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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

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

Petitioners-Plaintiffs,

v.

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

Respondents-Defendants.

Case No. 3:20-CV-02731-VC

**NOTICE OF MOTION AND MOTION FOR
 TEMPORARY RESTRAINING ORDER**

Date: August 5, 2020

Time: 9:00 a.m.

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1 PLEASE TAKE NOTICE that, on Wednesday, August 5, 2020 at 9 a.m., Plaintiffs will
2 and hereby do move, pursuant to Civil L. R. 7-1 and 65-1, for a temporary restraining order
3 (TRO) directing Defendants to conduct rapid testing of all class members at Mesa Verde
4 Detention Facility, clear a dorm to isolate all class members who are testing positive for COVID-
5 19, and observe the limits on increased population in the remaining dorms as set out by the
6 Court's preliminary injunction order.

7 Pursuant to Civil L.R. 65-1(b), on August 3, 2020 at 6:00 p.m., counsel for Plaintiffs sent
8 an e-mail to counsel for Defendants to advise of the emergency reasons requiring them to seek a
9 TRO. Plaintiffs' counsel have filed a redacted version of this notice of motion and motion on the
10 public docket for this case and have e-mailed the sealed, unredacted version to Defendants'
11 counsel.

12 **INTRODUCTION**

13 Defendants have failed to take meaningful steps to halt an outbreak of COVID-19 within
14 Mesa Verde Detention Facility (MVDF). Defendants first learned that MVDF staff members
15 tested positive for COVID-19 more than a month ago. In light of increasing numbers of staff
16 members who tested positive, more than ten days ago Plaintiffs implored Defendants to create a
17 testing and cohorting protocol for class members at MVDF. (See Joint Case Management
18 Statement, ECF No. 474 & Exh. A.) Yet Defendants neither implemented (nor substantively
19 responded to) Plaintiffs' detailed plan nor took any other action to prevent COVID-19 from
20 spreading through MVDF.

21 To the contrary, during the week of July 27, Defendants added more class members to
22 MVDF than they released, increasing the density while the outbreak spread. At the same time,
23 Defendants left symptomatic class members who would test positive for COVID-19 in their
24 dorms to potentially infect other people. Numerous class members in multiple MVDF dorms have
25 now tested positive for COVID-19. At least one has been hospitalized. Plaintiffs' requested TRO
26 is a stop-gap measure necessary to prevent this situation from becoming even more dire and
27 deadly.
28

FACTS

As of Friday, July 31, 2020, when the parties filed their Joint Case Management Statement, thirteen GEO staff and three class members at MVDF had tested positive for COVID-19. *See* Dkt. 474. Despite the alarming rise in positive cases, Defendants have declined to provide universal testing to class members, develop a comprehensive plan to test class members, house them safely, or make further releases of medically vulnerable individuals. Defendants have also admitted, through the deposition testimony of MVDF warden Nathan Allen, that GEO does not require employees to be tested or to remain at home if they come into close contact with someone who has tested positive. Coupled with recent intra-dorm transfers and new intakes from prison, conditions at MVDF pose a grave and imminent risk to the health and safety of class members, as well as to the general public.

Against this backdrop, on Saturday, August 1, Plaintiffs learned from other class members that a fourth class member had tested positive for COVID-19. According to his attorneys, Mr. Yao Saeturn, who is 65 years-old and suffers from chronic medical conditions,¹ had been exhibiting symptoms of COVID-19 for several days before he was brought to see Wellpath medical staff on Friday, July 31. *See* Declaration of Susan Beaty (“Beaty Dec.”) at ¶ 6. Class members from Dorm C, where Mr. Saeturn had been housed, reported to his attorneys that he had been suffering from body aches, extreme fatigue, and coughing for more than two days – and that *his requests for medical attention were repeatedly ignored by GEO. Id.*

Neither Plaintiffs’ counsel nor Mr. Saeturn’s attorneys were initially able to obtain basic information from Defendants about his status, location or condition. Instead, information has trickled out from class members calling in distress. According to class members in Dorm C, Mr.

¹ Mr. Saeturn has hypertension, high cholesterol, gout, and cerebrovascular disease with significant functional limitations as a result of a prior stroke. *See* Dkt. 128-2 (Bail Application). Defendants have consistently downplayed his medical conditions, and recently confiscated Mr. Saeturn’s walking cane that he relied upon for mobility. *See* Dkt. 139-2 (Response to Bail Application); Beaty Dec. at ¶ 3.

1 Saeturn was removed from the dorm, and class members in Dorm C were informed that he had
 2 tested positive for the virus. Dorm C was then “cohorted,” meaning that it was placed on
 3 lockdown. After being informed by a GEO officer that Mr. Saeturn had been hospitalized, Mr.
 4 Saeturn’s attorneys succeeded in locating Mr. Saeturn at Mercy Hospital Downtown.

5 That same day (August 1), Plaintiffs requested information regarding the safety of Mr.
 6 Saeturn and all class members from the Defendants via email. Maclean Dec., Exh. J (email from
 7 Plaintiff’s counsel, Genna Beier). Specifically, Plaintiffs requested confirmation that Mr. Saeturn
 8 had tested positive, and asked whether Defendants could provide his location and his status.
 9 Among other things, Plaintiffs also asked for information relating to the well-being of all class
 10 members, including whether testing had been offered to all those in Dorm C; what, if any, contact
 11 tracing was being performed; what information about positive tests had been provided to class
 12 members by Defendants; and what the capacity is for local hospitals to absorb patients from Mesa
 13 Verde. Further, Plaintiffs called on Defendants to take urgent steps to protect class members,
 14 including by providing universal rapid (point-of-care) testing to class members and staff alike,
 15 offering Plaintiffs’ counsel immediate access to class members who have been offered testing and
 16 refused, releasing medically vulnerable individuals such as Mr. Saeturn, and ceasing any new
 17 intakes into the facility until universal periodic testing has been implemented. Defendants initially
 18 failed to respond, other than to state that “Mr. Yao Saeturn was released to his family and is no
 19 longer in custody” (Coleman email 8/2/20), and, “Mesa Verde does not have enough rapid testing
 20 available to test all detainees.” (Choe email 8/3/20).²

21 On August 3, Plaintiffs’ counsel sent an e-mail requesting information about whether class
 22 members had tested positive and whether those who tested positive were being segregated.
 23 Maclean Dec., ¶ 11. Only in response to this request did Defendants inform Plaintiffs that five
 24 detainees in Dorm B had tested positive, with results pending for an unknown number of
 25 additional detainees, and that as of now, both Dorm B and Dorm C are “cohorted.” *Id.* Later, on

26 _____
 27 ² Plaintiffs have since learned that Mr. Saeturn was released from ICE custody on an order of
 28 supervision and directly admitted to the Emergency Department, where he remained until
 Sunday, August 2. Mercy Hospital Downtown discharged Mr. Saeturn on August 3. His attorneys
 report that he will quarantine at a motel in Merced, California, prior to returning home to his
 family. His condition, thankfully, is stable.

1 the evening of August 3, Defendants finally provided additional information about Mr. Saeturn
 2 and others in Dorm C. Maclean Dec., Exh. K. While Defendants’ represented that “arrangements”
 3 to test the class members in Dorm C are “in progress,” as of the afternoon of August 3, none of
 4 them had been tested. Beaty Decl. at ¶ 16. Moreover, class members report that approximately
 5 one dozen individuals in Dorm C are ill and showing symptoms of COVID-19. Beaty Decl. at ¶
 6 16. Although it is not clear from Defendants’ statements, it now appears that in at least three of
 7 the four dormitories at MVDF, detainees who have tested positive and/or have been exposed to a
 8 known case of COVID-19 are indiscriminately housed among the general population.³

9 Defendants also informed class counsel that ten class members were “transferred for
 10 removal” on August 3. This is one of the largest, if not the largest, groups of daily releases from
 11 MVDF. Defendants did not inform class counsel where those class members were transferred,
 12 whether any of them had been tested prior to transfer, or whether they will be tested on arrival to
 13 the facility receiving them. It thus appears that those transfers may spread COVID-19 to other
 14 facilities.

15 Defendants know that it is unacceptable to simply leave detainees who have tested
 16 positive in a dorm because such practices violate applicable ICE Health Service Corps policies
 17 and risks exposing other detainees to COVID-19. Declaration of Francisco Unger (Unger Dec.),
 18 Exh. A, GEO_07064 (6/4/2020, Warden Allen email to Cheryl Nelson and Paul Laird, with Allen
 19 explaining that a detainee who tests positive cannot be left in dorm in view of “IHSC/Public
 20 Health” protocols and “the continued exposure to other detainees.”). GEO has acknowledged that
 21 even potentially exposed detainees— to say nothing of known positive cases— cannot be housed
 22 in dormitories because of the risk of widespread transmission. *Id.*, Exh. B, GEO_07202
 23 (7/1/2020, Warden Allen writing to Cheryl Nelson, “I cannot put them [“potential exposures”] in
 24 the dorms (with the risk of spreading an infection)...”). Throughout this litigation, GEO has
 25 known that MVDF’s severe space limitations and small number of available isolation rooms
 26

27 ³ Even as Plaintiffs’ counsel were finalizing this motion, they continued to receive alarming
 28 reports out of MVDF. For example, a class member reports that around 7 p.m. on August 3,
 firefighters entered the building and left with a man on oxygen on a stretcher who had apparently
 been in Dorm B. Beaty Decl. ¶ 17.

1 make it all but impossible for the facility to safely manage multiple positive COVID-19 cases. *Id.*,
 2 Exh. C, GEO_00003 (4/10/2020, Department of Homeland Security Survey filled out by Warden
 3 Allen, with the question “How many ICE detainees can the facility hold in quarantine or isolation
 4 if a detainee tests positive for COVID-19?” answered with “2.”); *id.*, Exh. D, GEO_01052
 5 (6/4/2020, Warden Allen email to Alexander Pham noting that “[t]he issue [regarding COVID
 6 testing plan] is going to be the same as last time regarding housing for multiple positives.”). ICE
 7 has recognized the need to release additional class members from MVDF to allow it to respond to
 8 an outbreak, but has failed to release even those it classifies as having the “least egregious cases.”
 9 Maclean Dec., Exh. M, ICE 637 (6/4/2020, Alexander Pham email to David Jennings).

10 Warden Allen has not minced words in addressing Mesa Verde’s inability to safely handle
 11 multiple positive cases. When ICE intervened just last month to transfer six detainees exposed to
 12 COVID-19 during the intake process to another facility with more space for cohorting and
 13 isolation, Allen wrote to his colleagues “[l]ooks like we’re dodging a bullet.” Unger Dec., Exh. E,
 14 GEO 06391 (7/2/2020, Warden Allen email to Paul Laird and Cheryl Nelson.) Yet GEO’s
 15 awareness of a potential catastrophe at Mesa Verde has not been matched by a sense of urgency
 16 in developing procedures and alternative housing arrangements that would mitigate risk. Indeed,
 17 Warden Allen’s own GEO supervisor has harshly criticized MVDF’s lack of any “creative effort”
 18 to develop safer procedures even after repeated prodding. *Id.*, Exh. F, GEO_08822 (6/25/2020,
 19 GEO Western Region Vice President Paul Laird writing to Warden Allen regarding Mesa Verde
 20 intake procedures: “[w]e cannot just throw up our hands and say there isn’t anything we can do...
 21 I know we have discussed this multiple times before and it appears there has been no creative
 22 effort to come up with some mitigating strategies.”).

23 Even more troubling, ICE’s discussions suggest that MVDF has failed to implement
 24 widespread testing of detainees and staff not because the facility lacks the resources to do so but
 25 precisely because MVDF has not developed a workable strategy for facilitating the isolation and
 26 cohorting that appropriately responding to many test results would require. *Id.*, Exh. G,
 27 GEO_06238 (7/6/2020, Brooke Sanchez-Othon writing to Janese Mull and Warden Allen that
 28 ICE rejected Mesa Verde’s plan for testing all detainees because “[t]esting all detainees will

1 potentially cause... [a] housing issue... [c]ompleting the testing is not the issue it is just what we
 2 will need to do with the results once they are received.”); *id.*, Exh. H, GEO_06450 (5/26/2020,
 3 Warden Allen email to Cheryl Nelson noting that “[t]he [ICE] AFOD [Assistant Field Office
 4 Director] mentioned... he would rather not have staff testing as... an asymptomatic person testing
 5 positive would require dorm cohorts and detainee testing protocols.”); Maclean Dec., Exh. L, ICE
 6 682 (5/27/20, email from David Jennings to Russell Hoyt regarding ICE’s concerns about testing
 7 because “we have no place to cohort anyone who ... is positive”). In other words, widespread
 8 testing has not been done because Defendants fear they would not be able to handle the truths that
 9 it would reveal.

