffs (continued on next page)

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

19 FAOUR ABDALLAH FRAIHAT, *et al.*,
20 Plaintiffs,
21 v.
22 U.S. IMMIGRATION AND CUSTOMS
23 ENFORCEMENT, *et al.*,
24 Defendants.

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

**Supplemental Declaration of
Elizabeth Jordan in Support of
Plaintiffs' Reply Brief in Support of
Emergency Motion for Preliminary
Injunction**

Date: April 13, 2020
Time: 9:00 a.m.
Hon. Jesus G. Bernal

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

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

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

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

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

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

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

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

26 Attorneys for Plaintiffs (continued from previous page)

27 *Admitted Pro Hac Vice

28 **Pro Hac Vice Application Forthcoming

1 I, Elizabeth Jordan, declare as follows:

- 2 1. I am an attorney duly licensed to practice law in the States of Louisiana and
3 New York and am appearing *Pro Hac Vice* in this case. I am counsel of
4 record for Plaintiffs in the above-captioned case. This declaration is based
5 upon my personal knowledge. If called to testify, I would testify
6 competently to the facts described in this declaration.
- 7 2. I submit this supplemental declaration to provide up-to-date information
8 concerning confirmed cases of COVID-19 in detention centers (Exhibits A
9 and B) and news articles that respond to the Court's questions from the April
10 13, 2020 hearing.

11 **EXHIBITS IN SUPPORT OF PLAINTIFFS' REPLY BRIEF IN SUPPORT**
12 **OF EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**

- 13 1. Attached as **Exhibit A** is a true and correct copy of U.S. Immigration and
14 Customs Enforcement, ICE Guidance on COVID-19, Confirmed Cases,
15 available at <https://www.ice.gov/coronavirus> (last visited Apr. 16, 2020), for
16 the dates Apr 13, 14, and 15, 2020.
- 17 2. Attached as **Exhibit B** is a true and correct copy of an Excel spreadsheet
18 containing the information included in Exhibit B to my Supplemental
19 Declaration dated April 12, 2020 (ECF No. 122) and updated to reflect the
20 numbers shown on Exhibit A to that declaration (as of April 10, 2020 at 5:36
21 pm) and on Exhibit A above (as of April 13, 14 and 15, 2020), together with
22 a graph showing the growth of reported infections over time that I created
23 using the graph function on Microsoft Excel to convert the numbers shown
24 on those exhibits to graphic form.
- 25 3. Attached as **Exhibit C** is a true and correct copy of a news-related tweet,
26 Dulce Rivera (@drivera_gtv), TWITTER (Apr. 14, 2020, 2:54 PM),
27 https://twitter.com/drivera_gtv/status/1250165593585725440
28 a. Ms. Rivera is a political reporter in Guatemala. Her tweet states:

1 Según el ministro de Salud, Hugo Monroy, entre el 50 y 75% de
2 deportados ha dado positivo a covid-19. Solicitaron a EE. UU.
3 enviarlos con un certificado médico.

4 A true and correct translation is:

5 According to the Health Minister, Hugo Monroy, between 50 and 75
6 % of the deportees have tested positive to COVID-19. They requested
7 the U.S. to send them with a medical certificate.

8 b. Linked in that tweet is a video of an interview reporter Rivera
9 conducted with Minister Monroy of Guatemala, a transcription and
10 translation of that interview is reproduced below.

11 HM: “Cierto certificado de que están en un estado de buena salud. La
12 situación es de que hay vuelos realmente de donde nos vienen
13 deportados con ciudadanos que vienen con fiebre y todo, y así suben a
14 los aviones. Nosotros automáticamente aquí los evaluamos y es donde
15 nosotros les hacemos la prueba inmediatamente y nos han salidos
16 positivos muchos de ellos.”

17 Reportera: “¿Cuántos hay en total?”

18
19 HM: “En total le puedo decir yo que al menos en un vuelo, de ese
20 vuelo, por razones de seguridad y por ser datos sensibles, más del 75
21 por ciento de ese vuelo era positivo y es positivo ahora.”

22
23 Reportera: “¿Por eso es que ha incrementado tanto la cifra?”

24
25 HM: “Le puedo decir de que sí. Se ha incrementado la cifra por los
26 deportados que han venido. No es que los tengamos que estigmatizar,
27 si no que simplemente tengo que hablar con la realidad, con la
28 transparencia que el Sr. Presidente me ha ordenado. Que seamos un

1 ministerio transparente. Sí, el venir deportados y que hayan salidos
2 positivo sí nos han aumentado mucho los casos.”

3
4 Reportera: “En solo un vuelo venía el 75 por ciento de positivos?”

5
6 HM: “Un 75 por ciento a un 50 por ciento del total de los que venían,
7 sí han resultados positivo, pero estamos hablando de todos los vuelos.
8 No de un solo vuelo.”

9
10 HM: "Certain certificate that they are in a state of good health. The
11 situation is that there are flights from where really, deportees are
12 coming with citizens who are coming with fever and everything, and
13 they get in the airplanes like that. We automatically assess them here
14 and is when we immediately do the test on them. And we have had a
15 lot of them tested positive.

16 Reporter: "How many in total?"

17
18 HM: "In total, I can say at least in a flight, more than 75 percent of
19 that flight. For security reasons and for being sensitive data, more than
20 75 percent of that flight was positive and is positive at this moment."

21
22 Reporter: "Is that why numbers have increased?"

23
24 HM: "I can say that, yes, numbers have increased due to the deportees
25 that have come and it's not that we have to stigmatize them is that I
26 simply have to speak with the truth. With the transparency that Mr.
27 President has ordered me. That we are a transparent ministry. Yes,
28 deportees coming and having tested positive has increased our cases a

lot.

Reporter: "There was 75 percent in only one flight?"

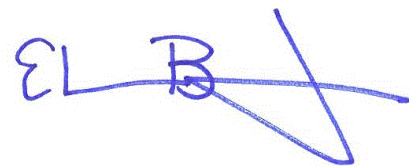
HM: "A 75 percent to a 50 percent of the total of who was coming, yes, has resulted positive, but we are talking about all of the flights, not only one flight."

c. I certify that I am fluent in Spanish and English and the translation of this tweet and related interview is true and correct.

4. Attached as **Exhibit D** is a true and correct copy of a news article, Bryn Stol, Eleven ICE staffers at Alexandria International Airport test positive for coronavirus, The New Orleans Advocate (Apr. 15, 2020), available at https://www.nola.com/news/coronavirus/article_e9d5ea0c-7f6a-11ea-b094-5722f480ca98.html (last visited Apr. 16, 2020).
5. Attached as **Exhibit E** is a true and correct copy of a news article, Conor McCormick-Cavanagh, Three More Employees at Aurora ICE Facility Test Positive for COVID-19, Denver Westword (Apr. 8, 2020), available at <https://www.westword.com/news/three-geo-group-staffers-at-ice-facility-in-aurora-test-positive-for-covid-19-11683722> (last visited Apr. 16, 2020).
6. Attached as **Exhibit F** is a true and correct copy of the Declaration of Patrick Gartland, Benavides v. Gartland, No. 5:20-46 (S.D. Ga. Apr. 14, 2020), ECF No. 29-1.

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

Executed on April 16, 2020 in Denver, Colorado.



Elizabeth Jordan

EXHIBIT A

 Official Website of the Department of Homeland Security



ICE

Report Crimes: [Email](#) or Call [1-866-DHS-2-ICE](#)

NOTICE

[Click here for the latest ICE guidance on COVID-19](#)

ICE Guidance on COVID-19

Overview &
FAQs

Confirmed
Cases

Previous
Statements

DETAINEES

89

There have been 89 confirmed cases of COVID-19 among those in ICE custody*.

- 5 detainees in Adams County Correctional Center (Natchez, MS)
- 2 detainees in Bergen County Jail (Hackensack, NJ)
- 11 detainees in Buffalo Federal Detention Facility (Buffalo, NY)
- 7 detainees in Elizabeth Detention Center (Elizabeth, NJ)
- 2 detainees in Essex County Correctional Facility (Newark, NJ)
- 6 detainees in Florence Detention Center (Florence, AZ)
- 5 detainees in Hudson County Jail (Kearny, NJ)
- 1 detainee in IAH Secure Adult Detention Facility (Livingston, TX)
- 1 detainee in Irwin County Detention Center (Ocilla, GA)
- 1 detainee in Krome Detention Center (Miami, FL)
- 2 detainees in La Palma Correctional Facility (Eloy, AZ)
- 2 detainees in LaSalle Correctional Center (Olla, LA)
- 1 detainee in LaSalle ICE Processing Center (Jena, LA)
- 15 detainees in Otay Mesa Detention Center (San Diego, CA)
- 1 detainee in Otero County Processing Center (Chaparral, NM)
- 1 detainee in Prairieland Detention Center (Alvarado, TX)
- 2 detainees in Richwood Correctional Center (Monroe, LA)
- 6 detainees in Pike County Correctional Facility (Hawley, PA)
- 2 detainees in Pine Prairie ICE Processing Center (Pine Prairie, LA)
- 3 detainees in Pulaski County Detention Center (Ullin, IL)
- 3 detainees in St. Clair County Jail (Huron, MI)
- 7 detainees in Stewart Detention Center (Lumpkin, GA)
- 1 detainee in Winn Correctional Center (Winnfield, LA)
- 1 detainee in York County Prison (York, PA)

- 1 ICE detainee at local hospital (Miami, FL)

*Some detainees may no longer be in ICE custody.

Updated 04/15/2020 12:15pm

ICE
EMPLOYEES
AT
DETENTION
CENTERS

25

There have been 25 confirmed cases of COVID-19 among ICE employees working in ICE detention facilities.

- 13 at Alexandria Staging Facility (Alexandria, LA)
- 2 at Aurora Contract Detention Facility (Aurora, CO)
- 1 at Butler County Jail (Hamilton, OH)
- 2 at Elizabeth Contract Detention Facility (Elizabeth, NJ)
- 1 at Houston Contract Detention Facility (Houston, TX)
- 1 at Hudson County Jail (Kearny, NJ)
- 5 at Otay Mesa Detention Center (San Diego, CA)

Updated 04/15/2020 5:30pm

ICE
EMPLOYEES

81

There have been 81 confirmed cases of COVID-19 among ICE employees not assigned to detention facilities.

Updated 04/15/2020 5:30pm

Last Reviewed/Updated: 04/15/2020

EXHIBIT B

Date	Number of Confirmed Cases
3/27/2020	2
3/28/2020	2
3/29/2020	2
3/30/2020	2
3/31/2020	4
4/1/2020	4
4/2/2020	6
4/4/2020	8
4/6/2020	13
4/7/2020	13
4/8/2020	19
4/9/2020	32
4/10/2020	61
4/11/2020	61
4/12/2020	61
4/13/2020	72
4/14/2020	77
4/15/2020	89

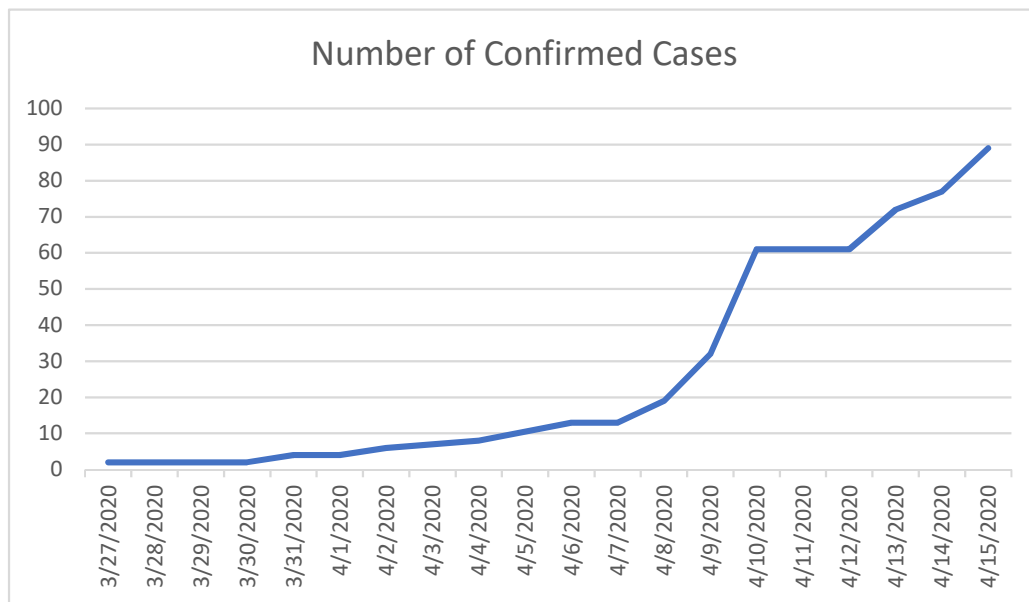


EXHIBIT C



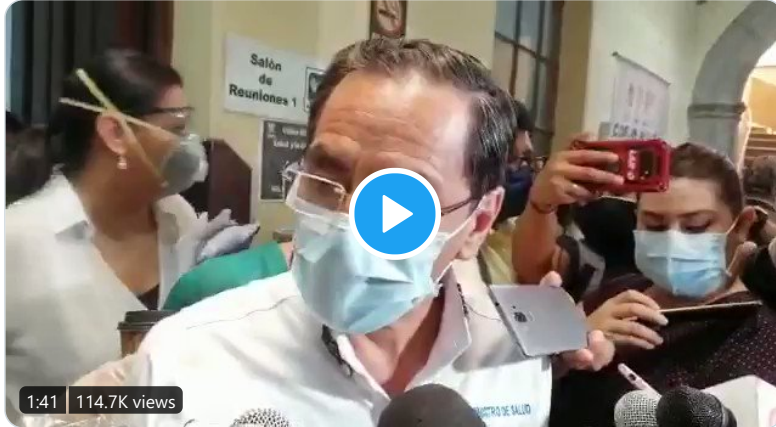
← Tweet



Dulce Rivera
@drivera_gtv

Según el ministro de Salud, Hugo Monroy, entre el 50 y 75% de deportados ha dado positivo a covid-19. Solicitaron a EE. UU. enviarlos con un certificado médico.

[Translate Tweet](#)



2:54 PM · Apr 14, 2020 · [Twitter for Android](#)

212 Retweets 393 Likes



Sergio @Juan85851841 · Apr 14
Replying to @drivera_gtv

Y lo peor, Seguirán viniendo y el riesgo de contagiar más personas crece.

1 1 15



мятежный @kikoNaPh1 · Apr 14

Ellos no son el foco de contagio, si lo son los que se esconden los que viajaron a Europa en la etapa de contagio, pero ellos no son pobres y no es fácil criminalizarlos.

3 3 18

[2 more replies](#)



★ **El PrincipitoGt** ★ @El_principitoGT · Apr 14
Replying to @drivera_gtv

Solo para aclararles el panorama, diariamente entran de 2-3 aviones llenos de Deportados y no solo ellos también entran Couriers... Cad avión trae entre 100-150 pasajeros y las primeras semanas de estado de calamidad entraron sin control alguno, el gobierno no los reportó...

1 3 9



★ **El PrincipitoGt** ★ @El_principitoGT · Apr 14

Y estos vuelos de Couriers y Deportados que no fueron reportados son los que tienen en vilo al gobierno. Por qué saben que la cagaron,. A los couriers los dejaron ir y a los Deportados los llevaron como ganado en camiones militares a sus aldeas ... Enfermos obviamente

1 4



Insurrección @3uddha_ · Apr 14
Replying to @drivera_gtv

Cuántos vuelos entran a diario y con cuántos pasajeros, no cuadra con las cifras de 160 casos aproximadamente de positivos

Search Twitter

Relevant people



Dulce Rivera
@drivera_gtv

[Follow](#)

Periodista de política de [#NoticieroGuatevisión](#) de [@guatevisión_tv](#) asignada a la cobertura legislativa y electoral. Instagram: dulceriverab

Trends for you

Politics · Trending

22 Million

36.7K Tweets

COVID-19

Another 5.2 million Americans file for unemployment as ...



#HealthyAtHome

Health starts at home.

[Promoted by World Health Organization \(WHO\)](#)

Trending in United States

Dennis Miller

18.7K Tweets

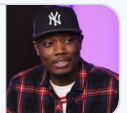
Celebrities · Trending

Michael Che

23.8K Tweets

Celebrity

Michael Che honors his late grandmother by covering a ...



Trending in United States

How High

28.6K Tweets

[Show more](#)

[Terms](#) [Privacy policy](#) [Cookies](#) [Ads info](#) [More](#)

© 2020 Twitter, Inc.

EXHIBIT D

Unprecedented events. Local news you can trust | Subscribe today for \$2.32 a week.

https://www.nola.com/news/coronavirus/article_e9d5ea0c-7f6a-11ea-b094-5722f480ca98.html

Eleven ICE staffers at Alexandria International Airport test positive for coronavirus

BY BRYN STOLE | STAFF WRITER
APR 15, 2020 - 6:26 PM



Detainees sit and wait for their turn at the medical clinic at the Winn Correctional Center in Winnfield, La., Thursday, Sept. 26, 2019. Nearly 1,500 migrants are detained at Winn. (AP Photo/Gerald Herbert)

Gerald Herbert

Bryn Stole

Eleven U.S. Immigration and Customs Enforcement staffers at the agency's facility at the Alexandria airport have tested positive for coronavirus, the largest outbreak among staff at any ICE facility nationwide.

The ICE Alexandria Staging Facility is normally used as a holding pen for immigration detainees as they await deportation flights out of the Alexandria International Airport. ICE Air, the agency's charter deportation airline, uses the airport as a hub for dedicated deportation flights to Central America.

ICE has continued operating deportation flights out of Alexandria as normal despite the coronavirus crisis, said Bryan Cox, an ICE spokesman.



ARTILECTION 10X42 BINOCULARS FOR ADULTS, HD PROFESSIONAL HIGH ...
(99)
\$53.99

But ICE is no longer holding detainees at the airport staging facility in the wake of the outbreak among staffers, Cox said, instead driving busloads of them from ICE detention facilities across Louisiana directly onto the tarmac to board flights.

It's unclear what might have triggered the outbreak. Cox said no one in ICE custody with a known coronavirus infection moved through the facility. ICE employees are still working out of the offices there processing paperwork for the deportation flights, Cox said.

The Alexandria airstrip is only an "international" airport by dint of ICE Air's sizable operation there. Commercial airlines only operate flights from Alexandria International to a handful of domestic destinations, including Atlanta, Dallas and Houston.

ICE Air has flown U.S. citizens stranded abroad home on the return legs of deportation flights. Cox said the State Department is coordinating those flights and that people flown back to the United States on the flights are responsible for arranging their own way home once they land in Louisiana.

At least five people held at ICE detention facilities in Louisiana have tested positive for coronavirus, including people held at the Richwood Correctional Center near Monroe, Winn Correctional Center in Winnfield and LaSalle Correctional Center in Olla.

Another detainee at the Adams County Correctional Center, just across the Mississippi state line in Natchez, also tested positive, according to the agency.

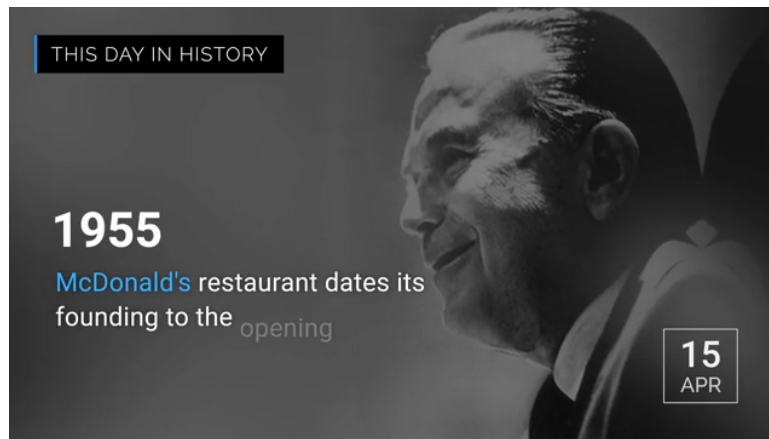
People loaded onto deportation flights are screened for fevers before being cleared to board, Cox said, and the agency won't deport anyone who's currently ill. Cox said detainees who have potentially been exposed to coronavirus are housed together in "cohorts" at detention center for at least 14 days.

ICE is reviewing the cases of people at high risk from coronavirus — primarily the elderly or people with serious underlying health conditions — who are currently locked in immigration detention, Cox said. A total of 693 people had been released from detention centers nationwide as of April 10, Cox said.

As of earlier this month, ICE was holding over 33,000 people across the country, including illegal immigrants facing possible deportation and asylum seekers who've traveled from around the world to seek refuge in the United States.

But immigrant rights groups have said those steps are not nearly enough. The ACLU and the Southern Poverty Law Center decried sanitary conditions in Louisiana immigration detention centers and asked a federal judge in Washington to order ICE to release asylum seekers.

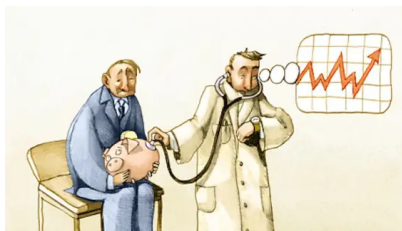
A new lawsuit on behalf of people held at six ICE detention centers in Louisiana called the lockups “notoriously overcrowded and unhealthy” and the possibility of deadly coronavirus outbreaks “inevitable.”



This Day In History

Sponsored by Connatix

SPONSORED CONTENT



Credit Score Under 700? Make These 5 Moves ASAP

By The Penny Hoarder

Yup — you've got some algorithm spitting out a three-digit number that's basically controlling your entire life. We...

You May Like

MD: If You Have Toenail Fungus, Do This Immediately (Watch}

Fungus Clear Supplements

Sponsored Links by Taboola

EXHIBIT E

Westword



Five staffers at the Aurora ICE facility have tested positive for COVID-19. / **Immigration and Customs Enforcement**

Three More Employees at Aurora ICE Facility Test Positive for COVID-19

CONOR MCCORMICK-CAVANAGH | **APRIL 8, 2020** | **10:57AM**

Three more people who work at the immigrant detention facility in Aurora have tested positive for COVID-19. They're all employees of private prison company **GEO Group**, which runs the facility through a contract with **Immigration and Customs Enforcement**, and are quarantining at home, according to the company.

"Based on a contact investigation conducted in partnership with the **Tri-County Health Department**, none of the employees who tested positive appear to have had any interactions with detainees that would have left them exposed to the coronavirus," says GEO Group spokesperson Pablo Paez.

The positive tests for the three GEO Group employees brings the number of workers at the ICE facility who have tested positive for COVID-19 to five. Earlier, **two ICE employees** who work at the facility, including one whose job involves contact with detainees, tested positive for COVID-19.

A handful of detainees at the facility have been tested for COVID-19. According to both ICE and Geo Group, none of the tests have come back positive. In late March, a **pod of close to eighty detainees was quarantined** because of possible exposure to either COVID-19 or influenza.

Throughout the pandemic, local ICE officials have not responded to questions about the number of individuals quarantined or the number of detainees who have been tested.

Immigration attorneys say that they, like their clients, have been largely left in the dark about what's been happening at the facility; detainees feel like they're sitting ducks and are beginning to panic, according to the lawyers.

Since March 24, attorneys have filed at least four habeas corpus petitions to get their clients out of the Aurora facility, which some see as a COVID-19 disaster waiting to happen. One client was released not long after a petition was filed, so lawyers voluntarily dismissed that one. The three others remain pending.

"The potential for the spread of one of these outbreaks within that detention facility may have significant casualties," **Carlos Franco-Paredes**, an infectious-disease doctor with the University of Colorado, had previously told *Westword*, noting that a major outbreak of COVID-19 cases in the facility could overwhelm nearby hospitals.

Lawsuits seeking release of vulnerable detainees from ICE custody have been filed in various federal courts throughout the country; some have been successful. Across the U.S., nineteen ICE detainees have tested positive for COVID-19.

Democratic members of Colorado's congressional delegation have also been pushing for ICE to release vulnerable detainees, such as older individuals or those with compromised immune systems.

"We write with serious concerns about the public health risks of detainees at detention facilities operated by [ICE] and contract facilities nationwide during the coronavirus outbreak. We believe that the COVID-19 outbreak across the country merits an evaluation of existing procedures regarding humanitarian parole," states a March 27 letter from Congressman Jason Crow, which was co-signed by representatives Diana DeGette, Ed Perlmutter and Joe Neguse.

Besides calling for the immediate release of people detained only for immigration offenses, the four Colorado representatives asked Matthew Albence, the acting director of ICE, to consider all detainees with non-violent criminal charges or convictions for parole, so long as they "do not pose a public safety risk." They also implored Albence to make sure that ICE employees "inform all detainees of their right to seek humanitarian release."

ICE recently notified congressional offices that it's telling field offices to reassess detainees and consider releasing those who may be at a higher risk for contracting serious cases of COVID-19, *BuzzFeed News* reports.

ICE "decided to reduce the population of all detention facilities to 75 percent or less to increase social distancing," according to an update on the ICE website. "Detention facilities may also increase social distancing by having staggered meals and recreation times in order to limit the number of detainees gathered together."

RELATED TOPICS: [NEWS](#) [CORONAVIRUS](#) [IMMIGRATION](#)

Use of this website constitutes acceptance of our terms of use, our cookies policy, and our privacy policy

©2020 Denver Westword, LLC. All rights reserved.

CALIFORNIA RESIDENTS: [California Privacy Policy](#) | [California Collection Notice](#) | [Do Not Sell My Info](#)

EXHIBIT F

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

JENNER BENAVIDES, et al.,	)	
	)	
Petitioners,	)	
v.	)	Civil Action No. 5:20-cv-46
	)	
PATRICK GARTLAND, et al.,	)	
	)	
Respondents.	)	

DECLARATION OF PATRICK GARTLAND

My name is Patrick Gartland and I serve as the Facility Administrator at the Folkston ICE Processing Center. I am an adult resident of Georgia, I am over 21 years of age, and I am competent to testify and have personal knowledge regarding the matters set forth in this Declaration.

1. I am presently employed as the Facility Administrator of Folkston ICE Processing Center. My duties and responsibilities include oversight and management of all Folkston's operations. This includes the steps recently taken to maintain the health of all staff and detainees and prevent the spread of COVID-19, as further described below. I have been the Facility Administrator at Folkston since February 2017.
2. Folkston takes the health and safety of its staff and detainees seriously. As such, it takes all requisite measures to adhere to standards required to ensure humane conditions. In addition to the usual cleaning and sanitizing measures

already in place, Folkston has instituted additional measures to ensure the health of its staff and detainees in light of the spread of COVID-19.

3. As of April 14, 2020, there has been one confirmed case of COVID-19 that has occurred with Folkston's staff. The staff member is currently on sick leave.
4. As of April 14, 2020, no confirmed cases of COVID-19 have occurred with the detainees at Folkston.
5. To stop the spread of COVID-19, Folkston has implemented a number of procedures in accordance with the guidelines published by the Centers for Disease Control (CDC).
6. Folkston has adopted enhanced screening for all visitors.
 - a. We have currently suspended social visits to Folkston.
 - b. Essential visits, such as attorney visits, still occur, subject to screening protocols and visitors are required to wear Personal Protective Equipment throughout their visit.
 - c. We have a screening area located in the facility's Front Entrance Areas. At the screening area, essential visitors are asked to complete a questionnaire in accordance with CDC guidelines and also undergo a temperature check.
 - d. If the screening is inconclusive, Folkston medical staff make the final determination about entry.
 - e. Any person who may place staff or detainees at risk is denied entry.

- f. Attorneys who visit are required to bring their own personal protective equipment.
- 7. To stop the spread of COVID-19, Folkston has implemented an enhanced intake procedure.
 - a. Upon entrance into the facility, every individual, including staff and new detainees, once processed into the facility, are advised to stand six feet apart from one another; no crowding or grouping is allowed throughout the facility.
 - b. At processing, all detainees must complete a temperature check and are screened by medical staff to determine whether anyone is at risk of having contracted COVID-19. If a detainee has temperature over 100.4 degrees, or a positive response to any of the health risk questions, that individual is sent to be assessed by the facility's medical staff to determine appropriate action.
 - c. The individual will not be released into the facility's general population until clearance is provided by the Medical Director.
- 8. To stop the spread of COVID-19, Folkston has implemented an enhanced cleaning regimen.
 - a. In addition to the usual cleaning procedures in place, the facility now implements additional, mandatory sanitization checklists and policies. For example, Folkston has purchased chemical cleaners on the list of approved products issued by the CDC to use to kill the virus.

- b. All units are required to undergo sanitization procedures throughout the dorms and common areas multiple times each day, including bathrooms, air vents, kitchens, and dining areas.
- c. Food carts and food prep areas are sanitized on a regular basis and are monitored daily by staff and by the local health department.
- d. All equipment used by detainees for attorney access (monitors, tablets, phones, etc.) are wiped down and sprayed with CDC approved chemical cleaning agents between each and every use.
- e. Additional handwashing signs, hand sanitizer units, and hand soap dispensers have also been installed throughout the facility and detainees are issued bars of soap as needed.
- f. Gloves are provided to all staff and detainees assigned to clean these areas. Further, all staff have been provided masks to wear while in the facility and directed to wear them.
- g. All group showers are sanitized daily, and CDC-approved chemicals are available for detainees to clean showers on an intermittent basis.
- h. Additionally, an approved sanitizer is sprayed in the shower units multiple times daily. Damaged or non-cleanable curtains are replaced upon detainee request and as is otherwise needed.
- i. All Folkston transportation vehicles and equipment are sanitized in between each use. The transportation staff have been provided with and employ all proper PPE materials.

- j. Detainees are allowed to purchase personal hygiene items from the commissary.
 - k. Additionally, detainees are provided 24-hour access at no charge to soap, shampoo, lotions, etc. as mandated under Performance-Based National Detention Standards (P.B.N.D.S.).
9. To stop the spread of COVID-19, Folkston has implemented a program of enhanced social distancing and critical detainee release.
- a. At the request of ICE, the Folkston medical staff generated a list of detainees with certain underlying medical conditions or who were over the age of 60 and provided that information to ICE.
 - b. A number of Folkston detainees whom I understand were determined to be particularly vulnerable to serious illness or death if infected by COVID-19 have already been removed from the facility. This determination was made by ICE, and we followed their direction.
 - c. Folkston houses other detainees whom it has determined to be particularly vulnerable to serious illness or death if infected by COVID-19 but whom I understand are not eligible for release based on their offenses. They have been placed in units with fewer detainees in order to create maximal social distancing opportunities.
 - d. Moreover, all Folkston open dormitory pod counts have been reduced to the greatest extent possible to facilitate social distancing among detainees.

- e. We have been able to accomplish this because Folkston is not currently at maximum capacity. Currently, Folkston is at 64% of design capacity.
 - f. Unfortunately, while detainees have been afforded every opportunity and are repeatedly advised by staff to practice social distancing measures in addition to CDC recommended handwashing procedures, detainees often choose not to follow these protocols.
 - g. We have suspended contact sports from the recreation program, such as basketball and soccer.
10. Folkston has also implemented education for detainees to make them aware of the CDC guidelines about personal hygiene and social distancing. Flyers discussing the prevention of COVID-19 have been distributed throughout the facility.
11. To stop the spread of COVID-19, Folkston has implemented a medical emergency protocol.
- a. Folkston is staffed with all necessary medical personnel. We have 37.5 medical personnel currently on staff.
 - b. Any detainee may request a medical appointment via the provided Detainee Request Form, verbally through their daily interaction with facility staff, via tablets in the housing units, or they may submit a Detainee Request Worksheet to immigration. Additionally, detainees may use the preexisting grievance system.