10 **LEGAL STANDARD**

11 Plaintiffs are entitled to a temporary restraining order if they establish that they are “likely
 12 to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief,
 13 that the balance of equities tips in [their] favor, and that an injunction is in the public interest.”
 14 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D.*
 15 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
 16 temporary restraining order standards are “substantially identical”). A temporary restraining order
 17 may likewise issue where “serious questions going to the merits [are] raised and the balance of
 18 hardships tips sharply in [plaintiff’s] favor.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
 19 1131 (9th Cir. 2011) (citation omitted). To succeed under the “serious question” test, Plaintiffs
 20 must show that they are likely to suffer irreparable injury and that an injunction is in the public’s
 21 interest. *Id.* at 1132.

22 **ARGUMENT**

23 COVID-19 is spreading quickly through MVDF. Three months after the TRO, two
 24 months after the preliminary injunction, one month after facility guards first tested positive for
 25 COVID-19, and several weeks after a MVDF class member first tested positive, Defendants have
 26 taken no effective action. The Court has already found that Plaintiffs satisfied the TRO and
 27
 28

1 injunctive relief factors on a record where there were *no* confirmed positive tests at MVDF.⁴
 2 (Dkt. 53; Dkt. 357.) In the face of Defendants’ inaction as COVID-19 spreads throughout MVDF,
 3 the conditions are even more dangerous, the harm more imminent, and the equities more sharply
 4 tipped in favor of immediate relief than at the preliminary-injunction phase. Defendants’
 5 “disinterest and . . . lack of dexterity in adjusting its conduct to respond to a global crisis” has
 6 come to roost. Dkt. 357 at 3.

7 Defendants have had months to prepare for the inevitable outbreak that experts long
 8 warned would happen. *Id.* at 6, n. 2 (“[T]he fact that Covid has not yet entered the facilities does
 9 nothing to undermine the un rebutted evidence that if and when it does, it may cause a rapid and
 10 dangerous outbreak.”). They have done virtually nothing, refusing to implement a universal
 11 testing and isolation protocol. Even the limited discovery taken to date demonstrates that
 12 Defendants have long been aware of the serious risks that the inability to quarantine at MVDF,
 13 that they failed to create any plan to respond to those risks, and that now that the risks are reality
 14 that they have failed to meaningfully respond. As explained below, further temporary relief is
 15 now necessary to prevent an increasingly dangerous situation from spiraling even more out of
 16 control.

17 Immediate point-of-care testing is necessary to determine the scope of the outbreak.
 18 Absent the rapid results that such testing produces, additional class members will inevitably
 19 contract COVID-19 from their dorm-mates. Those infected will be at risk of becoming seriously
 20 ill or dying, particularly the many class members who have COVID-19 risk factors. Third
 21 Supplemental Declaration of Dr. Robert Greifinger (“Greifinger Dec.”) ¶¶ 9-12.

22 Once Defendants have the results from such rapid point-of-care tests they should
 23 immediately isolate all of those who test positive in a cleared dorm, provided that there are no
 24 further rooms in which to isolate individual class members. Greifinger Dec. ¶¶ 13-15. As
 25 Defendants’ own documentary discovery shows, *supra*, isolating positive cases is the only way to
 26

27 ⁴ Defendants’ most vociferous responses to Plaintiffs’ requests for relief in this case had been that
 28 there were no positive cases at MVDF and that class members were accordingly not endangered.
 Dkt. 357, at 6, n. 2. While the Court has long been unpersuaded by this argument (*see* Dkt. 53 at
 4), there can be no dispute that Plaintiffs’ position is stronger than it was previously.

1 prevent other detainees sharing a dorm from contracting COVID-19. Thus, the equitable relief
2 factors weigh in favor of Plaintiffs' requested relief.

3 **CONCLUSION**

4 For the foregoing reasons, the Court should grant Plaintiffs' motion for a TRO.

5 Dated: August 5, 2020

AMERICAN CIVIL LIBERTIES
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8 By: /s/ Sean Riordan

9 Sean Riordan (255752)

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Respondents-Defendants.

Case No. 3:20-CV-02731-VC

**DECLARATION OF SUSAN BEATY IN
SUPPORT OF PETITIONERS-PLAINTIFFS'
MOTION FOR TEMPORARY RESTRAINING
ORDER**

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DECLARATION OF SUSAN BEATY

I, Susan Beaty, hereby declare and state as follows:

1. My name is Susan Beaty. I am employed by Centro Legal de la Raza (“Centro Legal”) as an attorney in the Immigrants’ Rights Project. Centro Legal represents a number of individuals detained at the Mesa Verde Detention Facility (“MVDF”), including Yao Xeng Saeturn (“Mr. Saeturn”).
2. The facts stated in this declaration are true and of my own personal knowledge, except as to any matters stated on information and belief, and as to those matters, I am informed and believe them to be true.
3. Centro Legal has represented Mr. Saeturn in federal habeas proceedings and before ICE since April, 2020. Mr. Saeturn is 65 years-old, and suffers from a number of medical conditions which render him vulnerable to severe outcomes if he contracts COVID-19, including hypertension, cerebrovascular disease with significant functional limitations as a result of a prior stroke, and gout.
4. On Saturday, August 1, 2020, between 11am and 1pm, I spoke on the phone with the following individuals detained in Dorm C at MVDF: Gabriel Yucate-Camey (“Mr. Yucate-Camey”), Walter Cruz Zavala (“Mr. Cruz Zavala”), and Asif Qazi (“Mr. Qazi”). Later that same day, at 6pm, I had a follow up phone conversation with Mr. Qazi.
5. They each informed me that during the late evening on Friday, July 31, 2020, our client Mr. Saeturn was removed from the dormitory by medical staff. They informed me that after Mr. Saeturn was removed, a GEO official came into the dorm and announced that Mr. Saeturn had tested positive for COVID-19, and that the entire dorm is now under quarantine. They stated that, at the time of our calls, no one else in the dorm had been

tested for COVID-19, and GEO staff had not cleaned or sanitized the dorm.

6. Mr. Qazi reported that Mr. Saeturn had been showing symptoms consistent with COVID-19 for at least two days – including body ache, coughing, and extreme fatigue. Mr. Qazi said that he and other men in the dorm had informed GEO officers in the dorm about Mr. Saeturn’s condition at least four times. Mr. Qazi said that facility staff told him multiple times that Mr. Saeturn “looked fine” and refused to give Mr. Saeturn treatment. Mr. Qazi said that Mr. Saeturn’s symptoms became increasingly severe over the course of the day on Friday, July 31, until he was removed from the dorm.
7. Mr. Qazi also reported that dorm C has received several new transfers from criminal custody in the past week, and that none of the new transfers was quarantined prior to being placed in the dorm.
8. All three of the men I spoke with reported that the dorm is particularly unsanitary currently, because facility staff have not cleaned the bathrooms or other shared surfaces in over a week, since the majority of the men in the dorm began a labor strike to protest their conditions during the COVID-19 pandemic. All three of the men also reported that, due to the labor strike, facility staff had revoked access to the commissary this week, meaning that they will not be able to purchase additional hygiene supplies.
9. In the early afternoon on Saturday, August 1, our office called the front desk at Mesa Verde to inquire about Mr. Saeturn. My colleague Lisa Knox spoke with Lieutenant Vasquez, who confirmed that Mr. Saeturn was removed from the facility and taken to a nearby hospital. Lieutenant Vasquez would not disclose the name of the hospital or additional details about Mr. Saeturn’s condition. My colleague Ms. Knox asked Lieutenant Vasquez for a call with Mr. Saeturn as soon as possible.

10. In an effort to locate our client, our office called at least six different hospitals in Bakersfield over the course of three hours. Shortly before 5pm, front desk staff at Mercy Hospital Downtown were able to confirm that an elderly man with Mr. Saeturn's date of birth was brought to the hospital by ICE officials from the Mesa Verde Detention Facility. A doctor who refused to disclose her name said that Mr. Saeturn was being admitted into the Emergency Room and that he was stable. Our office requested to speak with Mr. Saeturn directly. Hospital staff connected Ms. Knox to someone who identified himself as Mr. Saeturn's "guard". He told us that ICE was processing Mr. Saeturn for release, but that ICE would not allow anyone to speak with Mr. Saeturn until he was released from their custody.
11. On Sunday, August 2, Ms. Knox called Mercy Hospital. A nurse who did not name herself informed Ms. Knox that Mr. Saeturn had been moved to a different floor of the hospital, and that he was no longer in the emergency department. She permitted Ms. Knox to place a call to Mr. Saeturn's room. There was no answer. No further information regarding his condition was provided, other than the fact that he was "stable."
12. Later on August 2, Ms. Knox spoke with another nurse, who stated that Mr. Saeturn was ready to be discharged, but had been ordered discharged to ICE. Ms. Knox explained that Mr. Saeturn had been released from ICE custody. The nurse was able to locate and review Mr. Saeturn's release paperwork, and indicated he would be discharged from the hospital to his family on August 3.
13. On Monday, August 3, 2020, Ms. Knox spoke with ERO Deportation Officer Tamara Maldonado. She stated that she had been "called in" to process Mr. Saeturn's release on August 1, but stated she did not know the reasons for his release. At approximately 1pm

on August 3, 2020, Ms. Knox received a call from Mr. Saeturn who confirmed he had been discharged from the hospital.

14. At around 1pm on August 3, I received a phone call from an individual detained in Dorm B, Israel Parra ("Mr. Parra"). He reported that his friend had come back from the medical unit, where he was told that several of the coronavirus tests had come back with positive results, but that there were not enough medical segregation cells available to quarantine people.
15. Several hours later, around 5pm, I received another call from Mr. Parra. He informed me that he and four other people in Dorm B were told by Mesa Verde staff that they tested positive for COVID-19. He said that two of the five were moved into solitary confinement cells, and the other three were moved to the intake cells near the entrance of the facility. He said he was in one of the intake cells, which had just a bench and a toilet, but no bed. He reported that he had a headache and was having trouble breathing, and that he was worried for his health because he has diabetes. He said that he had not spoken with any medical staff or received any medical treatment since he was removed from the dorm. He said he believed that none of the other four people with confirmed COVID-19 cases had received treatment, either.
16. Also on August 3, between 2pm and 4pm, I received calls from Mr. Yacute Camey, Mr. Cruz Zavala, and Mr. Qazi from Dorm C. All three men confirmed that they had not received any updates or information from GEO or ICE personnel regarding COVID-19 at Mesa Verde. They confirmed that despite numerous requests to GEO staff, no one in dorm C had been tested for COVID-19 as of the time of our calls. They confirmed that GEO staff had still not cleaned or sanitized any part of their dormitory, nor provided

them any additional cleaning supplies, leaving detained people to clean bathrooms and shared surfaces with soap and shampoo purchased from the commissary. Mr. Yacute Camey and Mr. Cruz Zavala reported that around a dozen men in Dorm C are currently sick, with symptoms like headaches, chills, and sore throats.

17. Just after 7pm on August 3, Mr. Parra called me again and shared that about 20 minutes before his call, guards came through and covered up the tiny window in his cell door (and did the same in the other solitary cells). He said he then heard sirens, and saw firefighters enter the building, and then leave with a man on a stretcher. The man had an oxygen mask on his face. Mr. Parra believes the man had been in Dorm B and was brought down from a medical isolation cell.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 3rd day of August, 2020 in Berkeley, California.

s/ Susan Beaty
Susan Beaty

Declarant

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

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

Petitioners-Plaintiffs,

v.

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

Respondents-Defendants.

Case No. 3:20-CV-02731-VC

**THIRD SUPPLEMENTAL DECLARATION OF
 ROBERT GREIFINGER, MD IN SUPPORT OF
 PETITIONERS-PLAINTIFFS' MOTION FOR
 TEMPORARY RESTRAINING ORDER**

2

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THIRD SUPPLEMENTAL DECLARATION OF ROBERT GREIFINGER, MD

I, Robert B. Greifinger, declare as follows:

1. I am a physician who has worked in health care for prisoners for more than 30 years. I have managed the medical care for inmates in the custody of New York City (Rikers Island) and the New York State prison system. I have been an independent consultant on prison and jail health care since 1995. My clients have included the U.S. Department of Justice, Division of Civil Rights (for 23 years) and the U.S. Department of Homeland Security, Section for Civil Rights and Civil Liberties (for six years). I am familiar with immigration detention centers, having toured and evaluated the medical care in approximately 20 immigration detention centers, out of the several hundred correctional facilities I have visited during my career. I currently monitor the medical care in three large county jails for Federal Courts.
2. I provided three earlier declarations in this case, dated April 19 and April 26, 2020, and May 22, 2020. I now provide this third supplemental declaration after reviewing materials provided by the Defendants to the Court and to Plaintiffs in discovery, and reviewing information provided by Plaintiffs to me concerning recent developments at Mesa Verde Detention Center.
3. I have been informed of the following new developments at the Mesa Verde Detention Center:
 - a. thirteen staff members contracted with ICE (from the security contractor GEO and the health contractor Wellpath) have tested positive for COVID-19 in recent weeks;
 - b. at least nine individual detainees have tested positive for COVID-19, two while in intake and seven in different dorms (B and C), one of whom has since been released;
 - c. multiple individuals have been moved between dorms over the past week, including from dorms with infected individuals to other dorms; and
 - d. the Mesa Verde Facilities Administrator confirmed that GEO staff are not tested for COVID-19, there is no plan to test staff for COVID-19, and there is no obligation of contacts of staff who tested positive for COVID-19 to either test or quarantine if they are asymptomatic.

Responding to an Outbreak Through Testing and Isolation

4. In the event of an outbreak of COVID-19 in a congregate facility, the most urgent need is to prevent any further spread. Given the infectious nature of the virus, preventing further spread is virtually impossible if quick action is not taken. Containment must be a very high priority in the event of any positive COVID-19 tests in a facility where people are living indoors in close proximity. In these contexts, the infectious spread can be extremely rapid.
5. Containment is only possible through quickly identifying those who are infected and isolating them. Containment efforts should also include isolating individuals who *may* be infected because they have had contact with others who are infected.

6. It is not an effective containment strategy to only test individuals who are showing signs and symptoms of COVID-19. COVID-19 is highly contagious and can be spread by both symptomatic and asymptomatic people.
7. Testing to mitigate the risk of COVID-19 in a detention facility should be frequent and not once-off. This should be at least weekly in order to be able to respond rapidly to any new infections and isolate those who are infected. Nonetheless, in the event of any outbreak, it is critical to rapidly identify those who are infected with the virus and isolate them, even if it is not yet possible to identify or implement the medium- or long-term plan to further mitigate the risk.
8. In school or sports settings, where people are congregating in groups, public health experts have identified regular rapid testing in order to mitigate the risks of the virus. In some contexts, this means testing multiple times a week, but the recommendation is almost always at least weekly. This periodic testing is important for many reasons. Among the reasons: there is an incubation period for the virus, where individuals will test negative despite being positive; and individuals can be exposed and become positive after the initial test.

Point of Care and Laboratory Tests

9. “Point of care” tests are tests that can be both taken and analyzed on-site, producing relatively quick results. Samples need not be sent to a laboratory for reading and results can be available within minutes or hours. This has obvious benefits in a congregate setting where delayed results mean that more people are at risk of getting infected through interactions which take place while waiting for results.
10. The Abbott ID Now is one such point of care test developed for COVID-19. Some early analysis of the Abbott ID Now test have shown that it can produce some so-called “false negatives.” False negatives are when an individual is in fact infected with COVID but the test result does not show that. This limitation of the test does *not* mean that it should not be used. The speed of the test, and its effectiveness in identifying most of those who are infected with COVID-19 (so-called “true positives”), make it a very useful tool in a congregate setting. The fact that there are some false negatives only suggests that there should *also* be confirmatory laboratory tests done for those who test negative.
11. The industry standard for COVID-19 testing is real-time reverse transcription polymerase chain reaction (rCT-PCR) testing. These tests analyze nucleic acid from SARS-CoV-2 in upper and lower respiratory specimens, such as nasopharyngeal or oropharyngeal swabs. These specimens need to be analyzed in a laboratory. Where there are adequate resources, laboratories can report results quite quickly. However, particularly in light of the increase in COVID-19 cases in the State of California and nationwide, there are often insufficient resources to allow for rapid results. This has resulted in some delays.
12. It is worthless to rely only on laboratory tests that produce very delayed results. I understand that Defendants in this case have identified that it could take “up to several weeks to obtain results” from laboratory tests they propose. Dkt. 429-1 at n.3. Such delayed results would

provide no value. An individual who was positive several weeks ago, at the time the sample was taken, might no longer be positive at the time of the diagnosis, making the test meaningless for the individual. Moreover, the individual would likely have infected numerous other people in the interim if they were unable to quarantine in the period in which they were waiting for the results.

Isolating and Contact Tracing Despite Space Limitations

13. I am familiar with the space limitations for isolating individuals at Mesa Verde. I understand that there five single cells with beds, with two in the medical unit and three for restricted housing, the latter typically used to respond to disciplinary violations. (Only the rooms in the medical unit have negative pressure ventilation which is important in limiting the likely spread of COVID-19.) I also understand that there are three intake rooms that do not have beds. Plaintiffs have informed me that GEO has identified these intake rooms as back-up isolation rooms in the event that they run out of space to house people who test positive for COVID-19 in the other five single-bed isolation rooms. To house people in these intake rooms, according to testimony provided by the Facilities Administrator at GEO, would require mats to be brought into the intake rooms and for individuals to sleep on these mats on the floor. Plaintiffs have informed me that spending more than 12 hours in these rooms is also a violation of the ICE guidelines.
14. Given the space limitations at Mesa Verde, if more than a few people test positive for COVID-19, it is urgent that a common living space be cleared to house all of those who test positive for COVID-19. It is best practice for people who test positive to be isolated in individual cells. However, if that is not possible, individuals who test positive should at a minimum be isolated from others who have tested negative or whose status is unknown. These individuals should be isolated for as long as required, in accordance with the CDC standards which I previously laid out in my May 22, 2020 Declaration at ¶ 56.
15. It is important that the isolation of those who test positive not lead to increased density in other living spaces. This would mean that risks would be diminished in one way (by isolating those who test positive) but increased in another way (by decreasing the prospects for social distancing for those who have not tested positive). Increasing the density of certain dorms would be particularly concerning where, as here, there is uncertainty that those who remain in the dorms do *not* have COVID-19 and that staff members who attend to detainees do *not* have COVID-19. One person who is infected with COVID-19 in a shared living space is very risky for everyone else in that shared living space if there is insufficient room to socially distance.
16. Individuals who do not test positive but who have had contact with individuals who test positive should also be cohorted and should not interact with others who have had no known contact with those infected with COVID-19. This means for the period where one shared living space is quarantined or cohorted, no new individuals should be introduced into that living space. I have further elaborated this in my May 22, 2020 Declaration at ¶ 55

Refusals

17. In my experience, and through consulting with other experts, it is rare for individuals to refuse the offer of a COVID-19 or other such test. If a large number of individual detainees were refusing to test, I would suspect that they did not understand the question being asked of them or they were distrustful of the entity making the request. While it is a violation of medical ethics to coerce people to take a test in this setting, all efforts should be made to ensure that individual detainees understand what a COVID-19 test consists of and why the individual is being asked to consent to a test.
18. In my opinion, if there is a high refusal rate, individuals who are skeptical of the test should be offered the opportunity to speak with an independent advisor or their own advocate prior to being classified as someone who is “refusing” to take a COVID-19 test.
19. It is particularly important to identify the reasons for purported refusals, and to try to encourage people to be tested if they are willing, if the individuals who are refusing to are new arrivals at the facility and being introduced into the general population directly. The risk of these transfers introducing COVID-19 into the general population is relatively high.

Staff Testing

20. The failure to regularly test staff in a congregate setting, such as Mesa Verde, and to ensure that staff are not reporting to work while their results are pending, significantly increases the risk of COVID-19 transmission within the facility. As I have previously elaborated, one of the most common ways that COVID-19 enters congregate facilities, such as jails and detention centers, is through staff and contractors. Staff sometimes have a higher infection rate than detainees, and medical staff often have a higher rate of infection than other staff.
21. The recent developments at Mesa Verde are especially concerning. They provide strong evidence that more people (both staff and detainees) are infected currently with COVID-19 than are known to be infected. From the information I have reviewed over the course of this litigation, and from their response to the current positive tests, there is no evidence that either ICE or GEO has a plan in place to limit the risk of further spread of COVID-19. In such an environment, if immediate action is not taken to identify those who are infected and limit any further spread, I would expect that many more detainees will be infected quickly.

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

Executed this 3rd day of August 2020 in Eastham, Massachusetts.



Robert B. Greifinger, M.D.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Petitioners-Plaintiffs,

v.

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

Respondents-Defendants.

Case No. 3:20-CV-02731-VC

**DECLARATION OF EMILOU
MACLEAN IN SUPPORT OF
PETITIONERS-PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER**

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**DECLARATION OF EMILOU MACLEAN IN SUPPORT OF PETITIONERS-
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Emilou MacLean, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney admitted to practice in California. I am a deputy public defender in the immigration unit of the San Francisco Office of the Public Defender and counsel for Petitioners-Plaintiffs in this action. I submit this declaration in support of Petitioners-Plaintiffs' Motion for a Temporary Restraining Order and to transmit true and correct copies of the following documents.

I have personal knowledge of the facts stated in this declaration.

2. Attached as Exhibit A is a true and correct copy of an email I sent to Defendants on June 23, 2020, immediately following Defendants' Status Report to the Court concerning the first positive test of a Wellpath staff at Mesa Verde. The Exhibit includes Plaintiffs' initial email to Defendants expressing concern about Defendants' failure to provide sufficient information or take adequate measures to mitigate the risk of further COVID-19 transmission in the facility. The Exhibit also includes the complete response of Defendant GEO. Federal Defendants did not respond to this communication from Plaintiffs.

3. Attached as Exhibit B is a true and correct copy of two emails sent by counsel for Federal Defendants on July 2 and July 6, 2020, respectively, concerning the tests of detainees who had contact with the first Wellpath staff member who tested positive for COVID-19 at Mesa Verde.

4. Attached as Exhibit C is a true and correct copy of a July 6, 2020 email exchange between William Freeman, counsel for Plaintiffs, and Adrienne Zack, counsel for Federal Defendants, concerning the transfer of six individuals to Adelanto Detention Center following the positive COVID-19 test of an individual detainee who was admitted into Mesa Verde on July 1, 2020.

5. Attached as Exhibit D is a true and correct copy of a July 12, 2020 email communication from Adrienne Zack, counsel for Federal Defendants, concerning a positive COVID-19 test for a

1 second GEO officer. The officer tested positive on July 5, 2020. (is the third staff member to have
2 tested positive as the second was identified in Dkt. 407.)

3 6. Attached as Exhibit E is a true and correct copy of a series of emails from Adrienne Zack,
4 counsel for Federal Defendants, dated July 15, July 16, and July 17, 2020 concerning additional
5 positive COVID-19 tests of Mesa Verde staff. The July 15 email confirms that three additional
6 staff members who received positive test results for COVID-19 on July 12. Staff Member 4 is a
7 medical records clerk; Staff Member 5 is a licensed vocational nurse (LVN); and Staff Member 6
8 is a GEO Officer. The July 16 email confirms that one additional staff member, a GEO Officer
9 (also identified as Staff Member 7), tested positive for COVID-19 on July 14. The July 17 email
10 confirms two additional staff members, a GEO Officer and a Registered Nurse (also identified as
11 Staff Members 8 and 9), tested positive for COVID-19 with positive results received on July 15
12 and 16, respectively.

13
14
15 7. Attached as Exhibit F is a true and correct copy of a pair of emails from Adrienne Zack,
16 counsel for Federal Defendants, dated July 22 and 23, 2020, confirming that three additional staff
17 members tested positive for COVID-19. Two GEO Officers, identified as Staff Members 10 and
18 11, received a positive test for COVID-19 on July 20. A Registered Nurse, identified as Staff
19 Member 12, received a positive test on July 22 (from a test taken on July 13).

20
21 8. Attached as Exhibit G is a true and correct copy of a pair of emails from Adrienne Zack,
22 counsel for Federal Defendants, dated July 28 and July 29, 2020, and confirming that a 13th staff
23 member at Mesa Verde, a GEO Officer, received a positive test for COVID-19 on July 28.