- c. Administrative personnel conduct daily inspections and walk-throughs five days a week, and detainees have access to those individuals in order to voice any complaints for follow-up by staff.
 - d. The medical staff respond to all requests for medical attention within the time frames mandated by P.B.N.D.S. or sooner in order to triage and treat detainees. If a complaint is reported to be critical, it is expedited and the detainee will be seen the same day or immediately, if necessary.
 - e. If a medical emergency occurs, detainees notify a staff member, who then initiates a pre-existing protocol to provide assistance. Medical staff are trained to respond to such calls in minutes and to provide immediate treatment.
 - f. In critical situations, Emergency Medical Technicians are stationed less than 5 miles away from the facility to transport detainees to local hospitals.
 - g. Additionally, Life Flight Helicopters are able to arrive and depart directly from Folkston grounds.
12. Folkston uses the following area hospitals to facilitate detainee medical needs. To the best of my knowledge and based on my experience, each hospital is fully equipped to handle medical emergencies.
- a. South East Georgia Health System Hospital - Brunswick Campus
2415 Parkwood Drive
Brunswick, GA 31520

b. South East Georgia Health System Hospital - Camden Campus

2000 Dan Proctor Drive

St. Marys, GA 31558

c. Memorial Satilla Health

1900 Tebeau Street

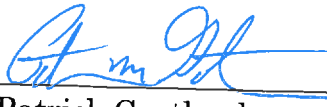
Waycross, GA 31501

13. All complaints in reference to medication are reviewed by the appropriate medical staff. All facility medical staff must adhere to a list of approved medications provided by ICE medical staff.

14. Based on the information provided herein and my knowledge of the people trained to undertake these protocols, I believe Folkston is and will remain capable of taking all adequate safeguards to protect staff and the detainee population from a COVID-19 outbreak at the facility.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that this information is true and correct to the best of my knowledge.

Executed this 14th day of April 2020 in Folkston, Georgia



Patrick Gartland
Facility Administrator
Folkston ICE Processing Center

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

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

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

13
14
15 Attorneys for Plaintiffs (continued on next page)

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

19 FAOUR ABDALLAH FRAIHAT, *et al.*,
20 Plaintiffs,
21 v.
22 U.S. IMMIGRATION AND CUSTOMS
23 ENFORCEMENT, *et al.*,
24 Defendants.

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

**SECOND SUPPLEMENTAL
DECLARATION OF HOMER
VENTERS IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION AND CLASS
CERTIFICATION**

Before the Honorable Jesus G. Bernal

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

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

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

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

26 Attorneys for Plaintiffs (continued from previous page)

27 *Admitted Pro Hac Vice

28 **Pro Hac Vice Application Forthcoming

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

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

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

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

1 I, Homer Venters, declare the following under penalty of perjury pursuant to 28
2 U.S.C. § 1746 as follows:

3 **Review of COVID-19 Pandemic Response Requirements (ERO, ERO 4/10/20)**

4 The ERO document identifies multiple areas of COVID-19 response that all
5 facilities holding ICE detainees must supposedly adhere to. Multiple sections of
6 this document reflect inconsistencies or critical omissions from CDC guidelines for
7 response to COVID-19 as well as recently promulgated ICE guidelines. In
8 addition, ICE is unlikely to ensure compliance with the policies laid out in this
9 document due to longstanding lack of information systems, quality assurance and
10 oversight mechanisms that are standard in other carceral or detention settings.
11 These inconsistencies and omissions increase the risk that facilities holding ICE
12 detainees will not follow evidence-based practices in infection control and that ICE
13 detainees will experience higher risks of serious illness and death because of these
14 deficiencies.

15 1. The ERO document omits key aspects of CDC guidelines for self-
16 monitoring and quarantine for staff and detainees who have had contact with
17 suspected or known cases of COVID-19.

18 a. Staff who have contact with a known or suspected case of COVID-19
19 are only mentioned in one sections of this document “Exposed
20 employees must then self-monitor for symptoms (i.e., fever, cough, or
21 shortness of breath).” This omits several critical aspects of CDC
22 guidance that bear on this very scenario, contacts between critical
23 staff and COVID-19 suspected or known cases. The CDC guidelines
24 include the following directives:¹

- 25 • Pre-Screen: Employers should measure the employee’s
26 temperature and assess symptoms prior to them starting work.

27
28 ¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>

1 Ideally, temperature checks should happen before the individual
2 enters the facility.

- 3 • Regular Monitoring: As long as the employee doesn't have a
4 temperature or symptoms, they should self-monitor under the
5 supervision of their employer's occupational health program.
- 6 • Wear a Mask: The employee should wear a face mask at all
7 times while in the workplace for 14 days after last exposure.
8 Employers can issue facemasks or can approve employees'
9 supplied cloth face coverings in the event of shortages.
- 10 • Social Distance: The employee should maintain 6 feet and
11 practice social distancing as work duties permit in the
12 workplace.
- 13 • Disinfect and Clean work spaces: Clean and disinfect all areas
14 such as offices, bathrooms, common areas, shared electronic
15 equipment routinely.

16 In addition, the ERO document provides no guidance on how facilities
17 should act if one of these staff members with a known/suspected
18 contact becomes ill at work. The CDC provides clear guidance
19 however:

20 "If the employee becomes sick during the day, they should
21 be sent home immediately. Surfaces in their workspace should
22 be cleaned and disinfected. Information on persons who had
23 contact with the ill employee during the time the employee had
24 symptoms and 2 days prior to symptoms should be compiled.
25 Others at the facility with close contact within 6 feet of the
26 employee during this time would be considered exposed."

27 b. Key CDC recommendations for detainees who have contact with a
28

1 known or suspected case of COVID-19 are similarly left out of the
2 ERO document. The ERO document addresses this aspect of facility
3 management with the following; “If an individual is a close contact of
4 a known COVID-19 case or has traveled to an affected area (but has
5 no COVID-19 symptoms), quarantine the individual and monitor for
6 symptoms two times per day for 14 days.” This omits several critical
7 aspects of CDC guidance that bear on this very scenario, the
8 quarantine of detainees who have contacts suspected or known cases.
9 On pages 19-21, the CDC guidelines include specific protocols
10 applicable to quarantine. Examples of these protocols include;²

- 11 • Provide PPE to staff working in quarantine settings, and masks
12 to detainees in these settings.
- 13 • Quarantined individuals should be monitored for COVID-19
14 symptoms twice per day, including temperature checks.
- 15 • Meals should be provided to quarantined individuals in their
16 quarantine spaces. Individuals under quarantine should throw
17 disposable food service items in the trash. Non-disposable food
18 service items should be handled with gloves and washed with
19 hot water or in a dishwasher. Individuals handling used food
20 service items should clean their hands after removing gloves.

21 2. The ERO document mandates that every facility holding ICE
22 detainees have a COVID-19 mitigation plan in place. The ERO document
23 specifies the following: “Consistent with ICE detention standards, all
24 facilities housing ICE detainees are required to have a COVID-19 mitigation
25 plan that meets the following four objectives:

- 26 • To protect employees, contractors, detainees, visitors to the facility,

27
28 ² <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#management>

and stakeholders from exposure to the virus;

- To maintain essential functions and services at the facility throughout the pendency of the pandemic;
- To reduce movement and limit interaction of detainees with others outside their assigned housing units, as well as staff and others, and to promote social distancing within housing units; and
- To establish means to monitor, cohort, quarantine, and isolate the sick from the well.³

My experience in reviewing policies and procedures in detention settings around the nation is that many facilities holding ICE detainees do not have such a plan and that since a critical part of the CDC recommendations include preparation for COVID-19, many facilities have already failed to meet many basic elements of the COVID-19 responses recommended by the CDC. Even if ICE is able to ensure and report that every facility creates such a plan in the coming two weeks, it is likely that the lack of existing COVID-19 response plan and preparation in many facilities will increase the risk of serious illness or death. Many ICE facilities are in the throes of COVID-19 infection and waiting until this pandemic is at its peak to require a mitigation plan represents a gross deviation from both CDC guidelines and basic correctional practice. Key areas of work that must be conducted before COVID-19 arrived include training of staff, ordering of supplies, planning for quarantine housing and monitoring, and identification of surge staffing. Starting these basic tasks now makes it much less likely that facilities will succeed in their efforts to slow spread of the virus.

3. The ERO document identifies a list of high-risk conditions that is inconsistent with the guidance given by ERO just days earlier, and fails to adhere to CDC guidelines.

- a. The new ERO document fails to identify pregnant or post-partum

women. The ERO docket review guidelines dated April 4, 2020, failed to identify smoking history or body mass index over 40 as risk factors, both of which are included by the CDC.

- b. The age for older detainees was indicated as 65 in the new ERO document and 60 in the prior document. The correct age, based on correctional standards, should be 55.

4. The purpose of the ERO document's identification of high-risk patients is unclear beyond custody review, but it fails to establish any higher level of protection from COVID-19 infection.

- a. The prescribed actions in the ERO document regarding high-risk detainees include identifying who they are, emailing their name, location, medical issues and medications, and facility point of contact information to ICE headquarters apparently for review for release.
- b. No guidance is given about how these high-risk patients can be protected from being infected with COVID-19, unless and until they are in a quarantine area or have been identified as symptomatic.
- c. Having identified the detainees who are at increased risk of serious illness and death, and initiated a process to effectuate their release based on that risk, ICE must also create increased surveillance of these detainees, including twice daily symptom checks with temperature checks.

5. The ERO document creates an unwieldy and unrealistic process for facilities to notify ICE headquarters regarding high risk detainees.

- a. The process of requiring every facility to send emails about every individual detainee with risk factors is unwieldy and unlikely to be effective. I have created surveillance tools for high risk patients in multiple detention scenarios and several key elements of this process

1 are problematic³;

- 2 i. The process of emailing thousands of names with relevant
3 information, or even spreadsheets, tables and other documents
4 from over 150 facilities creates an unreliable and error prone
5 system for finding the most vulnerable detainees inside ICE
6 facilities.
- 7 ii. The process identified by ICE is static, meaning that as detained
8 people move from one facility to another, there will be no way
9 for their location to be automatically updated with their high-
10 risk status, requiring labor intensive and error-prone records
11 reviews.
- 12 iii. This approach will not allow for day to day management of the
13 high-risk population by ICE leadership, since there will not be
14 any way to be automatically notified when people are released,
15 become ill from non-COVID-19 reasons, or even to
16 automatically cross check the new COVID-19 cases against this
17 initial batch of hundreds or thousands of emails.
- 18 iv. ICE should create single portal into which every facility can
19 enter data on the detainees who meet CDC criteria for being
20 high-risk. I employed such a portal as Chef Medical Officer of
21 the NYC jail system, and we relied on this before and after the
22 implementation of an electronic medical record as a way to
23 identify high risk patients and then track them from one facility
24 to another. This type of approach is also essential for ICE to
25 meet its stated obligations regarding re-entry planning for

26
27 ³ <https://cochs.org/files/health-it-hje/nyc-meaningful-use.pdf> And
28 https://www.researchgate.net/publication/264512394_Data-Driven_Human_Rights_Using_the_Electronic_Health_Record_to_Promote_Human_Rights_in_Jail

1 people who are leaving amid the COVID-19 crisis and
2 coordination with local and state public health partners.

3 v. The net effect to this cumbersome and inefficient process will
4 be that it will move unacceptably slow in a fast-changing
5 situation, far fewer detainees with risk factors are actually
6 released than could have occurred based on policies, and that
7 more high-risk patients will be at risk of serious illness and
8 death in ICE detention.

9 6. The ERO document fails to include vital elements of CDC guidance
10 on preventing the spread of COVID-19 inside detention settings.

11 a. The ERO document fails to mention or provide guidance on key
12 aspect of social distancing including;

- 13 i. Intake pens
- 14 ii. Clinical and medication lines
- 15 iii. Bathroom and shower areas
- 16 iv. Sally ports
- 17 v. Staff entry, symptom checking, meal and locker room areas

18 b. The ERO document fails to include guidance on the importance of
19 communication with detainees about changes to their daily routine
20 and how they can contribute to risk reduction, both of which are
21 explicitly identified by the CDC guidelines. This is particularly
22 important in a cross-cultural, multi-lingual setting like ICE detention.
23 Simply posting signs is insufficient to communicate with detained
24 people or staff, particularly during a stressful and chaotic situation
25 like an outbreak. My personal experience leading both small and large
26 scale outbreak responses behind bars is that frequent communication,
27 in housing areas and other parts of detention settings where detained
28

1 people are held, and where staff work, is critical to delivering
2 important messages about infection control and also hearing what is
3 working and what isn't.

4 c. The ERO document fails to include many critical aspects of cleaning
5 and disinfection outlined in CDC guidelines including;

6 i. CDC guidelines identify a higher level of cleaning and
7 disinfection after a person has been identified as suspected
8 COVID-19 case. This common sense approach is critical to
9 ensuring that the most high-risk scenarios encountered by
10 detainees and staff alike are responded to appropriately.

11 ii. The ERO document only mentions cleaning of vehicles after
12 transport of a known/suspected case but fails to mention
13 anything about the housing area, cell, bunk or personal effect of
14 detainees, or the computer, equipment or other belongings of
15 staff.

16 iii. CDC guidelines indicate that in settings where people are held
17 overnight, response to a known or suspected COVID-19 case
18 should include closing off areas used by the person who is sick,
19 opening outside doors and windows to increase air circulation
20 in the area and waiting 24 hours (or as long as possible) before
21 cleaning/disinfecting. If 24 hours is not feasible, wait as long as
22 possible.

23 iv. The ERO document fails to establish what PPE should be
24 utilized by staff or detainees cleaning areas occupied by a
25 known or suspected COVID-19 case.

26 d. CDC guidelines clearly recommend against transfer of detainees
27 between facilities, as a means to prevent the regional spread of
28 COVID-19. This approach is only mandated with regard to non-ICE

1 detainees by the April 10 ICE guidance leaving transfers of people in
2 custody of ICE unrestricted.

3 e. The ERO document requires that everyone in facilities engage in hand
4 washing for 20 seconds with soap and water but fails to address how
5 this can be accomplished in facilities that utilize metered faucets that
6 make this process essentially impossible.

7 f. The ERO document fails to establish or mandate a respiratory
8 protection program, a critical guideline of the CDC; “If not already in
9 place, employers operating within the facility should establish
10 a respiratory protection program as appropriate, to ensure that staff
11 and incarcerated/detained persons are fit tested for any respiratory
12 protection they will need within the scope of their responsibilities.”
13 Simply giving out N95 or other masks to staff and detainees and
14 failing to train them and identify the high-risk tasks or scenarios they
15 will encounter serves only to decrease the overall effectiveness of
16 infection control, and increase the risk of serious illness and death in
17 ICE facilities. The ERO document gives some details about cloth
18 masks, but there is no mention of any plan to train, record or supervise
19 members of the respiratory protection team, despite the CDC clearly
20 including security personnel in this team.⁴

21 7. The ERO document fails to address the re-entry needs of people
22 leaving ICE custody. This is a critical failure given their ongoing docket review.
23 The CDC makes clear recommendations on this process;

- 24 • If an individual does not clear the screening process, follow
25 the [protocol for a suspected COVID-19 case](#) – including putting a face

26
27 ⁴ <https://www.cdc.gov/niosh/nbptl/hospresptoolkit/programeval.html> CDC
28 definition includes “paid and unpaid persons who provide patient care in a
healthcare setting or support the delivery of healthcare by providing clerical,
dietary, housekeeping, engineering, security, or maintenance services.”

mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing.

- If the individual is released before the recommended medical isolation period is complete, discuss release of the individual with state, local, tribal, and/or territorial health departments to ensure safe medical transport and continued shelter and medical care, as part of release planning. Make direct linkages to community resources to ensure proper medical isolation and access to medical care.
- Before releasing an incarcerated/detained individual with COVID-19 symptoms to a community-based facility, such as a homeless shelter, contact the facility's staff to ensure adequate time for them to prepare to continue medical isolation, or contact local public health to explore alternate housing options.