24 9. Attached as Exhibit H is a true and correct copy of a pair of emails from Adrienne Zack,
25 counsel for Federal Defendants, dated July 30 and July 31, 2020, concerning a second individual
26 detainee who tested positive for COVID-19 at intake after showing symptoms. The individual
27 with whom he had contact during transport was placed in Dorm B. A third individual detainee,
28

1 who had been in Dorm B, also tested positive for COVID-19 on July 29, 2020, and was placed
2 into medical isolation. The remaining detainees in Dorm B were placed “on cohort for 14-day
3 monitoring” and, subsequently, offered testing.

4 10. Attached as Exhibit I is a true and correct copy of an email exchange between counsel for
5 Plaintiffs and counsel for Defendants concerning a proposal from Plaintiffs for periodic and
6 universal testing, contact tracing, and segregating detainees based on whether and how they test
7 for COVID-19. Sean Riordan, counsel for Plaintiffs, sent a proposal on July 24. Following a meet
8 and confer on July 27, Mr. Riordan sent a follow-up to the proposal on July 28, answering
9 questions identified by counsel for Defendants. Counsel for Defendants provided no further
10 substantive response.

11 11. Attached as Exhibit J is a true and correct copy of an email exchange initiated on August
12 1, 2020 concerning reports of an individual detainee who tested positive for COVID-19 and was
13 subsequently hospitalized. This email exchange includes all directly responsive communications.
14 On August 1, 2020, Genna Beier, counsel for Plaintiffs, notified Defendants that Plaintiffs heard
15 reports that a medically vulnerable and elderly individual tested positive for COVID-19 inside
16 Mesa Verde. Ms. Beier asked for additional information and for Defendants to take affirmative
17 steps to mitigate the risks of further transmission of COVID-19 among the detainee population in
18 Mesa Verde. On August 2, 2020, Susan Coleman, counsel for Defendant GEO responded that the
19 individual detainee of concern “was released to his family and is no longer in custody,” but did
20 not provide further responses to Plaintiffs’ questions. On August 3, 2020, Shiwon Choe, counsel
21 for Federal Defendants, did not answer the questions posed but provided that “ICE has requested
22 that GEO offer COVID-19 testing to all detainees in Dorm C” and that “Mesa Verde does not
23 have enough rapid testing available to test all detainees.” At 1:56 PM, I wrote to Defendants with
24 additional reports received by counsel for Plaintiffs of further positive COVID-19 tests of
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1 individual detainees at Mesa Verde. In response, at 3:48 PM, Mr. Choe wrote that counsel for
2 Defendants “have received word that five detainees in Dorm B who were tested on July 30 had
3 results come back that were positive for COVID-19” and “Dorms B and C currently remain
4 cohorted.”

5
6 12. Attached as Exhibit K is a true and correct copy of an email from Adrienne Zack, counsel
7 for Federal Defendants, dated August 3, 2020, confirming the positive test of an individual
8 detainee in Dormitory C following his admission to the emergency room for COVID-19 testing
9 on July 31, 2020, and his subsequent release on an order of supervision on August 2, 2020. This
10 individual is the individual referenced by Ms. Beier in the August 1, 2020 email included herein
11 as Exhibit J.

12
13 13. Attached as Exhibit L is a true and correct copy of an email from ERO Assistant Directors
14 to Field Office Directors and Deputy Field Office Directors, dated May 27, 2020; and a response
15 from ICE San Francisco Field Office Director David Jennings, produced as ICE 682.

16
17 14. Attached as Exhibit M is a true and correct copy of an email from Assistant Field Office
18 Director Alexander Pham to Field Office Director David Jennings, dated June 4, 2020, produced
19 as ICE 637.

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

21 Executed on August 3, 2020 in Berkeley, California.

22 /s/ Emilou MacLean
23 Emilou MacLean
24
25
26
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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of August, 2020, a true and correct copy of this Declaration was served via electronic mail on (1) Shiwon Choe, counsel for Federal Defendants and (2) Susan Coleman, counsel for GEO Defendants.

/s/ Martin S. Schenker
Martin S. Schenker
Cooley LLP

Attorney for Petitioners-Plaintiffs

Exhibit A

Bree Bernwanger

From: Maclean, Emilou (PDR) <emilou.maclean@sfgov.org>
Sent: Tuesday, June 23, 2020 4:08 PM
To: Coleman, Susan E.; Choe, Shiwon (USACAN); Garbers, Wendy (USACAN); Zack, Adrienne (USACAN)
Cc: Bill Freeman; Sean Riordan; Angelica Salceda; Beier, Genna (PDR); Ugarte, Francisco (PDR); Bree Bernwanger; Cook, Timothy; Schenker, Marty; Judah Lakin; Amalia Wille
Subject: Re: Zepeda: response to COVID-confirmed case at Mesa Verde

Dear Susan—

Thank you for confirming that one additional class member has been tested.

The status report filed with the Court yesterday confirms the fears of Plaintiffs' counsel that ICE is not taking seriously identifying *all* of those potentially exposed (including by contact with people exposed to the infected nurse or by contact with the infected nurse prior to June 15, 2020); ensuring that all potentially exposed are promptly tested for COVID-19, isolated, and monitored for symptoms, in order to further limit the risk of transmission within the facility; taking further measures to mitigate risk, including through testing beyond those potentially exposed here; and communicating with class members about the risks of transmission. Your resistance to even sharing basic information – the identities of 12 of our clients who Defendants admit have been exposed to a confirmed positive staff member as well as answers to the other questions presented – heightens our concern.

In order to understand if Defendants are adequately protecting class members from the threat of COVID-19, we need to speak with the class members directly. This is particularly important as Defendants have previously presented inaccurate information to the Court and to class counsel regarding the procedures related to COVID-19 at Mesa Verde, including related to intake, segregation, and testing. See Dkt. 286-2 ¶¶ 3-8; Dkt. 324.

Time is of the essence when there is a risk of exposure in a congregate living facility, as the exponential growth we now see at San Quentin Prison makes clear. Judge Chhabria has identified the “unrebutted evidence that if and when [Covid-19 enters the facilities] it may cause a rapid and dangerous outbreak.” Dkt. 357 at 6 n. 2.

It is our responsibility as class counsel to communicate with our clients who have been exposed to COVID-19 to understand the risk to them and the class and to be able to meaningfully communicate with the Court if measures are not being taken to adequately mitigate this risk. In the interest of the shared goal of protecting those in the facility from an outbreak, we expect cooperation from Defendants in providing this basic information to us without our needing to resort to judicial intervention. We thus renew our request for the information outlined in our previous correspondence.

Best,
Emi

From: "Coleman, Susan E." <SColeman@bwslaw.com>
Date: Tuesday, June 23, 2020 at 1:02 PM
To: "Maclean, Emilou (PDR)" <emilou.maclean@sfgov.org>, "Choe, Shiwon (USACAN)" <Shiwon.Cho@usdoj.gov>, "Garbers, Wendy (USACAN)" <Wendy.Garbers@usdoj.gov>, "Zack, Adrienne (USACAN)" <Adrienne.Zack@usdoj.gov>
Cc: Bill Freeman <wfreeman@aclunc.org>, Sean Riordan <SRiordan@aclunc.org>, Angelica Salceda

<asalceda@aclunc.org>, "Beier, Genna (PDR)" <genna.beier@sfgov.org>, "Ugarte, Francisco (PDR)" <francisco.ugarte@sfgov.org>, Bree Bernwanger <bbernwanger@lccsf.org>, "Cook, Timothy" <tcook@cooley.com>, "Schenker, Marty" <mschenker@cooley.com>, Judah Lakin <judah@lakinwille.com>, Amalia Wille <amalia@lakinwille.com>

Subject: RE: Zepeda: response to COVID-confirmed case at Mesa Verde

Emi – if the exposed persons have been tested (and I can now confirm that the person on suicide watch has also been tested), why do you have an obligation to communicate with them?

I also wanted to add that temperatures are not taken orally, so masks are not typically removed during medical encounters. You mentioned that vitals might require removal of masks but they do not.

Susan

Susan E. Coleman | Partner

444 South Flower Street, Suite 2400 | Los Angeles, CA 90071-2953

d - 213.236.2831 | t - 213.236.0600 | f - 213.236.2700

scoleman@bwsllaw.com | [vCard](#) | bwsllaw.com



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From: Maclean, Emilou (PDR) [mailto:emilou.macleam@sfgov.org]

Sent: Tuesday, June 23, 2020 12:26 PM

To: Coleman, Susan E.; Choe, Shiwon (USACAN); Garbers, Wendy (USACAN); Zack, Adrienne (USACAN)

Cc: Bill Freeman; Sean Riordan; Angelica Salceda; Beier, Genna (PDR); Ugarte, Francisco (PDR); Bree Bernwanger; Cook, Timothy; Schenker, Marty; Judah Lakin; Amalia Wille

Subject: Re: Zepeda: response to COVID-confirmed case at Mesa Verde

[EXTERNAL]

Counsel,

Thank you for your quick response. However, we have an obligation to communicate with class members who may have been exposed to COVID-19 through their interaction with this Mesa Verde staff member who has been confirmed to have COVID-19, and we can only access this information through the facility. We also have an obligation to ensure that the person released is aware of his potential risk of exposure. Thus, we reiterate our request that you confirm the names of our clients who have been exposed. If you will not, we ask that you provide more specific information as to why that information may not be shared with class counsel.

Please also provide information to answer the other questions raised below:

1. what days the COVID-confirmed medical provider worked in the two weeks before she tested positive;

2. the names of each of the detained *Zepeda* class members who had *any* contact with the COVID-confirmed medical provider in the 14 days before she tested positive;
3. whether those detained class members have been informed that they have come into contact with the COVID-confirmed medical provider;
4. whether they have been informed that they have the right to a test, whether they have been tested for COVID, and the results if any;
5. whether ICE has considered offering testing to *all* detained class members in light of the increased risk as well as the new CDC guidelines;
6. whether any class members have been cohorted, quarantined, or otherwise segregated in light of exposure, and whether the facility has the capacity to do so if there is a need;
7. whether staff outside of the medical unit have been offered testing in light of this recent development, whether they have been tested, and the results if any; and
8. whether the staff member who refused to be tested despite coming into contact with the COVID-infected nurse is going to work despite being potentially infectious.

Thank you,

Emi

From: "Coleman, Susan E." <SColeman@bwsllaw.com>

Date: Tuesday, June 23, 2020 at 10:45 AM

To: "Maclean, Emilou (PDR)" <emilou.maclean@sfgov.org>, "Choe, Shiwon (USACAN)" <Shiwon.Choe@usdoj.gov>, "Garbers, Wendy (USACAN)" <Wendy.Garbers@usdoj.gov>, "Zack, Adrienne (USACAN)" <Adrienne.Zack@usdoj.gov>

Cc: Bill Freeman <wfreeman@aclunc.org>, Sean Riordan <SRiordan@aclunc.org>, Angelica Salceda <asalceda@aclunc.org>, "Beier, Genna (PDR)" <genna.beier@sfgov.org>, "Ugarte, Francisco (PDR)" <francisco.ugarte@sfgov.org>, Bree Bernwanger <bbernwanger@lccrsf.org>, "Cook, Timothy" <tcook@cooley.com>, "Schenker, Marty" <mschenker@cooley.com>, Judah Lakin <judah@lakinwille.com>, Amalia Wille <amalia@lakinwille.com>

Subject: RE: Zepeda: response to COVID-confirmed case at Mesa Verde

Counsel – GEO does not want to release these names, as the spreading of this information (and the likely corollary discovery of the name of the RN) may lead to disturbances at the facility affecting safety/security. The facility continues to follow CDC recommendations including providing masks to all detainees, allowing for social distance in housing, meals and other activities, and monitoring for symptoms.

Will let you know the results once they are returned. The facility plans to test the individual on suicide once he can be spoken with by a mental health professional, assuming he cooperates, but in the meantime he is isolated from others. The person who was released is no longer an issue for the remaining detainees.

Susan

Susan E. Coleman | Partner

444 South Flower Street, Suite 2400 | Los Angeles, CA 90071-2953

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scolem@bwsllaw.com | vCard | bwsllaw.com



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From: Maclean, Emilou (PDR) [mailto:emilou.maclean@sfgov.org]

Sent: Tuesday, June 23, 2020 10:41 AM

To: Coleman, Susan E.; Choe, Shiwon (USACAN); Garbers, Wendy (USACAN); Zack, Adrienne (USACAN)

Cc: Bill Freeman; Sean Riordan; Angelica Salceda; Beier, Genna (PDR); Ugarte, Francisco (PDR); Bree Bernwanger; Cook, Timothy; Schenker, Marty; Judah Lakin; Amalia Wille

Subject: Re: Zepeda: response to COVID-confirmed case at Mesa Verde

[EXTERNAL]

Dear Susan,

Thank you for this information. Can you please provide asap the names of the individual class members who were tested, as well as the names of the individuals not tested because they were released and on suicide watch, and facilitate calls between these still-detained class members and class counsel today?

We also look forward to your responses to the other questions that are outstanding.

Sincerely,

Emi

From: "Coleman, Susan E." <SColeman@bwsllaw.com>

Date: Tuesday, June 23, 2020 at 10:38 AM

To: "Maclean, Emilou (PDR)" <emilou.maclean@sfgov.org>, "Choe, Shiwon (USACAN)" <Shiwon.Choe@usdoj.gov>, "Garbers, Wendy (USACAN)" <Wendy.Garbers@usdoj.gov>, "Zack, Adrienne (USACAN)" <Adrienne.Zack@usdoj.gov>

Cc: Bill Freeman <wfreeman@aclunc.org>, Sean Riordan <SRiordan@aclunc.org>, Angelica Salceda <asalceda@aclunc.org>, "Beier, Genna (PDR)" <genna.beier@sfgov.org>, "Ugarte, Francisco (PDR)" <francisco.ugarte@sfgov.org>, Bree Bernwanger <bbernwanger@lccrsf.org>, "Cook, Timothy" <tcook@cooley.com>, "Schenker, Marty" <mschenker@cooley.com>, Judah Lakin <judah@lakinwille.com>, Amalia Wille <amalia@lakinwille.com>

Subject: RE: Zepeda: response to COVID-confirmed case at Mesa Verde

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Counsel – just wanted to let you know that 10 of the 12 detainees have already been tested. #11 was released. #12 is on suicide watch so he's in solitary with direct observation, waiting for mental health to assist with administering the test. No results yet.

The screening given to staff on entry is compliant with CDC recommendations.

Also, it is my understanding the RN did not seek a COVID test, it was administered in connection with her medical appointment for other reasons.

Sincerely,

Susan

Susan E. Coleman | Partner

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From: Maclean, Emilou (PDR) [<mailto:emilou.maclean@sfgov.org>]

Sent: Tuesday, June 23, 2020 9:14 AM

To: Choe, Shiwon (USACAN); Garbers, Wendy (USACAN); Zack, Adrienne (USACAN); Coleman, Susan E.

Cc: Bill Freeman; Sean Riordan; Angelica Salceda; Beier, Genna (PDR); Ugarte, Francisco (PDR); Bree Bernwanger; Cook, Timothy; Schenker, Marty; Judah Lakin; Amalia Wille

Subject: Zepeda: response to COVID-confirmed case at Mesa Verde

[EXTERNAL]

Dear Counsel:

Following up on your status report filed yesterday evening related to the confirmed COVID-19 case at Mesa Verde, Plaintiffs seek further information.

Defendants' status report to the Court raises serious concerns for Plaintiffs in light of what is included as well as what is lacking. It suggests that Defendants are neither taking this incident seriously nor taking appropriate action in response to it.

- Five days have passed since the confirmed case was identified at Mesa Verde and, based on your status report, there is no evidence that Defendants have tested – or offered testing to – a single one of the 12 detainees with whom she came in contact on her last day at work, let alone on any of the previous days she was working when she may also have been infected with COVID. The status report notes only that "ICE has requested that MV offer COVID-19 testing" to a limited number of class members. (Plaintiffs reject Defendants' assertion that class members face minimal risk of exposure where they came into contact with her to have their vital signs and

blood sugar counts taken given that close proximity is necessary for such interactions. Moreover, given that vital signs were taken, it is likely that detainees were not wearing surgical masks at all times interacting with the health care provider. The status report seems unclear on this issue, noting only that detainees who visited the medical unit “were observed” wearing surgical masks, not that *all* these class members wore surgical masks at *all* relevant times.)

- There is no evidence that even the 12 people who were in contact with the nurse on the final day that she worked have been cohorted let alone quarantined or individually segregated. Apparently none have been tested, and it seems none have even been offered testing. There is no evidence of quarantining, cohorting, testing, or offering tests for anyone who she came into contact with *prior to* her last working day. There is not even a recognition of the need to take into consideration the risks to these detained class members if they did not come into contact with the nurse on her last day at work. If any class members are infected, it appears that they remain in the general population where they are at high risk of infecting others.
- There is no evidence that ICE is offering testing to *all detained class members* despite the new CDC guidance recommending this. New CDC guidance on testing, issued on June 13, affirms that “broader testing, beyond close contacts, is recommended as a part of a strategy to control transmission of SARS-CoV-2” in “high-risk settings that have potential for rapid and widespread dissemination of SARS-CoV-2.” The guidelines recognize the risk of “substantial adverse effects” in “settings that house vulnerable populations in close quarters for extended periods of time (e.g., long-term care facilities, correctional and detention facilities).” San Quentin provides further concerning evidence of the risk of exponential spread in detention settings—going from zero prisoner cases in late May to nearly 200 on Sunday to over 300 yesterday.
- It is evident that the current practice of “screening for symptoms” for employees entering the facility is insufficient as, at a minimum, it does not catch asymptomatic cases. Defendants have provided no information regarding her symptoms or what kind of screening she underwent when she entered the facility.
- It is concerning that a Mesa Verde health care worker would need to seek a test off-site rather than on-site. The fact that the health care worker requested a test with an independent health care provider suggests that at least some health care workers (and perhaps other staff) seek to be tested but are not provided that option by Defendants at work despite their work in a high-risk environment. The status report also suggests that COVID testing following this confirmed case has only been offered to the medical unit but not all employees or contractors. As medical experts and the CDC have repeatedly recognized, employees are some of the most common vectors of transmission in congregate living facilities.

To allow us to provide accurate and timely information to our clients, and allow us to meaningfully respond to this new information, it is necessary that you provide advise us by 5:00 p.m. today with the following information:

1. what days the COVID-confirmed medical provider worked in the two weeks before she tested positive;
2. the names of each of the detained *Zepeda* class members who had *any* contact with the COVID-confirmed medical provider in the 14 days before she tested positive;
3. whether those detained class members have been informed that they have come into contact with the COVID-confirmed medical provider;
4. whether they have been informed that they have the right to a test, whether they have been tested for COVID, and the results if any;
5. whether ICE has considered offering testing to *all* detained class members in light of the increased risk as well as the new CDC guidelines;
6. whether any class members have been cohorted, quarantined, or otherwise segregated in light of exposure, and whether the facility has the capacity to do so if there is a need;
7. whether staff outside of the medical unit have been offered testing in light of this recent development, whether they have been tested, and the results if any; and
8. whether the staff member who refused to be tested despite coming into contact with the COVID-infected nurse is going to work despite being potentially infectious.

We also ask that you facilitate phone calls before noon tomorrow between class counsel and each of the individual class members who came into contact with the COVID-confirmed medical provider in the two weeks before she tested positive, so that we may discuss this new development and its impact on them.

If satisfactory responses are not provided by 5:00 p.m. today, given the urgency and significance of this matter, we reserve the right to file a response with the court.

Best,
Emi

Exhibit B

Bree Bernwanger

From: Zack, Adrienne (USACAN) <Adrienne.Zack@usdoj.gov>
Sent: Monday, July 6, 2020 9:55 AM
To: Sean Riordan; Angelica Salceda; Beier, Genna (PDR); Francisco Ugarte; Bree Bernwanger; Timothy Cook; Marty Schenker; Judah Lakin; Amalia Wille; Emilou Maclean; Bill Freeman
Cc: Choe, Shiwon (USACAN); Garbers, Wendy (USACAN); Coleman, Susan E.
Subject: RE: Zepeda Rivas - Detainees tested

Counsel,

The information in this message is designated CONFIDENTIAL pursuant to the protective orders. The detainee that was tested due to his minimal contact with the GEO officer was Edmondson, [REDACTED]. As previously stated, his test returned negative.

Regards,
Adrienne

From: Zack, Adrienne (USACAN)
Sent: Thursday, July 2, 2020 6:32 PM
To: Sean Riordan <SRiordan@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Genna Beier <genna.beier@sfgov.org>; Francisco Ugarte <francisco.ugarte@sfgov.org>; Bree Bernwanger <bbernwanger@lccrsf.org>; Timothy Cook <tcook@cooley.com>; Marty Schenker <mschenker@cooley.com>; Judah Lakin <judah@lakinwille.com>; Amalia Wille <amalia@lakinwille.com>; Emilou Maclean <emilou.maclean@sfgov.org>; Bill Freeman <wfreeman@aclunc.org>
Cc: Choe, Shiwon (USACAN) <SChoe@usa.doj.gov>; Garbers, Wendy (USACAN) <wgarbers@usa.doj.gov>; Coleman, Susan E. <SColeman@bwsllaw.com>
Subject: Zepeda Rivas - Detainees tested

Counsel,

The information in this message is designated CONFIDENTIAL pursuant to the protective orders. Below are the names of the detainees tested as a result of their minimal contacts with the nurse who tested positive for COVID-19 at Mesa Verde. I am awaiting the name of the detainee tested due to his minimal contact with the GEO officer and will provide when I have it. As previously stated, all tests have returned as negative. The CDC contact tracing guidelines recommend identifying those with close contact "starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to specimen collection) until the time the patient is isolated." See <https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/investigating-covid-19-case.html>. This guidance was followed and exceeded here, where none of the detainees had "close contact" as defined by the CDC.

Contact with Nurse on 6/15/2020:

FLORES-HIDALGO
MANZANILLA
LABASTIDA
ARCHUNDIA
VIGIL
OROZCO
GARCIA-MARTINEZ
CHHOEUNG



LOPEZ-GARCIA
LOPEZ-SOLARIO
AQUINO-MIRANDA
REYES CRUZ (removed)



Contact with Nurse on 6/12/2020:

ORELLANA
MATIAS RAUDA



Regards,

Adrienne Zack
Assistant United States Attorney
Northern District of California
450 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
415.436.7031
Adrienne.Zack@usdoj.gov

Exhibit C

Bree Bernwanger

From: Zack, Adrienne (USACAN) <Adrienne.Zack@usdoj.gov>
Sent: Monday, July 6, 2020 11:11 AM
To: Bill Freeman; Choe, Shiwon (USACAN); Garbers, Wendy (USACAN); Winslow, Sara (USACAN)
Cc: Bree Bernwanger; Sean Riordan; Angelica Salceda; Emilou Maclean; Francisco Ugarte; Beier, Genna (PDR); Judah Lakin; Marty Schenker; Timothy Cook; [REDACTED]
(USACAN); Stephanie Padilla
Subject: RE: Zepeda Rivas: July 2 releases and July 1 arrivals

Bill,

As the Federal Defendants stated in their interrogatory responses, on Monday June 29, 2020, Mesa Verde began offering COVID-19 testing to detainees upon intake to Mesa Verde. On July 1, 2020, a detainee, who was asymptomatic, agreed to be tested, and his intake same-day-test results were positive. That individual was then housed in a single cell medical isolation unit at Mesa Verde. The same day, Mesa Verde identified six other new arrivals that had potentially been exposed to the detainee during transport and/or while in the holding cell. Those detainees refused testing. They remained in the holding cell (and were not introduced into the general population at Mesa Verde) and were then transferred to Adelanto on July 2, 2020, for cohorting/quarantining because there is not space available at Mesa Verde for those six individuals to be cohorted/quarantined. The individual who tested positive has been re-tested via nasopharyngeal collection and those results are pending.