8. I have also reviewed the Apr. 15, 2020 declaration of Russell Hott filed in this case.

- a. Mr. Hott identifies himself as the Acting Assistant Director of the Custody Management Division, and thus responsible for "oversight of compliance with ICE's detention standards and conditions of confinement at ICE detention facilities generally" for a detention network that encompasses approximately 250 facilities and has a daily census of approximately 40,000 people detained.
- b. Mr. Hott states that "As of this date, no ICE contractors or employees assigned to ICE facilities died from COVID-19." This appears to leave out numerous deaths that have occurred inside facilities that hold detained immigrants under the authority of the ICE, deaths among detained people in the same facilities and staff who work in these facilities. For example, in the Pike County Jail in Pennsylvania,

1 where ICE detainees are detained through an agreement between the
2 county and ICE, two jail inmates have died of COVID-19 related
3 illness and many more detainees and staff have tested positive.⁵
4 Failure to include the number of deaths in all facilities where ICE
5 detainees are held reflects a lack of appreciation about the risk of this
6 pandemic; the spread of COVID-19 throughout a detention setting is
7 not confined to staff or detainees, and certainly not limited one type of
8 detained person versus another. It is critical to report the full number
9 of cases and deaths among staff and all detained people in all settings
10 where ICE has detainees in their custody.

11 c. Mr. Hott does acknowledge that some non-ICE detainees and staff in
12 facilities that also house ICE detainees have become ill and died from
13 COVID-19. Regarding staff illness, he states that “Because this type
14 of information is not regularly shared by local law enforcement, ICE
15 is unable to determine how many non-ICE personnel in state and local
16 jails have contracted COVID-19 or died from COVID-19.” And
17 regarding detainee deaths and illness, he states that “Because these
18 detainees are not in ICE custody and they are non-ICE detainees,
19 information about these individuals is not regularly shared with ICE,
20 and ICE is unable to determine how many non-ICE detainees in state,
21 local, or other federal detention facilities have contracted COVID-19
22 or died from COVID-19.”

23 d. This lack of basic tracking of deaths and illness among staff and
24 detained people in the very facilities that ICE utilizes to detain ICE
25 detainees represents an egregious disregard for basic outbreak
26

27 ⁵ [https://www.brctv13.com/news/local-news/25816-dozens-of-inmates-at-pike-](https://www.brctv13.com/news/local-news/25816-dozens-of-inmates-at-pike-county-jail-along-with-ice-detainees-set-free-due-to-coronavirus-oubreak-at-the-facility)
28 [county-jail-along-with-ice-detainees-set-free-due-to-coronavirus-oubreak-at-the-](https://www.brctv13.com/news/local-news/25816-dozens-of-inmates-at-pike-county-jail-along-with-ice-detainees-set-free-due-to-coronavirus-oubreak-at-the-facility)
[facility](https://www.brctv13.com/news/local-news/25816-dozens-of-inmates-at-pike-county-jail-along-with-ice-detainees-set-free-due-to-coronavirus-oubreak-at-the-facility)

1 management. It is not possible for ICE to determine the risk to its
2 detainees without knowing whether and to what extent people are
3 infected with and dying from COVID-19 in the same buildings that
4 their own detainees are held. This willful disregard for basic
5 epidemiology and public health would never be considered acceptable
6 in separate schools that share a building, or long term care facilities
7 that share a physical plant, and it represents a willful disregard for
8 critical data needed to prevent illness and the loss of life for detainees
9 and staff alike.

10 e. Mr. Hott references a convening of ICE staff in March 2020 that
11 occurred for the purpose of determining who is high-risk for serious
12 illness and death from COVID-19 infection and whether their
13 detention was appropriate. No data are provided about what
14 percentage of the ICE population meets these criteria and despite this
15 knowledge being part of the day to day operations and accessible to
16 every correctional health service, it is extremely concerning that ICE
17 cannot report out how many of its detainees meet these criteria,
18 whether they are in fact using CDC criteria, and where these detainees
19 are being held.

20 f. No information is provided by Mr. Hott about how the extend of
21 COVID-19 infection inside a given facility will impact the
22 determination to release detainees, and whether high-risk detainees
23 inside facilities with active COVID-9 outbreaks will be prioritized. In
24 addition, given his stated lack of tracking about many of the COVID-
25 19 infections and deaths occurring inside facilities where ICE
26 detainees are held, it is unclear whether ICE even plans to make an
27 effort to learn about the full extent of COVID-19 infections and
28

1 deaths on the health of the entire ICE population of detainees and
2 staff.

- 3 g. Mr. Hott makes no reference to our prior submission (ERO critique)
4 that document the numerous failures of the ICE protocols to meet the
5 guidelines set forth by the CDC and our analysis that these failures
6 will contribute to illness and deaths among ICE detainees and staff.
7 h. Mr. Hott confusingly refers to the ERO guidance in his paragraph 14
8 as both mandatory and a reflection of best practice, leaving open the
9 possibility that ICE does not view or will not enforce it's newly
10 promulgated guidelines as mandatory.
11 i. The failure to track and utilize basic information about who is at high-
12 risk in the ICE detention system, wat facilities they are in, and
13 actively track with what facilities COVID-19 is causing illness and
14 death in raises the concern that ICE is failing to monitor and respond
15 to this outbreak, and that this failure will directly contribute to loss of
16 life among detained people and staff.

17
18 I declare under penalty of perjury that the statements above are true and
19 correct to the best of my knowledge.

20
21 Signature:



Homer Venters

Date: 4/16/2020

Location: Port Washington, NY

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

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

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

13
14
15 Attorneys for Plaintiffs (continued on next page)

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

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

21 v.

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

24 Defendants.

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

**DECLARATION OF ALEX
HERNANDEZ**

Before the Honorable Jesus G. Bernal

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

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

15 Maia Fleischman*
16 *maia.fleischman@splcenter.org*
17 SOUTHERN POVERTY LAW
18 CENTER
19 2 South Biscayne Boulevard
Suite 3750
Miami, FL 33131
Tel: (786) 347-2056
Fax: (786) 237-2949

20 Christina Brandt-Young*
21 *cbrandt-young@dralegal.org*
22 DISABILITY RIGHTS
23 ADVOCATES
24 655 Third Avenue, 14th Floor
New York, NY 10017
Tel: (212) 644-8644
Fax: (212) 644-8636

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

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

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

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

26 Attorneys for Plaintiffs (continued from previous page)

27 *Admitted Pro Hac Vice

28 **Pro Hac Vice Application Forthcoming

DECLARATION OF ALEX HERNANDEZ

I, Alex Hernandez, declare the following is true to the best of my knowledge:

1. I am at least 18 years of age and am competent to sign this declaration. I am originally from Honduras. I am currently detained in ICE custody at the Etowah County Detention Center (Etowah) in Gadsden, Alabama. I have been in ICE custody since approximately October 2016.
2. I am 49 years old and have several comorbidities that make me vulnerable to COVID-19. I have hypertension, which puts me at a higher risk for contracting COVID-19. I also have Barrett's esophagus, which puts me at a higher risk for cancer. I have not had an endoscopy or biopsy since being in ICE custody, which is meant to be conducted yearly to monitor my Barrett's esophagus and detect potentially cancerous cells. I am also recovering from a recent surgery. I am still experiencing pain, weakness, and inflammation from the surgery.
3. I have not received any formal education about COVID-19 from any ICE officers or Etowah officers. In my dorm, there have been no new educational materials. The informative flyer is still only posted in English, even though a large number of individuals in the unit do not speak English.
4. To my understanding and knowledge, there has been little change in protocols or procedures in place in light of COVID-19 at Etowah.
5. A week ago, around April 7, 2020, Etowah combined both ICE pods (Unit 9 and 10) together. Now everyone in ICE custody is housed together in Unit 9—it is about 100 of us together. Because both units are different custody levels, we cannot be mixed together and now, we are all on lock-down in our cells. The original individuals housed in unit 9, which includes myself, are released from our cells into the pod area for two hours in the morning and two hours in the evening. We are also released to eat our meals three times a day, which we are given roughly ten minutes for each meal. I eat with approximately 70 other men. We sit next to each other and it is very crowded. The other group is approximately 30 men. They are released at different times than us.
6. When we are in the pod, there is no room for social distancing. The most amount of space we have between each other is approximately two feet. The rest of the roughly 19.5 hours, we are in our cells.

7. I used to be in a cell by myself but since Etowah combined units 9 and 10, I share a cell. The only individuals who do not share a cell are the people who work. The cells have bunkbeds and they are very small. If you are sharing a cell, like myself, social distancing does not exist. I do not think the cells themselves are wider or longer than six feet.
8. Around Thursday, April 9, Etowah started giving us very tiny bars of soap to last for a week or two. Each bar is about a one-time use bar. I was given soap on Thursday and by Tuesday morning I had run out. Until the staff hands out soap again, I have to buy soap from commissary.
9. There is no hand sanitizer available.
10. The only detained individuals in our unit that receive cleaning supplies are the volunteer workers. The workers are responsible for cleaning. They do not clean my cell and I do not have disinfectant to clean it.
11. We do not have paper towels and must use toilet paper if we want to wipe anything down. To wipe down the phones, I use water and toilet paper.
12. We have been given a face mask to reuse. We have not been given gloves. The staff also wears masks, but do not wear gloves.
13. Detained individuals are still in physical contact. I have seen detained individuals shake hands and no one says anything. We have been given no instructions by staff on social distancing or other hygiene practices.
14. We have not been offered flu shots at Etowah.
15. I have not witnessed any changes in the medical staff or guards at Etowah County Detention Center in light of COVID-19, such as increased staffing.
16. People are still being transferred out of Etowah regularly. Last time I saw detained individuals being transferred out was the morning of April 14. It is my understanding that they are being transferred to other ICE facilities.
17. Despite my vulnerabilities to COVID-19, no member of the medical staff has evaluated my conditions or well-being to determine whether any

1 additional precautionary measures are necessary to protect me from the
2 illness. I am scared for my life.

3 18. As a named plaintiff, to the best of my ability, I have been working with my
4 lawyers to help them prepare and work on this case. I will continue to do so.
5 I am available to them to assist with the case, and they are available to me to
6 answer questions and to explain and keep me updated on the litigation. I
7 regularly speak with my attorneys and their staff to provide them information
8 in support of this lawsuit. I have responded and will continue to respond to
9 the lawyers' requests for information about adequate health care and other
10 conditions of confinement to the best of my ability. I intend to continue
11 working zealously with my attorneys on behalf of other individuals detained
12 in ICE custody nationwide as long as I am a named plaintiff.

13 19. I seek only declaratory and injunctive relief on behalf of the subclass I am
14 not seeking monetary damages, and I understand that this civil case will not
15 result in the dismissal of my civil immigration proceedings against me or
16 others.

17 20. I have authorized my attorney to sign on my behalf, given the difficulty of
18 arranging visitation and travel in light of the current COVID-19 pandemic. If
19 required to do so, I will provide a signature when I am able to do so.

20 I declare under penalty of perjury that the statements above are true and correct to
21 the best of my knowledge.
22
23
24
25
26
27
28

Maia Fleischman

Maia Fleischman Signed on
Behalf of Alex Hernandez

1 I, Maia Fleischman, declare the following under penalty of perjury pursuant to 28
2 U.S.C. § 1746 as follows:

- 3 1. My name is Maia Fleischman. I am a licensed attorney in good standing in
4 the state of Florida. I am an attorney of record in *Fraihat v. ICE*, Case 5:19-
5 cv-01546 (C.D. Cal.).
- 6 2. I represent the declarant, Alex Hernandez. Out of necessity in light of the
7 COVID-19 pandemic, I signed Alex Hernandez's declaration on his behalf
8 with his express consent.
- 9 3. ICE is now requiring legal visitors to provide and wear personal protective
10 equipment, including disposable vinyl gloves, surgical masks, and eye
11 protection while visiting any detention facility. These supplies are not easily
12 accessible, given the increase in demand. Any available supplies are
13 prioritized to hospitals and other medical facilities that are experiencing
14 dangerous shortages.
- 15 4. There are documented cases of COVID-19 in all fifty U.S. states and most
16 inhabited U.S. territories. The Center for Disease Control and Protection
17 (CDC) issued statements warning that individuals are at a higher risk of
18 infection when traveling. I have Immunoglobulin A Deficiency, an immune
19 system disorder, and asthma, which put me at a higher-risk for COVID-19
20 complications.
- 21 5. In light of the above, to protect public health, I am not able to travel to
22 Gadsden, Alabama, to obtain my clients' signatures.
- 23 6. I spoke with Alex Hernandez over the phone and read the declarations to
24 him and confirmed the accuracy of the information therein. Alex Hernandez
25 has confirmed that I can sign on his behalf, as reflected in his declaration.

26 I declare under penalty of perjury that the statements above are true and correct to
27 the best of my knowledge and that this declaration was executed on April 15, 2020
28 in Miami, Florida.



Maia Fleischman
Attorney for Plaintiffs
Southern Poverty Law Center
T: 786.390.3839
Maia.fleischman@splcenter.org

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

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

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

13
14
15 Attorneys for Plaintiffs (continued on next page)

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

19 FAOUR ABDALLAH FRAIHAT, *et al.*,
20 Plaintiffs,
21 v.
22 U.S. IMMIGRATION AND CUSTOMS
23 ENFORCEMENT, *et al.*,
24 Defendants.

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

**DECLARATION OF ANDRES
JIMENEZ**

Before the Honorable Jesus G. Bernal

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

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

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

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

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

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

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

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

26 Attorneys for Plaintiffs (continued from previous page)

27 *Admitted Pro Hac Vice

28 **Pro Hac Vice Application Forthcoming

DECLARATION OF ANDRES JIMENEZ

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Andres Jimenez, and I am currently employed as the Anti Detention and Bond Fund Coordinator for New Sanctuary Coalition (NSC).
2. New Sanctuary Coalition (NSC) is a multi-faith based immigrant-led organization based in New York City that believes no one should be deported and no one should be separated from their family. New Sanctuary Coalition creates support systems for and empowers those navigating the immigration system. NSC's Core programs include the Pro Se immigration clinic, Accompaniment, Anti-detention, and community organizing and advocacy.
3. Our accompaniment program recruits and trains volunteers to accompany people facing deportation to their immigration hearings and ICE check-ins. The weekly pro se clinic trains volunteers to help people identify ways to get relief from deportation and detention; access other immigration-related benefits; understand their rights so they can fight their own case; apply for asylum; prepare for court appearances or interviews; and much more. Through our Anti Detention program, we support Friends who are in detention throughout the United States including Mississippi, New York, New Jersey, and Louisiana. When we interact with people facing deportation, we refer to them as Friends. We do not call them clients, detainees, inmates, or anything else because they are a part of our community and we see them as equals to us.
4. I am in charge of NSC's Anti Detention program. I oversee volunteers who take the calls of our detained Friends, conduct detainee intakes, and follow up with me and other members of the Anti Detention Team for next steps. We are not lawyers and do not provide legal advice. Our services through the Anti-Detention program include connecting Friends to legal representation, supporting Friends with bond posting if given, support through our pro se clinic with preparation and/or translation of documents, and advocacy for their liberation.

5. Because of the urgency of the COVID-19 pandemic, and with our detained Friends' consent, we began taking close transcription-like notes of our conversations with them wherein they report conditions inside of the facilities.
6. Although ICE stated they have updated their policies around the COVID-19 pandemic to protect their detainees, our Friends in detention have not experienced any material changes that protect them from the virus. To the contrary, I have daily conversations with our detained community members and with each passing day the conditions get worse.
7. On March 28th, 2020, a detained Friend in Essex County Jail ("ECCF") located in Newark, NJ reported these conditions:

"There are no cleaning products in the bathroom. On the tablet, [guards] say they're trying to keep everything under control but they haven't given us anything and we are still in danger, without soap to wash. [Officers who are sick] would come in and out of the room. We need help from the organizations because this is going to be an epidemic in here, locked like in an anthill, like rats in a cage. I am desperate. [Three days ago], I woke up with red eyes, back pain and headache. I made a request on the tablet to see a doctor, but I haven't seen reply. Corridors are empty, like ghosts, desolated. You can't go to the library, we are all in the dorm like pigs in a pen."