Regards,

Adrienne Zack
Assistant United States Attorney
Northern District of California
450 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
415.436.7031
Adrienne.Zack@usdoj.gov

From: Bill Freeman <wfreeman@aclunc.org>
Sent: Monday, July 6, 2020 10:02 AM
To: Choe, Shiwon (USACAN) <SChoe@usa.doj.gov>; Garbers, Wendy (USACAN) <wgarbers@usa.doj.gov>; Zack, Adrienne (USACAN) <AZack1@usa.doj.gov>; Winslow, Sara (USACAN) <SWinslow@usa.doj.gov>
Cc: Bree Bernwanger <bbernwanger@lccrsf.org>; Sean Riordan <SRiordan@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Emilou Maclean <emilou.maclean@sfgov.org>; Francisco Ugarte <francisco.ugarte@sfgov.org>; Genna Beier <genna.beier@sfgov.org>; Judah Lakin <judah@lakinwille.com>; Marty Schenker <mschenker@cooley.com>; Timothy Cook <tcook@cooley.com>; [REDACTED]; Stephanie Padilla <SPadilla@aclusocal.org>
Subject: RE: Zepeda Rivas: July 2 releases and July 1 arrivals

Counsel,

We note from the below message that 6 persons were booked into Mesa Verde on July 1 and transferred to Adelanto on July 2. It is of great concern to us that individuals are being sent from Mesa Verde to a facility with a known, significant COVID-19 outbreak, and where it is not apparent that measures to enable social distancing have been implemented. It is also a concern to us as to how these individuals are housed during the time they are present at Mesa Verde.

Please let us know, prior to today's Case Management Conference, where each of these six individuals were housed during the night of July 1; what measures, if any, were taken to cohort or segregate any of them; and why the government believes it was appropriate to send them to Adelanto. Thank you.

Best regards,

Bill



William S. Freeman

Senior Counsel

Pronouns: he/him

ACLU Foundation of Northern California

39 Drumm Street, San Francisco, CA 94111

415-293-6335

From: [REDACTED]

Sent: Thursday, July 2, 2020 4:54 PM

To: 'Jonathan Rosenthal' <Jonathan.Rosenthal@cand.uscourts.gov>

Cc: Bree Bernwanger <bbernwanger@lccsf.org>; Garbers, Wendy (USACAN) <Wendy.Garbers@usdoj.gov>; Winslow, Sara (USACAN) <Sara.Winslow@usdoj.gov>; Choe, Shiwon (USACAN) <Shiwon.Cho@usdoj.gov>; Sean Riordan <SRiordan@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Emilou Maclean <emilou.maclean@sfgov.org>; Francisco Ugarte <francisco.ugarte@sfgov.org>; Genna Beier <genna.beier@sfgov.org>; Jordan Wells <JWells@aclusocal.org>; Judah Lakin <judah@lakinwille.com>; Marty Schenker <mschenker@cooley.com>; Zack, Adrienne (USACAN) <Adrienne.Zack@usdoj.gov>; Timothy Cook <tcook@cooley.com>; Bill Freeman <wfreeman@aclunc.org>; 'Patrick Fuster' <Patrick.Fuster@cand.uscourts.gov>; 'Catherine Padhi' <Catherine.Padhi@cand.uscourts.gov>; Rollins, Lucy (USACAN) <Lucy.Rollins@usdoj.gov>; Stephanie Padilla <SPadilla@aclusocal.org>

Subject: Zepeda Rivas: July 2 releases and July 1 arrivals

Please find below the names and A-numbers of the individuals who were released today, and new arrivals. Yuba County Jail had no releases or arrivals.

As tomorrow is a federal holiday, releases and arrivals will next be reported on Monday.

Mesa Verde releases:

A-Number	Last Name	First Name	Reason for Release
[REDACTED]	RAMIREZ-BENITEZ	PABLO	Released on own recognizance
	ANDRADE-MENJIVAR	KEVIN	Released on own recognizance
	MIRANDA	CESAR EDUARDO	Released on own recognizance
	CHHOEUNG	SOPHEAP	Released on own recognizance
	DOMINGUEZ-DOMINGUEZ	GUSTAVO	Transfer to Adelanto due to unavailable housing
	HERNANDEZ-PALMA	MARTIN	Transfer to Adelanto due to unavailable housing

	VASQUEZ-AMARO	JUAN	Transfer to Adelanto due to unavailable housing
	HURTADO-ROCHA	GILBERTO	Transfer to Adelanto due to unavailable housing
	ESCOBAR-RIVERA	GUSTAVO	Transfer to Adelanto due to unavailable housing
	FOLASA	AFA	Transfer to Adelanto due to unavailable housing

Mesa Verde arrivals:

A-Number	Last Name	First Name	Age	Sex	Book-In Date
	DOMINGUEZ-DOMINGUEZ	GUSTAVO	58	M	07/01/2020
	HERNANDEZ-PALMA	MARTIN	47	M	07/01/2020
	VASQUEZ-AMARO	JUAN	34	M	07/01/2020
	HURTADO-ROCHA	GILBERTO	50	M	07/01/2020
	ESCOBAR-RIVAS	GUSTAVO	39	M	07/01/2020
	FOLASA	AFA	51	M	07/01/2020
	BONILLA-SOLANO	OSCAR	58	M	07/01/2020
	OLIVARES-PINEDA	LUIS	38	M	07/01/2020
	LEDESMA AGUAYO	EDUARDO	67	M	07/01/2020


 Paralegal Specialist
 U.S. Attorney's Office, NDCA
 450 Golden Gate Ave
 San Francisco, CA 94102


Exhibit D

Bree Bernwanger

From: Zack, Adrienne (USACAN) <Adrienne.Zack@usdoj.gov>
Sent: Sunday, July 12, 2020 8:54 PM
To: Schenker, Marty; Bill Freeman; Sean Riordan; Emilou Maclean; Angelica Salceda; Unger, Francisco L.M.; Bree Bernwanger; Judah Lakin; Beier, Genna (PDR); Timothy Cook
Cc: Coleman, Susan E.; Garbers, Wendy (USACAN); Choe, Shiwon (USACAN)
Subject: Zepeda Rivas - COVID+ tests

Counsel,

A second GEO officer has tested positive for COVID-19 (referred to herein as Officer #2). He sought testing on July 2, 2020, as a precaution, in part because he had some exposure to the detainee who tested positive on July 1 during intake (that detainee remains in medical isolation and is asymptomatic). On July 5, Officer #2 received the positive test result. Officer #2 last worked at Mesa Verde on July 2 and July 3, 2020, doing intake. He was asymptomatic at the time. During his shift on each day, he wore his facemask during his entire shift. Contact tracing revealed that he had no close contact with detainees during either shift. (Mesa Verde had no new intakes on these days.) He did have some contact with three other GEO employees, who were also wearing masks (one on July 2 and two on July 3). GEO was not able to determine that this contact was not "close contact" as defined by the CDC and provided notice to the three officers. One of the officers with whom Officer #2 had contact on July 3 was tested for COVID-19, and the results returned on July 10 as negative. If more information becomes available, we will provide an update.

Further, ICE was informed that Mr. Paulino Ambriz-Bejar was unable to report to ERO as required on July 1, 2020, because he contracted COVID-19 after being released by Judge Chhabria in early June. Federal Defendants request that Plaintiffs and/or class counsel provide notification to Defendants and Defendants' counsel if a class member contracts COVID-19 after being released on bail. If any other individuals apart from Mr. Ambriz-Bejar have been diagnosed with COVID-19 after being released to date, we request that Plaintiffs provide that information by Friday, July 17, at 3pm.

Thank you,

Adrienne Zack
Assistant United States Attorney
Northern District of California
450 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
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Exhibit E

Bree Bernwanger

From: Zack, Adrienne (USACAN) <Adrienne.Zack@usdoj.gov>
Sent: Friday, July 17, 2020 5:12 PM
To: Sean Riordan; Angelica Salceda; Beier, Genna (PDR); Francisco Ugarte; Bree Bernwanger; Timothy Cook; Marty Schenker; Judah Lakin; Amalia Wille; Emilou Maclean; Bill Freeman
Cc: Choe, Shiwon (USACAN); Garbers, Wendy (USACAN); Coleman, Susan E.
Subject: RE: Zepeda Rivas - COVID testing

Counsel,

Since our last update, two further Mesa Verde staff members have tested positive.

Staff Member #8 is a GEO Officer, and their last day at the facility was on July 13, 2020. On July 13, the officer had an onset of symptoms (coughing and congestion). On July 14, 2020, the officer took a COVID-19 test, and the results returned positive on July 15. The officer's last shifts were on July 11, 12, and 13, and contact tracing shows that they did not have close contact with any detainees on those days.

Staff Member #9 is an RN, and their last day at the facility was July 16, 2020. The RN, who has no symptoms, took a COVID-19 test on July 8, 2020, and the results returned positive on July 16. The RN's last shifts were on July 14, 15, and 16, and contact tracing shows that they did not have close contact with any detainees on those days.

Regarding Staff Member #4 – As previously stated, this medical records clerk's last two days at the facility were July 8 and 9. They also worked on July 7. Contact tracing shows they did not have close contact with any detainees during any of the three days.

Regarding Staff Member #6 – As previously stated, this GEO officer's last two days of work were July 6 and 7, 2020. Contract tracing shows that they did not have close contact with any detainees on those days.

Regarding Staff Member #7 – The GEO Officer's last two days at the facility were July 13 and 14, 2020. During their shifts, they wore a facemask the entire shift. Contract tracing shows that they had no close contact with any detainees on those days.

Thank you,
Adrienne

From: Zack, Adrienne (USACAN)
Sent: Thursday, July 16, 2020 9:40 AM
To: Sean Riordan <SRiordan@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Genna Beier <genna.beier@sfgov.org>; Francisco Ugarte <francisco.ugarte@sfgov.org>; Bree Bernwanger <bbernwanger@lccrsf.org>; Timothy Cook <tcook@cooley.com>; Marty Schenker <mschenker@cooley.com>; Judah Lakin <judah@lakinwille.com>; Amalia Wille <amalia@lakinwille.com>; Emilou Maclean <emilou.maclean@sfgov.org>; Bill Freeman <wfreeman@aclunc.org>
Cc: Choe, Shiwon (USACAN) <SChoe@usa.doj.gov>; Garbers, Wendy (USACAN) <wgarbers@usa.doj.gov>; Coleman, Susan E. <SColeman@bwsllaw.com>
Subject: RE: Zepeda Rivas - COVID testing

Counsel,

On July 14, 2020, Mesa Verde Staff Member #7 received a positive test for COVID-19. Staff Member #7 is a GEO officer, and his last day at the facility was on July 14, 2020. The officer was tested on July 11, 2020. He was and is asymptomatic. We will provide further updates regarding contact tracing as available.

Regarding Staff Member #4 – The medical records clerk's last two days at the facility were July 8 and 9, 2020. During their shifts, they wore personal protective equipment, including a facemask and gloves. They remain asymptomatic. Based on the contact tracing done to date, Staff Member #4 did not have any contact with any detainees on their last two days at the facility. Any medical staff who had any contact with Staff Member #4 have been informed and are being offered COVID-19 testing. Further contact tracing is ongoing.

Regarding Staff Member #5 – The LVN's last two days at the facility were July 8 and 9, 2020. During their shifts, they wore personal protective equipment, including facemask and gloves. Based on the contact tracing done to date, Staff Member #5 did not have any close contact with any detainees. Any medical staff who had any contact with Staff Member #5 have been informed and are being offered COVID-19 testing. Further contact tracing is ongoing.

Regarding Staff Member #6 – The GEO officer's last two days of work at the were on July 6 and 7, 2020, on the security shift. During his shifts, he wore his personal protective equipment, including facemask and gloves. Contact tracing is ongoing.

Thank you,
Adrienne

From: Zack, Adrienne (USACAN)

Sent: Wednesday, July 15, 2020 8:58 AM

To: Sean Riordan <SRiordan@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Genna Beier <genna.beier@sfgov.org>; Francisco Ugarte <francisco.ugarte@sfgov.org>; Bree Bernwanger <bbernwanger@lccsf.org>; Timothy Cook <tcCook@cooley.com>; Marty Schenker <mschenker@cooley.com>; Judah Lakin <judah@lakinwille.com>; Amalia Wille <amalia@lakinwille.com>; Emilou Maclean <emilou.maclean@sfgov.org>; Bill Freeman <wfreeman@aclunc.org>

Cc: Choe, Shiwon (USACAN) <SChoe@usa.doj.gov>; Garbers, Wendy (USACAN) <wgarbers@usa.doj.gov>; Coleman, Susan E. <SColeman@bwsllaw.com>

Subject: Zepeda Rivas - COVID testing

Counsel,

Since our last correspondence, three additional Mesa Verde staff members have tested positive for COVID-19. To date, we've referred to the staff members by their titles and a number (i.e., Officer #2), but moving forward, we will identify all as staff members for easier tracking (although we will still provide their titles where available). The names and information of the detainees in this message is designated CONFIDENTIAL pursuant to the protective orders.

Staff Member #4 is a medical records clerk, and their last day at the facility was July 9, 2020. The clerk tested offsite for COVID-19 on July 10, 2020 and received a positive test result on July 12, 2020. The clerk reported being asymptomatic prior to testing and still has no symptoms. We will provide further updates regarding contact tracing as available.

Staff Member #5 is an LVN, and their last day at the facility was July 9, 2020. The LVN tested offsite for COVID-19 on July 10, 2020 and received a positive test result on July 12, 2020. The LVN reported being asymptomatic prior to testing, but, as of July 12, 2020, reported experiencing a loss of taste and smell. We will provide further updates regarding contact tracing as available.

Staff Member #6 is a GEO officer, and their last day at the facility was July 7, 2020. The GEO officer, on July 8, 2020, began experiencing fever, chills, headache, and cough. The GEO officer tested offsite for COVID-19 on July 9, 2020 and received a positive test result on July 12, 2020. We will provide further updates regarding contact tracing as available.

We also have additional information regarding Officer #2 (aka Staff Member #3). The officer also worked on June 30 and July 1, 2020, doing intake. During each shift, he wore his personal protective equipment, including his facemask, the entire time. On June 30, Officer #2 had close contact with detainee Gedber Morales-Castillo, [REDACTED] during intake. Officer #2 was wearing his facemask and gloves and otherwise maintained social distancing while searching and inventorying Mr. Morales-Castillo's property. On July 13, 2020, Mr. Morales-Castillo was informed of the exposure and offered COVID-19 testing. He refused and denied any symptoms. On June 30, Officer #2 also had close contact with detainee Ruben Seguido-Velazquez, [REDACTED], who was returning from offsite. Officer #2 pat-searched Mr. Seguido-Velazquez and escorted him to his housing unit. Officer #2 was wearing his facemask and gloves during the encounter. On July 13, 2020, Mr. Seguido-Velazquez was informed of the exposure and offered COVID-19 testing. He refused and denied any symptoms.

On July 1, Officer #2 had close contact with detainee Oscar Gustavo Bonilla-Solano, [REDACTED], who was a new intake. This is the detainee who tested positive at intake, as previously disclosed. During the intake, Officer #2 was wearing his facemask and gloves. With respect to Mr. Bonilla-Solano, there was a technical/lab error with the follow up specimen collection that was taken on July 1, 2020. Medical staff sought to collect another specimen when this became known, but Mr. Bonilla-Solano refused. However, on July 11, 2020, he changed his mind, consented, and a new specimen was collected. The results of that new sample are pending. Mr. Bonilla-Solano is still asymptomatic and in medical isolation.

Regards,
Adrienne

Adrienne Zack
Assistant United States Attorney
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Exhibit F

From: "Zack, Adrienne (USACAN)" <Adrienne.Zack@usdoj.gov>
Date: Thursday, July 23, 2020 at 6:48 PM
To: Sean Riordan <SRiordan@aclunc.org>, Angelica Salceda <asalceda@aclunc.org>, "Beier, Genna (PDR)" <genna.beier@sfgov.org>, "Ugarte, Francisco (PDR)" <francisco.ugarte@sfgov.org>, Bree Bernwanger <bbernwanger@lccrsf.org>, Timothy Cook <tcook@cooley.com>, Marty Schenker <mschenker@cooley.com>, Judah Lakin <judah@lakinwille.com>, Amalia Wille <amalia@lakinwille.com>, "Maclean, Emilou (PDR)" <emilou.maclean@sfgov.org>, Bill Freeman <wfreeman@aclunc.org>
Cc: "Choe, Shiwon (USACAN)" <Shiwon.Choe@usdoj.gov>, "Garbers, Wendy (USACAN)" <Wendy.Garbers@usdoj.gov>, "Coleman, Susan E." <SColeman@bwslaw.com>
Subject: RE: Zepeda Rivas - COVID Testing Update

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Counsel,

Regarding Mr. Bonilla-Solano – Medical staff will follow a “test-based” protocol to determine when he can be released from medical isolation. This process was explained to Mr. Bonilla-Solano, who is agreeable. The protocol requires that all of the following conditions be met before release from medical isolation: No fever present on examination, the individual has not been using fever reducing medication, the individual has not developed symptoms, a minimum of 14 days has passed since the first specimen collection resulting in a positive test, and negative results on two separate COVID-19 FDA approved molecular assays obtained at least 24 hours apart. Another specimen was collected on July 22, 2020, and sent for testing.

Regarding Staff Member #10 – This GEO Officer’s last two days of work at the facility were July 14 and 15, 2020. Contact tracing shows that they had no close contact with any detainees on those days.

On July 20, 2020, Mesa Verde Staff Member #11 received a positive test for COVID-19. Staff Member #11 is a GEO officer, and their last day at the facility was July 5, 2020. The officer was tested on July 7, 2020. Contact tracing shows that during their shift on July 5, 2020, the officer did not have any close contact with any detainees.

On July 22, 2020, Mesa Verde Staff Member #12 received a positive test for COVID-19. Staff Member #12 is a nurse practitioner. They were tested on July 13, 2020. We will provide further updates regarding contact tracing as available.

Regards,
Adrienne

From: Zack, Adrienne (USACAN)
Sent: Wednesday, July 22, 2020 10:20 AM
To: Sean Riordan <SRiordan@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Genna Beier <genna.beier@sfgov.org>; Francisco Ugarte <francisco.ugarte@sfgov.org>; Bree Bernwanger

<bbernwanger@lccrsf.org>; Timothy Cook <tcook@cooley.com>; Marty Schenker <mschenker@cooley.com>; Judah Lakin <judah@lakinwille.com>; Amalia Wille <amalia@lakinwille.com>; Emilou Maclean <emilou.maclean@sfgov.org>; Bill Freeman <wfreeman@aclunc.org>

Cc: Choe, Shiwon (USACAN) <SChoe@usa.doj.gov>; Garbers, Wendy (USACAN) <wgarbers@usa.doj.gov>; Coleman, Susan E. <SColeman@bwslaw.com>

Subject: Zepeda Rivas - COVID Testing Update

Counsel,

On July 18 and July 19, follow-up COVID-19 test results for Oscar Bonilla-Solano, [REDACTED], returned as positive. These results were from samples collected on July 14 and July 1, respectively. (The July 14 specimen was collected because there was concern that the lab to which the July 11 specimen previously reported was sent might be delayed. Also, it appears that despite earlier reported trouble with the July 1 specimen, the lab was able to complete the test.) Mr. Bonilla-Solano has been in medical isolation since the Abbot test at his intake on July 1 returned a positive result, and he has had and continues to have no symptoms. The medical providers at Mesa Verde are discussing a plan of care and intend to provide an update soon.

On July 20, 2020, Mesa Verde Staff Member #10 received a positive test for COVID-19. Staff Member #10 is a GEO officer, and their last day at the facility was July 15, 2020. The officer was tested on July 17, 2020. We will provide further updates regarding contact tracing as available.

ICE also learned on July 21, 2020, that one Yuba County Jail staff member has had a positive COVID-19 test result. Contact tracing showed no detainee contact with the positive staff member.

Regards,
Adrienne

Adrienne Zack
Assistant United States Attorney
Northern District of California
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Adrienne.Zack@usdoj.gov

Exhibit G

From: "Zack, Adrienne (USACAN)" <Adrienne.Zack@usdoj.gov>
Date: Wednesday, July 29, 2020 at 7:21 PM
To: Sean Riordan <SRiordan@aclunc.org>, Angelica Salceda <asalceda@aclunc.org>, "Beier, Genna (PDR)" <genna.beier@sfgov.org>, "Ugarte, Francisco (PDR)" <francisco.ugarte@sfgov.org>, Bree Bernwanger <bbernwanger@lccrsf.org>, Timothy Cook <tcook@cooley.com>, Marty Schenker <mschenker@cooley.com>, Judah Lakin <judah@lakinwille.com>, Amalia Wille <amalia@lakinwille.com>, "Maclean, Emilou (PDR)" <emilou.maclean@sfgov.org>, Bill Freeman <wfreeman@aclunc.org>
Cc: "Choe, Shiwon (USACAN)" <Shiwon.Choe@usdoj.gov>, "Garbers, Wendy (USACAN)" <Wendy.Garbers@usdoj.gov>, "Coleman, Susan E." <SColeman@bwsllaw.com>
Subject: RE: Zepeda Rivas - COVID Testing Update

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Counsel,

On July 28, 2020, Mesa Verde Staff Member #13 received a positive test for COVID-19. Staff Member #13 is a GEO officer, and their last day at the facility was July 24, 2020. The officer is asymptomatic. Their last shifts at the facility were on July 22, 23, and 24, and contact tracing shows that during those shifts the officer did not have any close contact with any detainees.

Regards,
Adrienne

From: Zack, Adrienne (USACAN)
Sent: Tuesday, July 28, 2020 1:21 PM
To: Sean Riordan <SRiordan@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Genna Beier <genna.beier@sfgov.org>; Francisco Ugarte <francisco.ugarte@sfgov.org>; Bree Bernwanger <bbernwanger@lccrsf.org>; Timothy Cook <tcook@cooley.com>; Marty Schenker <mschenker@cooley.com>; Judah Lakin <judah@lakinwille.com>; Amalia Wille <amalia@lakinwille.com>; Emilou Maclean <emilou.maclean@sfgov.org>; Bill Freeman <wfreeman@aclunc.org>
Cc: Choe, Shiwon (USACAN) <SChoe@usa.doj.gov>; Garbers, Wendy (USACAN) <wgarbers@usa.doj.gov>; Coleman, Susan E. <SColeman@bwsllaw.com>
Subject: Zepeda Rivas - COVID Testing Update

Counsel,

On or about July 24, 2020, Yuba County Jail informed ICE that a second staff member has tested positive for COVID-19. The facility conducted contact tracing, and it reported that there was no close contact between Yuba Staff Member #2 and any detainees.

Regarding Mesa Verde Staff Member #12 – this nurse practitioner’s last day of work at the facility was July 13, 2020. Staff Member #12 did not work on July 11 and 12, 2020. Contract tracing shows that they had no close contact with detainees on July 13, 2020.

Regarding Mr. Bonilla-Solano – the COVID-19 specimen collected on July 22, 2020, resulted positive on July 25, 2020. He remains in medical isolation and asymptomatic.

Regards,
Adrienne

Adrienne Zack
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Adrienne.Zack@usdoj.gov

Exhibit H

From: "Zack, Adrienne (USACAN)" <Adrienne.Zack@usdoj.gov>
Date: Friday, July 31, 2020 at 6:19 PM
To: Sean Riordan <SRiordan@aclunc.org>, Angelica Salceda <asalceda@aclunc.org>, "Beier, Genna (PDR)" <genna.beier@sfgov.org>, "Ugarte, Francisco (PDR)" <francisco.ugarte@sfgov.org>, Bree Bernwanger <bbernwanger@lccrsf.org>, Timothy Cook <tcook@cooley.com>, Marty Schenker <mschenker@cooley.com>, Judah Lakin <judah@lakinwille.com>, Amalia Wille <amalia@lakinwille.com>, "Maclean, Emilou (PDR)" <emilou.maclean@sfgov.org>, Bill Freeman <wfreeman@aclunc.org>
Cc: "Choe, Shiwon (USACAN)" <Shiwon.Choe@usdoj.gov>, "Garbers, Wendy (USACAN)" <Wendy.Garbers@usdoj.gov>, "Coleman, Susan E." <SColeman@bwslaw.com>
Subject: RE: Zepeda Rivas - COVID testing update

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Counsel,

The names and information of the detainees in this message are designated CONFIDENTIAL pursuant to the protective orders.

Detainee Santiago Pineda, [REDACTED], was moved from the intake cell and placed in medical isolation.

Further, as previously stated, all detainees in B dorm were offered COVID-19 testing. 32 of the 33 detainees consented and were tested. The tests have been sent out for processing. The 33 detainees in Dormitory B will continue to be cohorted, monitored and checked twice daily for any COVID-19 symptoms.