8. On April 13, 2020, a detained Friend in Richwood Correctional Center in Richwood, Louisiana reported these conditions:

"They are bringing us food to our bunkers, we all have fever. The officers are telling us there is nothing else they can do and we do not want to die here. We know there are cases in this detention center. Every time we talk to an ICE Officer they talk to us like we are a part of a business, they tell us we are here for our own good and that is not true because we are all going to get sick and we do not want to die here. They tell us we are feeling this way because of the pollen and that is not true, I have never had allergies in my life. There are 98 of us in one

bunker, I want you to record this because after this call the Officers will pull me aside and threaten me for saying what I am saying.”

9. On April 14th, 2020, a detained Friend in Hudson County Jail in Kearny, New Jersey reported these conditions:

“We are in a horrible situation, . . . We don't have access to hygiene or cleaning products. They don't give us gloves or face masks, they only give us soap once a week. We find the microwave very dirty because we only have 30 mins out of our cells a day, everything is dirty. In the area of our cells it is very dirty because we are in our cells all day. The toilets we cannot flush more than twice an hour so it is very dirty. The food is very bad, they only give us bread, bologna... The C.O.'s come in and out of the jail without any protection and they come close to us and they can be carrying the virus as well. They do not explain anything to us about how to prevent the spread of the virus. I had put requests to see the doctor here and they never call me. We have gone a month and a half without our cells being cleaned and our sheets have been the same as well.”

10. NSC volunteers have also called the detention facilities throughout the U.S. where our community members are detained and spoken to officers employed by the facilities.

11. In a 40-minute-long phone conversation one NSC volunteer had on March 30, 2020 with a Corrections Officer (“C.O.”) at ECCF, this officer repeatedly spoke disparagingly of the nurses and doctors at ECCF. “They are the bottom of the barrel,” the C.O. told our volunteer, sharing that the best doctor they had on staff was ill with COVID-19 symptoms.

12. Another safety concern voiced by the C.O. was related to the central air and lack of fresh air circulation. “The issue with the jails, which you're going to start seeing really soon, is - remember how in the beginning it was the cruise ships that were affected the most?” he asked our volunteer. “That's because it's recycled air. Once one person has been exposed, everyone has been exposed.” While he cites the ability to reverse the air (something jails are designed to do for situations in which

pepper spray is used, for example) and states that the C.O.s have been reversing the airflow once a shift, he still acknowledged, “that’s not doing anything. We all know that’s not fixing anything.”

13. The C.O. emphasized the same fears I hear from our detained Friends - that no significant safety precautions are being taken and that even among staff, C.O.s were not notified with transparency when a supervisor to whom many had been exposed tested positive for COVID-19. And due to “lack of manpower,” according to the C.O., officers who were exposed to this supervisor, like himself, were unable to go home and perform the mandatory 14 days of self-quarantine as urged by public health officials. They had to go back to work and bring whatever they were exposed to directly to detainees.
14. Based on my ongoing, daily, communication with our Friends in detention who are providing firsthand experience, as well as the concerns raised by the C.O. at ECCF, I feel confident saying that every individual in detention and confinement, regardless of any pre-existing medical conditions, is at significant personal risk of contracting COVID-19. If they do contract this potentially fatal virus, they will have no access to adequate medical care or even nutritious food necessary to recover from significant illness. The continued detention of our community poses a catastrophic risk to the public health of detainees in ICE’s custody, all jail staff and their families, and all of the surrounding communities.

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

April 15th, 2020

Andres Jimenez

A handwritten signature in black ink, appearing to read 'Andres Jimenez', with a stylized, flowing script.

1 Timothy P. Fox (CA Bar 157750)
2 *tfox@creeclaw.org*
3 Elizabeth Jordan*
4 *ejordan@creeclaw.org*
5 Maria del Pilar Gonzalez Morales
6 (CA Bar 308550)
7 *pgonzalez@creeclaw.org*
8 CIVIL RIGHTS EDUCATION AND
9 ENFORCEMENT CENTER
10 1245 E. Colfax Avenue, Suite 400
11 Denver, CO 80218
12 Tel: (303) 757-7901
13 Fax: (303) 872-9072
14

15 Lisa Graybill*
16 *lisa.graybill@splcenter.org*
17 Jared Davidson*
18 *jared.davidson@splcenter.org*
19 SOUTHERN POVERTY LAW
20 CENTER
21 201 St. Charles Avenue, Suite 2000
22 New Orleans, Louisiana 70170
23 Tel: (504) 486-8982
24 Fax: (504) 486-8947
25

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

Attorneys for Plaintiffs (continued on next page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE**

FAOUR ABDALLAH FRAIHAT, *et al.*,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, *et al.*,

Defendants.

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

**DECLARATION OF
ARISTOTELES SANCHEZ
MARTINEZ**

Date: April 15, 2020

33870051.1

1 William F. Alderman (CA Bar 47381)
2 *walderman@orrick.com*
3 Jake Routhier (CA Bar 324452)
4 *jrouthier@orrick.com*
5 ORRICK, HERRINGTON &
6 SUTCLIFFE LLP
7 405 Howard Street
8 San Francisco, CA 94105
9 Tel: (415) 773-5700
10 Fax: (415) 773-5759

11 Michael W. Johnson**
12 *mjohnson1@willkie.com*
13 Dania Bardavid**
14 *dbardavid@willkie.com*
15 Jessica Blanton**
16 *jblanton@willkie.com*
17 Joseph Bretschneider**
18 *jbretschneider@willkie.com*
19 WILLKIE FARR &
20 GALLAGHER LLP
21 787 Seventh Avenue
22 New York, NY 10019
23 Tel: (212) 728-8000
24 Fax: (212) 728-8111

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

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

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

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

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

Attorneys for Plaintiffs (continued from previous page)

*Admitted Pro Hac Vice

**Pro Hac Vice Application Forthcoming

DECLARATION OF ARISTOTELES SANCHEZ MARTINEZ

I, Aristoteles Sanchez Martinez, declare the following is true to the best of my knowledge:

1. I am at least 18 years of age and am competent to sign this declaration. I am originally from Venezuela. I have been in ICE custody since approximately September 2018. I was transferred to Stewart Detention Center in Lumpkin, Georgia, on March 23, 2020, from the Houston Contract Detention Facility ("HCDF") in Houston, Texas. I had been at HCDF since about January 10, 2020. Before HCDF, I was at Stewart Detention Center ("Stewart"). Previously, I was at Folkston ICE Processing Center in Folkston, Georgia.

Medical Vulnerability

2. I am 47 years old and have several medical conditions that make me vulnerable to COVID-19. I have Type II diabetes and hypertension, which both put me at a higher risk for contracting COVID-19. Since I have been in ICE custody, my hemoglobin A1C levels and sugar levels have been dangerously high, at times at 9.7 and 345, respectively.
3. I am recovering from a hernia repair surgery that occurred on or around March 11, 2020. The surgeon removed a large right flank hernia on my abdomen, which had grown substantially since being in ICE custody. Despite instructions from a surgeon that I would have to remain in intensive care after the surgery, I was brought back to the ICE facility within one day of the surgery. I am still experiencing pain, weakness, and inflammation from the surgery. I also have neuropathy, a bone spur on my left foot, Charcot foot, avascular necrosis, non-palpable pulses in lower extremities, and venous insufficiency. I am currently in a wheelchair due to my conditions.
4. I worry that each of these conditions puts me at a higher risk for contracting COVID-19.

Stewart Detention Facility

5. Since I was transferred back to Stewart on March 23, my medical care has continued to decline. Because my diabetes is uncontrolled, it is important for me to eat within twenty minutes of receiving my insulin. There are three other people with diabetes in my unit. For the past week, our breakfast has been

33870051.1

1 delayed by at least one hour after we received our insulin. On one occasion,
2 we did not receive breakfast at all.

3 6. Our food portions have been significantly reduced, almost in half. For
4 example, for breakfast, we no longer receive what is on the schedule.
5 Instead, we receive oatmeal and two pieces of bread. This is not food enough
6 for me and is also dangerous for my sugar levels.

7 7. I was transferred back to Stewart without my prescribed pain medication. To
8 this day, I have only been given Tylenol 500mg to treat my pain.

9 8. Until March 31, I was living in a dorm unit with approximately eighty (80)
10 other men. I shared a cell with another detainee. We were regularly in close
11 proximity to each other and did not have the ability to exercise any social
12 distancing.

13 9. I am currently in a wheelchair. The initial wheelchair that I was given made
14 social distancing impossible because I could not push myself. I was fully
15 dependent on others to get around.

16 10. On Tuesday, March 31st, 2020, I was transferred to a separate dorm unit at
17 Stewart. In this unit, I am now living in a dorm with approximately twenty
18 (20) other men. I was assigned a cell without any roommates. However, we
19 all share a shower and eat our meals at the tables in the common area within
20 6 feet of each other.

21 11. My unit continues to be cleaned by other detainees. Since the COVID-19
22 crisis started, ICE has not made any changes to the cleaning schedule for our
23 dorm. Nor have we been provided with additional cleaning supplies to keep
24 our dorm disinfected and sufficiently clean.

25 12. I used to spend hours at the law library. Now, I am scared to go because I
26 worry that it will not be cleaned and I am scared for my life from this virus.

27 13. Instead, to keep myself busy, I spend my time playing videogames in the
28 common area of the unit. But, even there, I am worried for my life. Because
we have not been provided with additional cleaning supplies, I have used the
alcohol pad that the nurse gives me when I receive my insulin shot to wipe
down the video console.

33870051.1

1 14. ICE continues to maintain the same schedule for distribution of personal
2 hygiene supplies. Every Thursday, we receive one toilet paper roll, batteries,
3 one small bar of body soap (for washing hands and showering), one bottle of
4 body lotion, and one tube of toothpaste. If we run out of these provisions
5 before the end of the week, the only option is to buy additional supplies at the
6 commissary.

7 15. There are two other dorm units at Stewart that are currently in lockdown right
8 now, but ICE refuses to confirm whether this is due to a medical quarantine
9 situation.

10 **Named Plaintiff**

11 16. As a named plaintiff, to the best of my ability, I have been working with my
12 lawyers to help them prepare and work on this case. I will continue to do so.
13 I am available to them to assist with the case, and they are available to me to
14 answer questions and to explain and keep me updated on the litigation. I
15 regularly speak with my attorneys and their staff to provide them information
16 in support of this lawsuit. I have responded and will continue to respond to
17 the lawyers' requests for information about adequate health care and other
18 conditions of confinement to the best of my ability. I intend to continue
19 working zealously with my attorneys on behalf of other individuals detained
20 in ICE custody nationwide as long as I am a named plaintiff.

21 17. I seek only declaratory and injunctive relief on behalf of the subclass. I am
22 not seeking monetary damages, and I understand that this civil case will not
23 result in the dismissal of my civil immigration proceedings against me or
24 others.

25 18. I have authorized my attorney to sign on my behalf given the difficulty of
26 arranging visitation and travel in light of the current COVID-19 pandemic. If
27 required to do so, I will provide a signature when I am able to do so.

28 I declare under penalty of perjury that the statements above are true and correct to
the best of my knowledge.

Maia Fleischman

Maia Fleischman Signed on
Behalf of Aristoteles Sanchez
Martinez

33870051.1

1 I, Maia Fleischman, declare the following under penalty of perjury pursuant to 28
2 U.S.C. § 1746 as follows:

- 3 1. My name is Maia Fleischman. I am a licensed attorney in good standing in
4 the state of Florida. I am an attorney of record in *Fraihat v. ICE*, Case 5:19-
5 cv-01546 (C.D. Cal.).
- 6 2. I represent the declarant, Aristoteles Sanchez Martinez. Out of necessity in
7 light of the COVID-19 pandemic, I signed Aristoteles Sanchez Martinez's
8 declaration on his behalf with his express consent.
- 9 3. ICE is now requiring legal visitors to provide and wear personal protective
10 equipment, including disposable vinyl gloves, surgical masks, and eye
11 protection while visiting any detention facility. These supplies are not easily
12 accessible, given the increase in demand. Any available supplies are
13 prioritized to hospitals and other medical facilities that are experiencing
14 dangerous shortages.
- 15 4. There are documented cases of COVID-19 in all fifty U.S. states and most
16 inhabited U.S. territories. The Center for Disease Control and Protection
17 (CDC) issued statements warning that individuals are at a higher risk of
18 infection when traveling. I have Immunoglobulin A Deficiency, an immune
19 system disorder, and asthma, which put me at a higher-risk for COVID-19
20 complications.
- 21 5. In light of the above, to protect public health, I am not able to travel to
22 Lumpkin, Georgia, to obtain my clients' signatures.
- 23 6. I spoke with Aristoteles Sanchez Martinez over the phone and read the
24 declarations to him and confirmed the accuracy of the information therein.
25 Aristoteles Sanchez Martinez has confirmed that I can sign on his behalf, as
26 reflected in his declaration.

27 I declare under penalty of perjury that the statements above are true and correct to
28 the best of my knowledge and that this declaration was executed on April 15, 2020
in Miami, Florida.

33870051.1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Maia Fleischman

Maia Fleischman
Attorney for Plaintiffs
Southern Poverty Law Center
T: 786.390.3839
Maia.fleischman@splcenter.org

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

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

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

13
14
15 Attorneys for Plaintiffs (continued on next page)

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

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

21 v.

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

24 Defendants.

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

**DECLARATION OF FRANCIS L.
CONLIN**

Before the Honorable Jesus G. Bernal

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

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

15 Maia Fleischman*
16 *maia.fleischman@splcenter.org*
17 SOUTHERN POVERTY LAW
18 CENTER
19 2 South Biscayne Boulevard
20 Suite 3750
21 Miami, FL 33131
22 Tel: (786) 347-2056
23 Fax: (786) 237-2949

24 Christina Brandt-Young*
25 *cbrandt-young@dralegal.org*
26 DISABILITY RIGHTS
27 ADVOCATES
28 655 Third Avenue, 14th Floor
New York, NY 10017
Tel: (212) 644-8644
Fax: (212) 644-8636

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

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

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

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

Attorneys for Plaintiffs (continued from previous page)

*Admitted Pro Hac Vice

**Pro Hac Vice Application Forthcoming

DECLARATION OF FRANCIS L. CONLIN

I, Francis L. Conlin, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

1. My name is Francis L. Conlin. I am the Chairperson for Friends of Miami-Dade Detainees (FOMDD). FOMDD is a 501(c)(3) non-profit organization that advocates for immigrants. Our mission is to end isolation, curb abuse, spread awareness, and end immigrant detention. We accomplish our mission by operating visitation programs that offer friendship, a link to legal representation, phone time, books, and other support to immigrants in detention.
2. FOMDD operates visitation programs at Krome Service Processing Center (Krome) in Miami, Florida, Broward Transitional Center (BTC) in Pompano Beach, Florida, and Glades County Jail (Glades) in Moore Haven, Florida. FOMDD has operated visitation programs for over six years and has conducted over 3,000 visits to people in detention.
3. Since the outbreak of the COVID-19 pandemic, FOMDD volunteers have been in continuous contact with detained individuals at the three facilities we serve and have reported their findings to me.
4. All community visitation has been suspended at the three facilities since March 13, 2020. We are not permitted to bring in cleaning supplies, masks, gloves, or hand sanitizer. After visitation was suspended, we have remained in contact with people at Krome, Glades, and BTC through telephone and Video Conferencing.
5. Based on FOMDD's knowledge and understanding, there have been no significant or material changes in the three facilities after the April 10, 2020 ICE guidelines.
6. FOMDD is aware of dozens of people detained at Krome, Glades, and BTC who are elderly or immunocompromised due to diabetes, high blood

1 pressure, and other underlying medical conditions that put them at high risk
2 of contracting and suffering deadly consequences from COVID-19.

- 3 7. Detained individuals at all three facilities report not being provided with
4 sufficient soap, cleaning supplies, or hand sanitizer to wash their hands
5 following the CDC protocols.

6 **KROME ICE PROCESSING CENTER**

- 7 8. At Krome, the only education that the approximately 600 detained
8 individuals have received on COVID-19 has been informative flyers posted.
9 FOMDD has heard since the beginning of the COVID-19 outbreak that
10 detained immigrants have been demanding that ICE tell them their plan to
11 safely and adequately handle coronavirus. Because Krome staff was not
12 providing sufficient information, and people were terrified, one dorm begged
staff to test them for the virus. The dorm was not tested.

- 13 9. As of April 13, detained individuals were still reporting overcrowding in the
14 dorms. There are about 99 people in one of the pods. Because of this, there
15 is no room for social distancing of six feet. Individuals report being
16 crammed together all the time. Some people do not have a cot and are
17 sleeping on a makeshift bed on the floor.

- 18 10. FOMDD has heard reports from people detained at Krome that guards are
19 reluctant to report to work for fear they will not be allowed to leave, and for
20 their own well-being and safety. We heard there had been a decrease in
contracted staff to a “skeleton crew” that would potentially stay on-site 24/7.

- 21 11. Krome is failing to provide adequate medical care for individuals with
22 chronic conditions. Detained individuals are reporting that they have not
23 been receiving satisfactory healthcare to manage their chronic medical
24 conditions at Krome. FOMDD is aware of a diabetic man who had been
25 without his medication for 17 days—he finally received his medication on
April 14.

- 26 12. As of April 7, 2020, we were told that at least 238 people had been exposed
27 to the virus and were quarantined as a group at Krome. The quarantined
28 group was not provided with masks or hand soap until April 13—nearly 8

1 days into their quarantine. The conditions are very unsanitary and the staff
2 does not monitor conditions. One individual reported that feces is sometimes
3 passed between individuals during meals.

4 13. As of April 15, there are two confirmed cases of detained individuals
5 COVID-19 at Krome. One detained individual who contracted the virus is a
6 29-year-old man currently in critical condition in the ICU. FOMDD heard of
7 a 27-year old man who was taken to the hospital with symptoms. It was
8 reported he was taken back to Krome on April 6 and placed in medical
isolation.

9 14. We are aware of two guards that tested positive for COVID-19 as of April
10 13.

11 15. Krome follows the dangerous practice of “cohorting.” FOMDD learned that
12 anyone who was exposed to the virus is placed in a room with dozens of
13 others who also may have been exposed, virtually guaranteeing that they
14 will all become sick even if they wouldn’t have otherwise. There is no room
15 for social distancing in these cohorted pods, nor are people in these cohorted
16 pods given masks.

17 16. FOMDD has documented ICE indiscriminately transferring people from
18 Krome Service to other detention centers during this pandemic. Individuals
19 are being transferred into the facilities’ custody with only cursory screening.
20 It has been reported that Krome is gearing up for mass transfer to facilities in
other states, including Alabama and Georgia.

21 **GLADES COUNTY DETENTION CENTER**

22
23 17. With recent transfers and over 400 individuals already imprisoned at Glades,
24 social distancing, the only mechanism of prevention and control of the
25 disease, is impossible at this facility.

26 18. At Glades, individuals are housed with over 90 people per pod, sleeping in
27 bunks and spending most of the day in a single common area. There is no
28 room to practice social distancing in these pods. There are six bunks in each

1 cubicle—about twelve people per cell. Everyone sleeps within less than 6
2 feet from each other.

3 19.As of April 14, one of the units only had one sign about how to prevent the
4 virus from spreading. The sign was only in Spanish and it was torn in half.
5 Most of the men in that unit do not speak Spanish and would not understand
6 what the sign says.

7 20.As of April 4, more than 20 people were brought to Glades from Krome. We
8 are very nervous that, given Krome's already confirmed cases of COVID-
9 19, Krome is transferring individuals who are either symptomatic or
10 asymptomatic and will increase the spread of COVID-19 to Glades.

11 21. Consonant to the reality at Krome, detained individuals at Glades report
12 symptoms of COVID-19. It was reported that on March 30, a man was taken
13 to medical and staff came into the dorm to pack up his belongings wearing
14 gloves and masks, instilling justifiable fear in the people in that dorm. Later,
15 on April 5, FOMDD received a report that a detained person was taken to
16 quarantine. On April 14, FOMDD received another report of a detained
17 person reporting symptoms. Rather than getting tested, he was taken to
18 confinement.

19 22.FOMDD has heard from detained people that there are people in group
20 quarantine at Glades. On April 12, we received confirmation from a man
21 with whom we have been communicating that he was moved out of a dorm
22 that is now dedicated for use as a group quarantine dorm for those with
23 suspected COVID-19 exposure or infection. On April 14, it was reported
24 that people in the quarantine unit were tested for COVID-19. This group
25 then had to sign a liability waiver saying that Glades was not liable if they
26 test positive for COVID-19.

27 23.Conditions at Glades continue to be unsanitary for detained individuals. It
28 was reported one individual with a work assignment that requires being in
contact with the food trays reported feeling ill. He went to the medical unit
to report his illness and was not provided with adequate medical care. He
ultimately decided not to continue his work assignment because he was

1 afraid to expose other detained individuals to his illness, and he was not
2 being provided with additional sanitizing materials. In one unit, most of the
3 individuals with work assignments quit because they are scared to get
4 COVID-19, leaving only two trustees to clean a 90-person unit.

5 24. On April 14, one individual reported seeing staff coughing and not covering
6 their mouths, and with stuffy noses.

7
8 25. Men and women only receive one, 4-ounce bottle of liquid soap per week.

9 26. There is no hand sanitizer, or tissue paper available for detained individuals
10 at Glades. A soap dispenser was not installed in the bathroom in the men's
11 pods until April 13. Detained individuals are not provided face masks.

12 27. One individual reported that guards conduct shakedowns without
13 precautions—checking all the bunks using the same pair of gloves for every
14 bunk. These harmful practices of touch and go results in cross-
15 contamination. For gloves to be effective, they must be changed between
16 each activity to avoid cross-contamination.

17 28. Detained individuals are not receiving satisfactory healthcare to manage
18 their chronic medical conditions. On April 2, it was reported that the
19 detention center had run out of all antibiotics and medicine for colds, pain,
20 and diabetes and would not receive a new supply for at least seven days. On
21 April 14, one man who suffers from grand mal seizures, reported not
22 receiving his life-saving medications since April 8. On April 15, another
23 man who suffers from asthma and is having trouble breathing reported that
24 he had requested an inhaler on two separate occasions in the last three
25 weeks, and has not yet received one.

26 **BROWARD TRANSITIONAL CENTER**

27 29. Parallel to Glades, BTC is unable to keep the approximately 700 imprisoned
28 individuals healthy due to the facility's unsanitary conditions and lack of

1 medical resources. Detained individuals have reported that bathrooms are
2 very dirty. There is not enough soap or hygiene products for everyone.

3 30. BTC is not responding to medical concerns and providing adequate care.
4 FOMDD knows a 23-year-old woman with asthma and diabetes who
5 reported that staff made light of her illnesses and accused her of “wanting
6 attention” and “putting on a show.” In detention, her condition worsened, as
7 she was given ibuprofen as her only treatment.

8 31. Detained individuals at BTC report being sick or witnessing other people
9 with coughs, chills, fevers, and other symptoms and report that they were
10 receiving minimal to no medical treatment. Detained individuals reported to
11 FOMDD that there are people with symptoms of COVID-19.

12 32. FOMDD has received consistent reports that all detained immigrants in a
13 unit are using the same phones without access to disinfectants to clean them
14 following each individual use. Consequently, people are using socks to
15 serve as barriers between their germs and those of the people before them.

16 33. On April 9, new people were brought to BTC from Krome. We are very
17 nervous that, given Krome’s already confirmed cases of COVID-19, Krome
18 is transferring individuals who are either symptomatic or asymptomatic and
19 will increase the spread of COVID-19 to BTC.

20 34. On April 9, 2020, individuals reported that BTC cut off access to
21 Univision—the primary independent source of news and information
22 detained individuals receive regarding COVID-19.

23 35. On April 13, individuals detained at BTC were still reporting that some BTC
24 guards move throughout the common living areas without wearing masks or
25 gloves.

26 36. On April 13, one detained man reported only receiving a couple squirts of
27 hand sanitizer during meal times.
28

1 37. Detained individuals at BTC reported on April 14, that detained individuals
2 were unable to practice social distancing. Detained individuals were also still
3 not receiving gloves or masks.

4
5 38. Transferred individuals are placed in group quarantines. The quarantines in
6 place result in individuals being put together in a crowded and cramped area
7 without space necessary for social distancing. Everyone is together for over
8 a total of 10 hours per day. For the remainder of the time, six people share
9 one small cell. On April 14, one man reported that there were 3 groups of
10 quarantined rooms and the staff was not giving the non-quarantined groups
11 information. One individual reported seeing guards coming in and out of
the quarantined rooms to the non-quarantined rooms. The quarantined
people eat in the same dining rooms and use the same telephones as the rest
of the population.

12 39. I, along with the other members at FOMDD, are terrified for the safety and
13 well-being of the detained individuals at the three facilities. We are deeply
14 frustrated and horrified by the lack of efforts the three facilities have made to
15 prevent COVID-19 from spreading. We worry that it is too late, and the
16 virus is already in the three facilities and that hundreds of individuals are at
serious risk of harm or death.

17
18 I declare under penalty of perjury and under the laws of the United States, pursuant
19 to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my
knowledge, memory, and belief.

20 Executed on the 15th day of April, in the year 2020, in the city of Key Largo,
21 Florida.

22
23 *Francis L. Conlin*

24
25 Francis L. Conlin
26 Friends of Miami-Dade Detainees
27 3900 Hollywood Blvd., Ste. 103
28 Hollywood, FL 33021
T: 305.394.7461
colinbud@gmail.com

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

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

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

13
14
15 Attorneys for Plaintiffs (continued on next page)

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

19 FAOUR ABDALLAH FRAIHAT, *et al.*,
20 Plaintiffs,
21 v.
22 U.S. IMMIGRATION AND CUSTOMS
23 ENFORCEMENT, *et al.*,
24 Defendants.

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

**DECLARATION OF JOSE
TAPETE GONZALEZ**

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

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

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

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

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

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

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

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

26 Attorneys for Plaintiffs (continued from previous page)

27 *Admitted Pro Hac Vice

28 **Pro Hac Vice Application Forthcoming

DECLARATION OF JOSE TAPETE GONZALEZ

I, Jose Tapete Gonzalez, declare the following under penalty of perjury pursuant to 28 USC § 1746 as follows:

1. I am at least 18 years of age and am competent to make this declaration.
2. My full name is Jose Tapete Gonzalez. I am 51 years old. I have been in ICE custody for approximately two years, all of which has been at Adelanto Detention Center. I used to live in Los Angeles.
3. I am diabetic and have hypertension, among other chronic issues.
4. A few weeks ago I was moved from Dorm 3D to Dorm 5C. I was told by a GEO employee that 5C is now a medical dorm. There are older people in this dorm and people with chronic issues. There are approximately 60 of us in this dorm. I have two cellmates. The beds in our cell are bunk beds and bolted to the floor. We are right on top of each other. We do not sleep head to foot.
5. Everyone in this dorm has a cellmate. When we were moved into the dorm no one took our temperature or did any other symptoms checks.
6. GEO guards keep entering our dorm without gloves or masks. Just this morning (April 15, 2020), a guard came in without a mask. The medical grievance coordinator was in our dorm at the time. I told her to look at her colleague without protective gear, that they were risking infecting me and that she knew my medical history. She did not say anything.
7. We do not see medical staff more frequently. It is just the pill pass nurse and they do no temperature checks or any other symptom checks. When the pill pass nurse comes, we line up. We are very close together. We have not been told to maintain 6 feet of distance. The pill pass cart has a pitcher of water on it. Each detained person has to pick up the pitcher and pour a glass of water for themselves to take their medicine. We are all touching the pitcher.

1 8. I have seen people leaving my dorm for medical appointments. Yesterday
2 (April 14, 2020), I saw four or five people from my dorm leave at once to go
3 to the medical area. They were not given masks that I could see and they
4 were all bunched together.

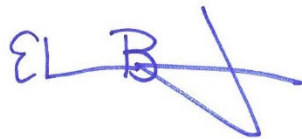
5 9. I have not seen any more security or medical staff working at Adelanto than
6 normal.

7 10. A few weeks ago a hand sanitizer dispenser was placed in the hallway
8 leading to the cafeteria. It has been empty for more than two weeks. The
9 security staff keep telling us they are going to refill us but it has not been
10 refilled. Thirty of us go to the cafeteria at a time but we walk in a group less
11 than 6 feet apart.

12 11. I am working to clean floors for a dollar a day. There are bottles of
13 disinfectant in the janitor's closet that we are supposed to add to the bucket
14 but they are empty. We are just cleaning with water.

15 I declare under penalty of perjury that the statements above are true and correct to
16 the best of my knowledge.

17
18 Signature:

19 A handwritten signature in blue ink, appearing to be 'ELB' followed by a stylized flourish.

Elizabeth Jordan on behalf of Jose
Tapete Gonzalez

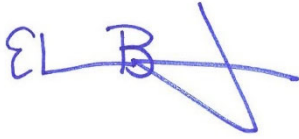
Date: 4/15/2020

Location: Adelanto, California

1 I, Elizabeth Jordan, declare the following under penalty of perjury pursuant to 28
2 U.S.C. § 1746 as follows:

- 3 1. I am a licensed attorney in good standing in Louisiana and New York. I am
4 an attorney of record in *Fraihat v. ICE*, Case 5:19-cv-01546 (C.D. Cal.).
- 5 2. Out of necessity in light of the COVID-19 pandemic, I signed the attached
6 declaration on Jose Tapete Gonzalez's behalf with his express consent.
- 7 3. ICE is now requiring legal visitors to provide and wear personal protective
8 equipment, including disposable vinyl gloves, surgical masks, and eye
9 protection while visiting any detention facility. These supplies are not easily
10 accessible, given the increase in demand. Any available supplies are
11 prioritized to hospitals and other medical facilities that are experiencing
12 dangerous shortages. As such, it is nearly impossible to arrange an in-person
13 legal visit while this policy is in effect.
- 14 4. There are documented cases of COVID-19 in all fifty U.S. states and most
15 inhabited U.S. territories. The Center for Disease Control and Protection
16 (CDC) issued statements warning that individuals are at a higher risk of
17 infection when traveling. Mr. Tapete Gonzalez is detained at Adelanto
18 Detention Facility in Adelanto, California, while I live in Denver, Colorado.
19 Colorado has been under a state of emergency since March 10 and
20 recommends avoiding non-essential travel.
- 21 5. In light of the above, to protect public health, I am not able to travel to
22 Adelanto to obtain Mr. Tapete Gonzalez's signature.
- 23 6. I spoke with Mr. Tapete Gonzalez over the phone. While we were speaking,
24 I simultaneously translated the declaration into Spanish for Mr. Tapete
25 Gonzalez's review for accuracy, confirmation of the contents, and approval.
26 I am a non-native fluent Spanish speaker. Mr. Tapete Gonzalez has
27 confirmed that I can sign on his behalf as reflected in his declaration. I
28 declare under penalty of perjury that the statements above are true and

1 correct to the best of my knowledge and that this declaration was executed
2 on April 15, 2020 in Denver, Colorado.

3
4 A handwritten signature in blue ink, appearing to read 'ELB' followed by a stylized flourish.

5
6
7 Elizabeth Jordan
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

13
14 Attorneys for Plaintiffs (continued on next page)

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

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

21 v.

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

24 Defendants.

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

25 **DECLARATION OF LINDA**
26 **CORCHADO**

27 Before the Honorable Jesus G. Bernal
28

1 William F. Alderman (CA Bar 47381)
2 *walderman@orrick.com*
3 Jake Routhier (CA Bar 324452)
4 *jrouthier@orrick.com*
5 ORRICK, HERRINGTON &
6 SUTCLIFFE LLP
7 405 Howard Street
8 San Francisco, CA 94105
9 Tel: (415) 773-5700
10 Fax: (415) 773-5759

11 Michael W. Johnson**
12 *mjohnson1@willkie.com*
13 Dania Bardavid**
14 *dbardavid@willkie.com*
15 Jessica Blanton**
16 *jblanton@willkie.com*
17 Joseph Bretschneider**
18 *jbretschneider@willkie.com*
19 WILLKIE FARR &
20 GALLAGHER LLP
21 787 Seventh Avenue
22 New York, NY 10019
23 Tel: (212) 728-8000
24 Fax: (212) 728-8111

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

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

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

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

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

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

Attorneys for Plaintiffs (continued from previous page)

*Admitted Pro Hac Vice

**Pro Hac Vice Application Forthcoming

**DECLARATION OF LINDA CORCHADO, LEGAL DIRECTOR, LAS
AMERICAS IMMIGRANT ADVOCACY CENTER**

I, Linda Corchado, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct. If called as a witness, I could and would testify as follows.

1. I am an attorney licensed to practice law in New York. Since May 2019, I have been the Legal Director at Las Americas Immigrant Advocacy Center (“Las Americas”). As Legal Director, I engage in direct representation of noncitizen clients and also supervise attorneys and other staff at Las Americas who represent individuals detained during immigration proceedings.

2. I have been practicing law since 2015. I have focused my practice on immigration law, with a particular focus on asylum and the detention of asylum seekers. Prior to joining Las Americas, I worked as a private immigration attorney for four years.

Las Americas’ Mission and Scope

3. Las Americas is a nonprofit legal services organization based in El Paso, Texas, dedicated to serving the legal needs of low-income asylum seekers and other low-income noncitizens in West Texas and New Mexico.

4. Las Americas’ legal staff consists of six attorneys, two non-attorney representatives accredited by the Board of Immigration Appeals to represent

1 noncitizens in immigration matters before the Department of Homeland Security
2 (“DHS”) and in immigration court, and six paralegals.

3
4 5. A central part of Las Americas’ mission is providing consultation and legal
5 services to asylum seekers detained while in the expedited removal process.

6
7 6. Las Americas also represents detained asylum seekers in other procedural
8 settings, such as in connection with bond and parole requests, and on the merits of
9 their asylum applications in regular removal proceedings in immigration court.

10
11 7. Our goal in all of our work with asylum seekers is to ensure that detained
12 low-income individuals have a fair opportunity to establish their eligibility for
13 protection and are not wrongfully removed to persecution or torture. Reaching and
14 effectively representing asylum seekers during the expedited removal process is
15 absolutely essential to our mission of ensuring that they have a chance to fully
16 develop and present their claims.

17
18 8. Our detained work primarily focuses on providing representation to persons
19 at the El Paso Service Processing Center (“ESPC”), and Otero Processing Center
20 (“Otero”). Since the outbreak of COVID-19, Las Americas has not been able to
21 visit individuals inside of ICE detention facilities and has instead spoken by phone
22 to individuals inside of the facilities. Over the last couple of weeks we have
23 received multiple reports from our clients detailing the ways in which ICE is
24 failing ICE’s failure to protect individuals in its custody during this pandemic.
25
26
27
28

1 Below are but a few of the horrific conditions that clients have expressed in the
2 past two weeks.

3
4 **Otero County Processing Center**

5 9. On April 9, 2020, we received confirmation that one detainee and one
6 independent contractor had tested positive for COVID-19 at the Otero ICE
7 Facility. This has also been publicly reported.

8
9 10. On Monday, April 13, 2020, we spoke with Client 1 over the phone. He told
10 us that guards and ICE officials kept telling them everything is fine, they denied
11 that people are infected. Instead, detained persons heard of the positive COVID
12 case on Spanish language news. On Friday, April 10, 2020, an MTC guard finally
13 told them he was “tired of lying to them” and told them some people at Otero were
14 infected.
15
16

17 11. According to this client, people detained at Otero are practically sleeping on
18 top of each other and there is no room to socially distance from one another. No
19 soap has been given to them; if they want soap, they have to buy it. This client tells
20 us that they are cleaning the bathroom themselves because he along with other
21 persons in the same bunker are afraid of infection and have taken it upon
22 themselves to ensure shared spaces are clean. He told us detainees are also
23 cleaning their bed space, because there is no one cleaning it. Detainees continue
24 their \$1 a day jobs like cooking for the detained population. This client told us that
25 there are several people around him who are coughing and don’t receive immediate
26
27
28

1 medical attention. Instead, they need to wait the customary time in order to be seen.
2 Additionally, the guards do not wear masks and gloves. This client stated that since
3 news broke of the COVID-19 case in the facility, they were not allowed to use any
4 video chats from Friday until Monday.
5

6 12. Another client of ours is disabled and has been placed in medical isolation in
7 Otero. On Monday, April 13, 2020, he told us over the phone that no one has
8 cleaned his room in about a month and a half. His sheets also had not been
9 changed. There is no soap in the showers, only shampoo. There was also no soap
10 in his isolation cell, where there was a sink with a metered faucet. This client tells
11 us he has had a fever, a cough, and was experiencing body aches. He initially told a
12 guard how he felt and was told not to bother the guard. The emergency button in
13 his cell never worked. He had to wait for three days to receive any medication for
14 these symptoms. His temperature was also not taken. The guard in the isolation
15 unit where he lived did not wear a mask, and one was coughing in front of this
16 client. He was later replaced by another guard who this client had previously seen
17 in other parts of the facility. There was no indication that the facility had hired
18 more staff. This client also overheard guards discussing having contact with a
19 person who had come into the facility who later tested positive. The guards were
20 commenting that they thought they were going to be sent to quarantine, and they
21 were expressing concern that they would not be paid if they were in quarantine.
22 This client also observed shift change while he was out for a medical appointment.
23
24
25
26
27
28

1 Guards entering the facility to start their shift were not tested and were shaking
2 hands with other guards.

3
4 13. That same day, an ICE deportation officer notified me that this client was
5 going to be released. I advised ICE that my client had been feeling unwell. I
6 received no response from ICE as to whether or not my client had ever been tested
7 for COVID. Promptly upon his release on Tuesday, April 14, 2020, I was able to
8 ensure that this client obtained free COVID-19 testing. He is currently in
9 quarantine until he receives the results.
10

11
12 14. On Tuesday, April 14, 2020, a third client reported that a guard had
13 informed them that two people at the facility, one guard and one detainee, had
14 tested positive for COVID-19. The detainees at Otero had started a hunger strike
15 on Monday, April 13, 2020 in order to push for accountability and have ICE talk to
16 them about the positive COVID-19 cases.
17

18
19 15. This client tells us that the barracks are at full capacity and that all the beds
20 are taken. He explained that a few weeks ago the facility had about 25 people in
21 each barrack to attempt to socially distance, but now there are 55-70 people in each
22 barrack.
23

24 16. Although this client states that his temperature was taken when he was first
25 transferred from El Paso to Otero, his temperature has not been taken since.
26

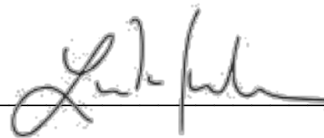
27 17. Our clients have reported that over the past weeks no additional cleaning of
28 common areas, such as tables, telephones, or bathroom is taking place. No new

1 policies for disinfecting and cleaning have been implemented since the outbreak of
2 COVID-19. The guards refuse to allow bed sheets to be washed every week. The
3 protocol currently is to allow for bed sheets to be washed every 45 days.
4

5 **El Paso Service Processing Center**

6 18. On Tuesday, April 14, 2020, a detainee tells us that no one at the facility has
7 been providing updates about COVID-19 to the detainees. Detainees are still
8 preparing food for others and their temperatures are not being taken. She has been
9 detained in El Paso for 2 months.
10

11 19. On Tuesday, April 14, 2020, another client tells us that she has been feeling
12 ill and had flu like symptoms, including headaches, coughing and diarrhea. She has
13 not been tested for COVID-19, nor has she been quarantined from others. She went
14 to medical and staff simply stated that she does not have COVID-19, without
15 having given her a test. She states that there are no sanitary products like hand
16 sanitizer or Lysol wipes and that she cannot socially isolate from others.
17
18
19
20
21
22
23
24



25 Linda Corchado

26 Executed this 15th day of April 2020
27
28

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

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

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

13
14
15 Attorneys for Plaintiffs (continued on next page)

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

19 FAOUR ABDALLAH FRAIHAT, *et al.*,
20 Plaintiffs,
21 v.
22 U.S. IMMIGRATION AND CUSTOMS
23 ENFORCEMENT, *et al.*,
24 Defendants.

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

**DECLARATION OF MELVIN
MURILLO HERNANDEZ**

Before the Honorable Jesus G. Bernal

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

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

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

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

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

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

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

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

26 Attorneys for Plaintiffs (continued from previous page)

27 *Admitted Pro Hac Vice

28 **Pro Hac Vice Application Forthcoming

DECLARATION OF MELVIN MURILLO HERNANDEZ

I, Melvin Murillo Hernandez declare the following is true to the best of my knowledge:

1. I am at least 18 years of age and am competent to sign this declaration. I am originally from Honduras. I am currently detained in ICE custody at the LaSalle ICE Processing Center (LaSalle) in Jena, Louisiana. I have been at LaSalle since approximately May 2019.
2. I have severe and life-threatening allergies that attack my respiratory system. Because of my medical conditions, I have been in medical isolation in ICE custody for over a year.
3. I have been experiencing potential COVID-19 symptoms for over a week. On or around April 7, 2020, I began having night sweats, a sore throat, difficulty swallowing, headaches, a stuffy nose, and pain and pressure in my chest lasting increments of thirty minutes to an hour.
4. On Wednesday, April 8, I reported my symptoms to medical and was provided with nasal spray and medicated lip balm. The nurses did not check my body temperature or blood pressure. On April 11, I was having severe trouble breathing. Since then, I have been having difficulty breathing daily. On April 14, I started getting body aches. I went to the doctor on April 15 again and told her my symptoms again. The doctor told me to avoid the hallways so I do not get infected. I can't avoid the hallways when I go to see the psychologist or to get cleaning supplies. She did not give me any other medications.
5. I have not been tested or treated for COVID-19. No one has subsequently followed up with my report to medical. No medical staff has come to provide medical attention at my cell.
6. Only the staff wear masks, and I have asked several times for a mask but I have been denied. Only some nurses and guards use gloves.
7. There are a couple of medical isolation cells that are said to have individuals with COVID-19. Whenever I see nurses go to those units, they are covered from head-to-toe with gloves and masks. My cell is less than 15 feet away from these cells. On April 13, one doctor confirmed that these individuals had COVID-19 and to try not to leave my cell so much. Whenever I have an appointment with the psychologist or doctor, I have to pass those isolation units. I am not wearing any protection when I pass these cells. I am terrified being this close to positive COVID-19 cases and am concerned about

1 continuing to raise my symptoms with medical since they would have me
2 walk by these units to get to the doctor.

3 8. I share a phone with other detained individuals in the medical isolation unit.
4 I wipe down the phone myself with toilet paper and some soap. The staff
5 does not clean the phones.

6 9. Despite my vulnerabilities to COVID-19 and my symptoms, I have not been
7 tested for COVID-19. I am terrified I have the virus and can die from it.

8 10. I have authorized my attorney to sign on my behalf, given the difficulty of
9 arranging visitation and travel in light of the current COVID-19 pandemic. If
10 required to do so, I will provide a signature when I am able to do so.

11 I declare under penalty of perjury that the statements above are true and correct to
12 the best of my knowledge.

13 

14 _____
15 Maia Fleischman Signed on
16 Behalf of Melvin Murillo
17 Hernandez

18 **CERTIFICATE OF TRANSLATION**

19 I, Maia Fleischman, affirm that I am competent to translate from Spanish to
20 English, that I have translated the above document, and that to the best of my
21 knowledge, ability, and belief, this translation is a true, accurate, and complete
22 translation of the original Spanish document that was provided to me.

23 

24 _____
25 Maia Fleischman
26 April 14, 2020
27
28

1 I, Maia Fleischman, declare the following under penalty of perjury pursuant to 28
2 U.S.C. § 1746 as follows:

- 3 1. My name is Maia Fleischman. I am a licensed attorney in good standing in
4 the state of Florida. I am an attorney of record in *Fraihat v. ICE*, Case 5:19-
cv-01546 (C.D. Cal.).
- 5 2. I represent the declarant, Melvin Murillo Hernandez. Out of necessity in
6 light of the COVID-19 pandemic, I signed Melvin Murillo Hernandez 's
7 declaration on his behalf with his express consent.
- 8 3. ICE is now requiring legal visitors to provide and wear personal protective
9 equipment, including disposable vinyl gloves, surgical masks, and eye
10 protection while visiting any detention facility. These supplies are not easily
11 accessible, given the increase in demand. Any available supplies are
prioritized to hospitals and other medical facilities that are experiencing
dangerous shortages.
- 12 4. There are documented cases of COVID-19 in all fifty U.S. states and most
13 inhabited U.S. territories. The Center for Disease Control and Protection
14 (CDC) issued statements warning that individuals are at a higher risk of
15 infection when traveling. I have Immunoglobulin A Deficiency, an immune
16 system disorder, and asthma, which put me at a higher-risk for COVID-19
complications.
- 17 5. In light of the above, to protect public health, I am not able to travel to Jena,
18 Louisiana, to obtain my clients' signatures.
- 19 6. I spoke with Melvin Murillo Hernandez over the phone and read the
20 declarations to him and confirmed the accuracy of the information therein.
21 Melvin Murillo Hernandez has confirmed that I can sign on his behalf, as
reflected in his declaration.

22 I declare under penalty of perjury that the statements above are true and correct to
23 the best of my knowledge and that this declaration was executed on April 14, 2020
in Miami, Florida.

24 _____
25 *Maia Fleischman*

26 Maia Fleischman
27 Attorney for Plaintiffs
28 Southern Poverty Law Center
T: 786.390.3839
Maia.fleischman@splcenter.org

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

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

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

13
14
15 Attorneys for Plaintiffs (continued on next page)

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

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

21 v.

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

24 Defendants.

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

**DECLARATION OF PERLA P.
ESQUIVEL**

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

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

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

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

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

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

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

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

26 Attorneys for Plaintiffs (continued from previous page)

27 *Admitted Pro Hac Vice

28 **Pro Hac Vice Application Forthcoming

DECLARATION OF PERLA P. ESQUIVEL

I, Perla P. Esquivel, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

1. My name is Perla P. Esquivel. I serve as the Removal Defense Unit Staff Attorney at the Coalition for Humane Immigrant Rights (“CHIRLA”). CHIRLA is a 501(C)(3) non-profit that seeks to create a just society fully inclusive of immigrants. The Removal Defense Unit provides *pro bono* legal representation for individuals in removal proceedings for both merits and bond hearings, including humanitarian parole requests.
2. Our detained work focuses exclusively on individuals detained at the Adelanto ICE Processing Center in Adelanto, California.
3. On April 13, 2020, I met with a client detained at Adelanto ICE Processing Center. When I entered the facility I already had on gloves and an N95 mask. I was not told to keep 6 feet apart from others at the facility. After I passed through the metal detector, at least three other staff were within less than six feet of me, none of whom were wearing masks. Upon entering the visiting area to meet with my client, the staff who showed me to my client approached me and stood less than six feet from me. This staff person was not wearing a mask. My client also informed me that he was being housed in close quarters with other detainees, and that based on his observations and experience, the guards and detainees were not practicing social distancing or wearing masks.
4. After I finished meeting with my client, I came into contact with another staff person. This staff person was also not wearing a mask and did not practice social distancing. Upon my exit of the facility, I came in close contact with at least three other staff people who were not wearing masks.

- 1 5. Based on my personal knowledge and understanding, there has been no
2 material changes in protocols or procedures at Adelanto over the last two
3 weeks.
- 4 6. Based on my knowledge and understanding, ICE and its contractors have not
5 effectively disseminated vital information about COVID-19 to individuals at
6 Adelanto Detention Center as of my April 13, 2020 visit with my client.
- 7 7. The lack of information has heightened fear and anxiety amongst the
8 detained populations and led to a rampant spread of unverified information
9 at Adelanto. CHIRLA has heard from several detained individuals about
10 their increased anxiety and fear that COVID-19 will spread throughout the
11 facilities.
- 12 8. Based on reports from CHIRLA clients, the only education that detained
13 individuals have received on COVID-19 has been informative flyers posted
14 in only English and Spanish. As of April 13, I observed that there are no
15 informative flyers discussing good hand hygiene or cough etiquette posted
16 throughout the facility. Flyers were only seen at the front desk, but were not
17 visible in the legal meeting rooms where I met with my client.
- 18 9. During my visit on April 13, 2020, I observed that only some staff are
19 wearing surgical masks. Our clients have reported that surgical masks have
20 not been provided to the detained population.
- 21 10. During my visit on April 13, I observed that only some facility staff were
22 wearing gloves, and no detained individuals were wearing gloves. Multiple
23 detained clients have told us that they have asked for gloves and have not
24 received them. Our clients have also told us that only some staff were seen
25 wearing gloves and that the same gloves are worn for hours at a time and
26 touch multiple surfaces during this time.
- 27 11. As of April 13, according to reports from our clients, staff does not enforce
28 no physical contact amongst detained individuals. Detained individuals at

1 the Adelanto ICE Processing Center are not able to practice social
2 distancing. At night, individuals sleep in bunk beds within six feet of
3 another. We have not heard reports of any individuals being moved to single
4 cells.

5 12. I, along with all attorneys in our unit, am extremely concerned for the safety
6 and well-being of our clients at Adelanto. We are deeply frustrated and
7 disturbed by the continuing lack of efforts ICE and its contractors have made
8 to implement policies and practices to keep our clients safe, follow the CDC,
9 or release people from Adelanto. We fear that its actions are putting
10 hundreds of individuals at serious risk of harm or death.

11
12 I declare under penalty of perjury and under the laws of the United States, pursuant
13 to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my
14 knowledge, memory, and belief.

15
16 Executed on the 14 day of April, in the year 2020, in the city of Los Angeles,
17 California.

18
19 /s/ Perla P. Esquivel

20
21 Perla Esquivel
22 Coalition for Humane Immigrant
23 Rights (CHIRLA)
24 2533 W. 3rd Street, Suite 101
25 Los Angeles, California 90057
26 T: (213) 269-4084
27 email: pesquivel@chirla.org
28

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

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

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

13
14
15 Attorneys for Plaintiffs (continued on next page)

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

18 FAOUR ABDALLAH FRAIHAT, *et al.*,
19 Plaintiffs,
20 v.
21 U.S. IMMIGRATION AND CUSTOMS
22 ENFORCEMENT, *et al.*,
23 Defendants.

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

**DECLARATION OF REBECCA
MERTON ON BEHALF OF
FREEDOM FOR IMMIGRANTS**

Before the Honorable Jesus G. Bernal

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

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

15 Maia Fleischman*
16 *maia.fleischman@splcenter.org*
17 SOUTHERN POVERTY LAW
18 CENTER
19 2 South Biscayne Boulevard
20 Suite 3750
21 Miami, FL 33131
22 Tel: (786) 347-2056
23 Fax: (786) 237-2949

24 Christina Brandt-Young*
25 *cbrandt-young@dralegal.org*
26 DISABILITY RIGHTS
27 ADVOCATES
28 655 Third Avenue, 14th Floor
New York, NY 10017
Tel: (212) 644-8644
Fax: (212) 644-8636

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

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

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

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

Attorneys for Plaintiffs (continued from previous page)

*Admitted Pro Hac Vice

**Pro Hac Vice Application Forthcoming

1 **DECLARATION OF REBECCA MERTON**

2
3 I, REBECCA MERTON, make the following declaration based on my personal
4 knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746
5 that the following is true and correct.

6
7 1. I am the Director of Visitation and Independent Monitoring for Freedom for
8 Immigrants, a national 501(C)(3) non-profit organization that seeks to end the
9 isolation of people in immigration detention. I am over the age of eighteen (18). I
10 am competent to testify in this matter. My statement is based upon my personal
11 knowledge, and my education, training, and experience.

12 2. Freedom for Immigrants operates the National Immigration Detention
13 Hotline. The National Immigration Detention Hotline is a monitoring tool through
14 which we gather data through free, unmonitored phone calls from people in
15 immigration detention and their loved ones on a daily basis with a team of highly
16 trained and dedicated volunteers.

17
18 3. Freedom for Immigrants also coordinates a network of community-led
19 visitation groups operating in 69 immigrant prisons and jails in 26 states with over
20 4,500 visitor volunteers. These visitor volunteers, who also receive phone calls and
21 correspondence from people inside detention, also track support of people
22 detained.

23
24 4. From April 10th to April 13th 2020, Freedom for Immigrants (“FFI”) has
25 received the following reports through the National Immigration Detention Hotline
26 (“NIDH”) and the visitation network from people in immigration detention and
27 their loved ones regarding current conditions in the ICE detention facilities listed
28 below.

1
2 **5. Otay Mesa Detention Facility in San Diego, CA:**

3 a. April 10th, 2020: A shipment of masks arrived but guards refused to pass
4 them out unless the women agreed to sign English-language contracts agreeing to
5 release CoreCivic from any liability related to wearing them. The unit manager
6 translated the contract to Spanish inaccurately and it was not made available in
7 other languages. Three women who pointed out the erroneous translation to other
8 women, causing the women to protest. Guards used pepper spray against the
9 women in retaliation.

10
11 **6. Imperial Regional Detention Facility in Calexico, CA:**

12 a. April 10th, 2020: Individuals in detention have hardly any soap and do not
13 have masks.

14 **7. Tacoma ICE Processing Center in Tacoma, WA:**

15 a. April 13th, 2020: No staff are wearing protective gear, and people in
16 detention are only given small amounts of soap.

17 b. April 13th, 2020: ICE continues to bring in new people. There is no hand
18 sanitizer provided. Social distancing is not possible; there are over 70 people in
19 one dorm alone. Detained individuals are working in the kitchen, cleaning
20 bathrooms, and providing other essential services without personal protective
21 equipment.

22
23 **8. Jena / Lasalle Detention Facility in Jena, LA:**

24 a. April 10th, 2020: Individuals lack access to medical information in multiple
25 languages. They are given one small bar of soap per week that breaks easily; then
26 they are forced to go without soap for days.

27
28 **9. Broward Transitional Center in Pompano Beach, FL:**

1 a. April 13th, 2020: People are still being transferred from other detention
2 facilities, including from Krome where there has been a confirmed COVID-19
3 case. Multiple individuals in detention have to share one phone with no ability to
4 sanitize it between use.

5
6 **10. Pulaski County Detention Center:**

7 a. April 10th, 2020: Individuals in detention put socks over the phone to try to
8 not get it contaminated because the phone is unsanitized and they are all sharing it.

9
10 **11. Mesa Verde Detention Facility in Bakersfield, CA:**

11 a. April 12th, 2020: The facility refuses to install hand-sanitizers. Detained
12 individuals are only given one small hotel size bar of soap each week to wash their
13 entire bodies as well as hands.

14 **12. Montgomery Processing Center:**

15 a. April 14th: A high risk individual who was in a dorm with another removed
16 for suspected COVID-19 symptoms has expressed feeling sick for over 2 weeks
17 with coughing, acute weakness, and headaches, but has not been tested, medically
18 isolated, or provided appropriate care. He has only been provided mucinex and
19 Tylenol 3. This individual has advanced cardiovascular disease, 4 prior heart
20 attacks and 3 stents along with diabetes, a spot on his lungs, and a large kidney
21 stone requiring surgery which the facility has denied.

22
23 Based on my understanding of these reports, there has been no material changes in
24 protocols or procedures following the April 10, 2020 guidelines in the
25 aforementioned ICE detention facilities.

26
27 I, along with the other members at Freedom for Immigrants, are extremely
28 concerned for the safety and well-being of people in ICE detention facilities. We

1 are deeply frustrated and disturbed by the lack of efforts ICE and its contractors
2 have made to implement policies and practices from ICE's updated guidelines
3 published on April 10, 2020. We fear that its actions are putting hundreds of
4 individuals at serious risk of harm or death.

5
6 I declare under penalty of perjury and under the laws of the United States, pursuant
7 to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my
8 knowledge, memory, and belief. I executed this Declaration on the 15th day of
9 April, 2020, in Oakland, California.

10
11 
12

13 _____
14 Rebecca Merton, Declarant
15 Freedom for Immigrants
16 1322 Webster Street, Suite 300
17 Oakland, CA 94612
18 (510) 806-1330
19 rmerton@freedomforimmigrants.org
20
21
22
23
24
25
26
27
28

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

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

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

13
14
15 Attorneys for Plaintiffs (continued on next page)

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

19 FAOUR ABDALLAH FRAIHAT, *et al.*,
20 Plaintiffs,
21 v.
22 U.S. IMMIGRATION AND CUSTOMS
23 ENFORCEMENT, *et al.*,
24 Defendants.

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

**DECLARATION OF ROSE
MURRAY**

Before the Honorable Jesus G. Bernal

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

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

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

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

26 Attorneys for Plaintiffs (continued from previous page)

27 *Admitted Pro Hac Vice

28 **Pro Hac Vice Application Forthcoming

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

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

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

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

DECLARATION OF ROSE MURRAY

I, Rose Murray, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

1. I am a direct service provider for the Southeast Immigrant Freedom Initiative of the Southern Poverty Law Center ("SIFI"). SIFI provides pro bono representation to detained immigrants in proceedings before the Executive Office for Immigration Review and U.S. Immigration and Customs and Enforcement ("ICE"). SIFI prioritizes representing detained individuals in seeking their release from ICE custody.
2. SIFI represents individuals confined inside the following detention centers in Louisiana and Georgia: the LaSalle ICE Processing Center ("LaSalle") in Jena, Louisiana; the Pine Prairie ICE Processing Center ("Pine Prairie") in Pine Prairie, Louisiana; the Irwin County Detention Center ("Irwin") in Ocilla, Georgia; the Folkston ICE Processing Center ("Folkston") in Folkston, Georgia; and the Stewart Detention Center ("Stewart") in Lumpkin, Georgia.
3. Since the outbreak of COVID-19 pandemic, SIFI has also engaged in limited advocacy on behalf of individuals detained at Adams County Correctional Facility ("Adams") in Natchez, Mississippi; South Louisiana ICE Processing Center ("Basille") in Basille, Louisiana; and Winn Correctional Center ("Winn") in Winnfield, Louisiana.
4. As of April 15, 2020, ICE has confirmed the following cases of COVID-19 among the detained population at facilities we serve: 5 detained people at Adams; 1 detained person at Winn; 1 detained person at LaSalle; 2 detained people at Pine Prairie; 1 detained person at Irwin; 7 detained people at Stewart.
5. SIFI staff have been in continuous contact with detained individuals at the facilities we serve, through in-person visitation as well as by phone and video teleconference ("VTC"). SIFI staff have reported their findings to me.
6. What SIFI staff have recently learned in conversation with detained individuals reveals a continued grossly deficient response by government officials and private contractors to stem the spread of the COVID-19 inside these detention centers.

- 1 7. Based on our knowledge and understanding, there has been no material
2 changes in protocols or procedures at SIFI facilities over the last two weeks.
- 3 8. Below are but a few of the horrific conditions that clients expressed to me
4 through VTC and phone interviews I conducted on April 14 and April 15,
5 2020.

6 **Pine Prairie ICE Processing Center**

- 7 9. On or about Friday, April 10, between 80-90 people were transferred into
8 Pine Prairie. This was exhibited by the increase in "count." On Thursday,
9 April 9, there were around 420 in the detained population. The next day, the
10 number increased to over 500.
- 11 10. One client is housed in a unit with about 61 other individuals. On or about
12 Friday, April 10, 2020, two people were released from his unit, but this has
13 not done much to alleviate the lack of space. There is no ability to physically
14 distance between the beds, which are less than 6 feet apart from one another.
15 All 62 people in his unit share one microwave.
- 16 11. Individuals are not provided with masks inside of the unit. They are only
17 provided with a mask when they leave the unit, for example, for a VTC with
18 their attorney. However, even this practice is not standard. For example, one
19 client who I interviewed through VTC was wearing a mask but the other was
20 not.
- 21 12. As of Tuesday, April 14, individuals detained at Pine Prairie had not been
22 told of a second confirmed case in their detention center.

23 **Adams County Correctional Facility**

- 24 13. One client has a very strong urinary tract infection and inflamed ankles. She
25 has been given some treatment but is still experiencing severe nausea and
26 dizziness, she continues to vomit each day. This client was placed in a
27 separate unit along with two others because they were told they are more
28 vulnerable to COVID-19. However, she is afraid because they are still
brought to the cafeteria to eat at times with the general population, and she
has to remove her mask to eat.
14. Large groups in the detained population eats together in the cafeteria. They
have not been provided with gloves. Detained individuals have asked for
gloves and have not received them.

15. For the past month, the breakfast at the facility has been minimal and ill-prepared. For breakfast, my client has been provided with only a little bit of milk and bread that tasted raw.

16. One client is detained in a unit with 95 people in total. Facility staff only provide new soap once a week, so the detained individuals in this unit often go without soap for three or four days. For example, on or about Sunday, April 12, ICE replenished the soap supply from the week before, but the individuals in the unit had run out of soap on Wednesday, April 8. They expect to run out by tomorrow, April 16, and not receive a new ration until Sunday April 19 or Monday April 20 per the existing practice.

17. The facility staff still do not use masks or gloves and they do not implement social distancing amongst themselves or the detainee population

LaSalle

18. One client has been experiencing chest pain and labored breathing for three weeks. She has placed several sick calls, has been verbally and physically abused by medical staff, and still has not seen a doctor.

19. One member of the medical staff has stated that individuals with COVID-19 have been taken to the medical unit, which is a small enclosed room, and therefore individuals placing sick calls will need to wait.

20. A client had previously been forced to sign a release of liability or else be put into segregation (the same single cells used for punitive solitary confinement) indefinitely, ostensibly for their own protection from COVID. This person has numerous underlying conditions which make them a high risk if they contract COVID-19, but they have been denied release, despite ICE's new guidance.

21. Only when an individual goes to sick call is their temperature taken.

22. There has not been soap for over four days in my client's unit.

23. On or about Friday, April 10, two new individuals from a prison in Alabama were transferred into my client's unit.

24. There is no possibility for social distancing. There are 80 individuals in one unit and the distance between the beds is much less than 6 feet. There are no vents or windows in the units.

1
2 25. There are rumors that staff who work in my client's unit have tested
3 positive, and these individuals have not been seen at the facility for days.

4 26. I, along with the other members at SIFI, are deeply concerned for the safety
5 and well-being of the detained individuals at the facilities. We are frustrated
6 by the lack of efforts ICE and its contractors have made to implement
7 policies and practices that will protect people from COVID-19.

8 27. We are especially concerned at the lack of re-assessment and release of
9 significant numbers of individuals that would allow for effective social
10 distancing, effective dissemination of vital information about COVID-19 to
11 individuals, the documented continuance of indiscriminatory transfers of
12 people into facilities, the failure to provide treatment and testing to those
13 exhibiting COVID-19 symptoms, and detained populations continued
14 inability to socially distance or practice safe hygiene due to lack of space
15 and protective equipment.

16 28. We fear that ICE's actions are putting many individuals at serious risk of
17 harm or death.

18 I declare under penalty of perjury and under the laws of the United States, pursuant
19 to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my
20 knowledge, memory, and belief.

21 Executed on the 16th day of April, in the year 2020, in the city of New Orleans,
22 Louisiana.

23
24
25
26
27
28


Rose Murray
Southeast Immigrant Freedom
Initiative
Southern Poverty Law Center
T: 318.314.0147
rose.murray@splcenter.org

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE**

FAOUR ABDALLAH FRAIHAT, *et al.*,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, *et al.*,

Defendants.

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

**[Proposed] Order Granting
Plaintiffs' Ex Parte Application for
Leave to File Supplemental Post-
Hearing Briefing and Response to
Defendants' April 15 Notice of
Supplemental Factual Information**

1 Plaintiffs having submitted an ex parte application for leave to file a
2 supplemental post-hearing brief and declarations regarding their emergency
3 motions for preliminary injunction and class certification. The Court being fully
4 advised, and good cause appearing therefor, IT IS ORDERED that the application
5 be, and the same hereby is, GRANTED.

6
7 IT IS SO ORDERED.

8
9 DATED: _____

10 The Honorable Jesus Bernal
UNITED STATES DISTRICT JUDGE