Regards,
Adrienne

From: Zack, Adrienne (USACAN)
Sent: Thursday, July 30, 2020 8:55 PM
To: Sean Riordan <SRiordan@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Genna Beier <genna.beier@sfgov.org>; Francisco Ugarte <francisco.ugarte@sfgov.org>; Bree Bernwanger <bbernwanger@lccrsf.org>; Timothy Cook <tcook@cooley.com>; Marty Schenker <mschenker@cooley.com>; Judah Lakin <judah@lakinwille.com>; Amalia Wille <amalia@lakinwille.com>; Emilou Maclean <emilou.maclean@sfgov.org>; Bill Freeman <wfreeman@aclunc.org>
Cc: Choe, Shiwon (USACAN) <SChoe@usa.doj.gov>; Garbers, Wendy (USACAN) <wgarbers@usa.doj.gov>; Coleman, Susan E. <SColeman@bwslaw.com>
Subject: Zepeda Rivas - COVID testing update

Counsel,

The names and information of the detainees in this message are designated CONFIDENTIAL pursuant to the protective orders. The remainder is not designated confidential.

Regarding Mr. Bonilla-Solano - He remains housed in medical at Mesa Verde, away from the other detainees, due to his persistent positive COVID-19 testing. The medical staff reports that he is no longer contagious—he is considered persistently positive by CDC guidelines—and he is off isolation precautions pending removal to Honduras, which likely will be within a week.

Detainee Santiago Pineda, [REDACTED], arrived at the Mesa Verde facility as a new detainee on July 29, 2020, and during intake, he consented to COVID-19 testing via the Abbott ID Now machine. He tested positive for COVID-19. He was febrile and placed into medical isolation in an individual intake cell, where he remains. He had contact with detainee Jaswant Singh, [REDACTED], during transport to the facility. We will provide further updates regarding contact tracing as available.

Detainee Albert Orellana, [REDACTED], was seen by medical staff at Mesa Verde on July 29, 2020, because of his complaint of fever, headache, and body aches. He consented to testing for COVID-19 via the Abbott ID Now machine and tested positive for COVID-19. He was placed into medical isolation in one of the negative pressure rooms, where he remains. Because he was assigned to Dormitory B, that dormitory and the detainees in it are on cohort for 14-day monitoring. As part of the cohorting, the 33 detainees in Dormitory B are being monitored and checked twice daily for any COVID-19 symptoms. Per IHSC guidance, tests have not been offered to the cohorted detainees, but, as stated, the cohorted detainees are being monitored for symptoms. The 33 detainees on cohort are listed below. We will provide further updates regarding contact tracing as available.

- (1) Hector Estevan Abadin, [REDACTED];
- (2) Ruben Alcala Almanza, [REDACTED];
- (3) Juan Manuel Alvarez-Gonzalez, [REDACTED];
- (4) Narcisco Aquino-Camiro, [REDACTED] 1;
- (5) Nestor Chavez, [REDACTED];
- (6) Alberto Diaz-Solano, [REDACTED];
- (7) Alton Edmondson, [REDACTED];
- (8) Eder Said Erazo-Diaz, [REDACTED];
- (9) Moises Adrian Gallardo-Lopez, [REDACTED];
- (10) Jose Guerra, [REDACTED];
- (11) Oswaldo Hernandez-Reyes, [REDACTED];
- (12) Jaime Lopez-Solario, [REDACTED];
- (13) Israel Marin-Parra, [REDACTED];
- (14) Jose Dino Mejia, [REDACTED];
- (15) Jose Melgoza-Enriquez, [REDACTED];
- (16) Antoni Mendoza, [REDACTED];
- (17) Jose Mendoza-Valdovinos, [REDACTED];
- (18) Juan Minchaca-Ramos, [REDACTED];
- (19) Jacinto Morales, [REDACTED];
- (20) Henry Morales-Sanchez, [REDACTED];
- (21) German Najera Grajeda, [REDACTED];
- (22) Marcos Najera-Sandoval, [REDACTED];
- (23) William Nickle, [REDACTED];
- (24) Oscar Perez, [REDACTED];

- (25) Lam Quan, [REDACTED]
- (26) Hermelindo Rodriguez Galicia, [REDACTED]
- (27) Edgar Rodriguez-Rojas, [REDACTED];
- (28) Jose Ruiz, [REDACTED];
- (29) Jaswant Singh [REDACTED]
- (30) Gurmail Toor, [REDACTED]
- (31) John Victorio, [REDACTED]
- (32) Benito Villalobos-Sura, [REDACTED]; and
- (33) Margarito Zamora-Guzman, [REDACTED]

Adrienne Zack
Assistant United States Attorney
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Exhibit I

Monday, August 3, 2020 at 20:57:29 Pacific Daylight Time

Subject: RE: [Zepeda Rivas] proposal for testing/cohorting protocol
Date: Tuesday, July 28, 2020 at 5:40:33 PM Pacific Daylight Time
From: Sean Riordan
To: Choe, Shiwon (USACAN), Coleman, Susan E., Zack, Adrienne (USACAN), Garbers, Wendy (USACAN)
CC: Bill Freeman, Angelica Salceda, Marty Schenker, Maclean, Emilou (PDR), Bree Bernwanger, Francisco Unger, Timothy Cook, Beier, Genna (PDR), Judah Lakin
Attachments: image001.jpg

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Dear Shiwon:

We're following up here on several of the framework and substantive questions you raised during yesterday's meeting concerning testing and cohorting protocols. We also address pending case management issues in advance of next Wednesday's CMC.

Testing and Cohorting Protocols

- Negotiation Framework Questions:
 - As we stated yesterday, if the parties reach agreement on a protocol for testing and cohorting class members, we would not seek an evidentiary hearing absent changed circumstances or new disputes of which we are presently unaware.
 - As we indicated yesterday, we are willing to discuss a global resolution of the case if the Defendants are so interested. Indeed, if ICE is interested in exploring a global resolution, we believe that agreeing on a robust testing/cohorting regime would be an important trust-building step. But regardless of whether there is progress to be had on possible settlement of the whole case, testing/cohorting is an urgent issue that should be resolved as soon as possible.
- Substantive Questions:
 - Whether the plaintiffs would agree to increasing the density of certain dorms to free up other dorms for cohorting positives and/or refusers:
 - As we indicated in our initial proposal, we recognize that some modest increase may

be necessary.

- After further communication with experts on this question, we continue to believe that anything more than a modest increase would be too dangerous. The Abbott ID Now test remains an important tool for universal periodic testing, but it returns false negatives, as discovery in this case further affirms. This limitation means that a dorm of people who have all tested negative cannot be guaranteed to *not* have any COVID-positive detainees. Moreover, even those who do have the disease may not test positive, depending on the particular point in the infection cycle at which they are tested. There is also risk that between testing the virus could be introduced into a non-cohort dorm by other means – ventilation, facility personnel, etc. For all these reasons, maintaining social distancing remains important even with a rigorous testing/cohorting system.
 - You asked us to provide a particular number for any dorm that would be considered safe. We would be interested in working with ICE on a cap number, in keeping with the imperative for social distancing.
- Whether class members denied bail by Judge Chhabria should not be released in order to achieve the safe cohorting of class members:
 - We propose a testing/cohorting system where ICE would decide who should be released in circumstances where release is required to avoid the unsafe redensification of a particular dorm. Under the Plaintiffs’ proposal, ICE would have no obligation to release detainees previously denied bail by Judge Chhabria, but there would be no categorical prohibition against ICE deciding to release such detainees in its discretion.
 - To proactively address the possibility that at least one dorm may need to be cleared and the consequent density issues, we believe it would be wise for ICE to begin by temporarily halting new arrivals to Mesa Verde and voluntarily releasing individuals who are a relatively lower security classification (see, e.g., ICE 637).
 - How long refusers should be cohorted:
 - We believe that if ICE offers testing that provides prompt results, adequately explains the tests and the uses to which the results can be put, provides reasonable release forms, and allows class counsel to discuss the benefits of testing with putative refusers, the number of refusers will be extremely low. If we can agree on the other aspects of a proposal, we would commit to use our best efforts to convince any reluctant class member to submit to a test.
 - For those who still refuse, the cohorting time should be 14 days or until they are willing to be tested, whichever is shorter.
 - Whether the court should order that class members be required to wear masks:
 - We would want additional information about the Defendants’ understanding of how often and in what circumstances class members are not wearing masks. We do not think development of this issue – which we are happy to continue discussing – should delay the implementation of a universal and regular testing system with cohorting plans.

We hope this additional information is useful to you and the Defendants. We would be happy to set a further meeting to discuss testing/cohorting issues at your earliest convenience.

Case Management Issues

We plan to submit a short case management statement tomorrow noting the recent COVID-19 positive tests and the parties' discussion of a potential testing/cohorting regime. We will indicate that if the parties cannot resolve this issue that we plan to file a motion on or around August 14 seeking additional preliminary injunctive relief of court-imposed testing and cohorting requirements. We may seek an evidentiary hearing to assist in resolving any such motion, and the court may order the same. If we are unable to resolve this issue by the time we file our motion, we will remain interested in continuing discussions thereafter in an attempt to develop a mutually acceptable testing and cohorting regime.

We also understand that the parties are to confer in advance of the CMC on future case deadlines. We propose the following rough case management deadlines:

- Fact discovery cut-off: March 2021.
- Expert discovery cut-off: June 2021.
- MSJ cut-off: August 2021.
- Trial: mid-2022.

Please let us know if you agree with these deadlines in principle.

Best Regards,
Sean

From: Sean Riordan

Sent: Saturday, July 25, 2020 1:24 PM

To: 'Choe, Shiwon (USACAN)' <Shiwon.Choe@usdoj.gov>; Coleman, Susan E. <SColeman@bwslaw.com>; Zack, Adrienne (USACAN) <Adrienne.Zack@usdoj.gov>; Garbers, Wendy (USACAN) <Wendy.Garbers@usdoj.gov>

Cc: Bill Freeman <wfreeman@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Marty Schenker <mschenker@cooley.com>; Emilou Maclean <emilou.maclean@sfgov.org>; Bree Bernwanger <bbernwanger@lccrsf.org>; Francisco Unger <funger@cooley.com>; Timothy Cook <tcook@cooley.com>; Genna Beier <genna.beier@sfgov.org>; Judah Lakin <judah@lakinwille.com>

Subject: RE: [Zepeda Rivas] proposal for testing/cohorting protocol

Shiwon:

We appreciate the quick response on this.

Monday at 1 p.m. works best from our end. We recently switched over to "Microsoft Teams" as our remote meeting platform, and I can send an invite for that. Or if you have a conference call line, we'd be happy to use that.

Thanks,
Sean

From: Choe, Shiwon (USACAN) <Shiwon.Choë@usdoj.gov>
Sent: Friday, July 24, 2020 11:58 PM
To: Sean Riordan <SRiordan@aclunc.org>; Coleman, Susan E. <SColeman@bwsllaw.com>; Zack, Adrienne (USACAN) <Adrienne.Zack@usdoj.gov>; Garbers, Wendy (USACAN) <Wendy.Garbers@usdoj.gov>
Cc: Bill Freeman <wfreeman@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Marty Schenker <mschenker@cooley.com>; Emilou Maclean <emilou.maclean@sfgov.org>; Bree Bernwanger <bbernwanger@lccrsf.org>; Francisco Unger <funger@cooley.com>; Timothy Cook <tcook@cooley.com>; Genna Beier <genna.beier@sfgov.org>; Judah Lakin <judah@lakinwille.com>
Subject: RE: [Zepeda Rivas] proposal for testing/cohorting protocol

Dear Sean:

We have received Plaintiffs' proposal and are reviewing and evaluating with ICE.

We had some initial questions about Plaintiffs' proposal where we may need further clarity in order to evaluate. We are happy to have a call to meet and confer to discuss on Monday between 10 and 11 or between 1 and 2, if that works for Plaintiffs and for GEO?

Best regards,
Shiwon

Shiwon Choe
Assistant United States Attorney
Northern District of California
450 Golden Gate Avenue
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E: shiwon.choë@usdoj.gov

From: Sean Riordan <SRiordan@aclunc.org>
Sent: Friday, July 24, 2020 1:26 PM
To: Coleman, Susan E. <SColeman@bwsllaw.com>; Zack, Adrienne (USACAN) <AZack1@usa.doj.gov>; Choe, Shiwon (USACAN) <SChoe@usa.doj.gov>; Garbers, Wendy (USACAN) <wgarbers@usa.doj.gov>
Cc: Bill Freeman <wfreeman@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Marty Schenker <mschenker@cooley.com>; Emilou Maclean <emilou.maclean@sfgov.org>; Bree Bernwanger <bbernwanger@lccrsf.org>; Francisco Unger <funger@cooley.com>; Timothy Cook <tcook@cooley.com>; Genna Beier <genna.beier@sfgov.org>; Judah Lakin <judah@lakinwille.com>

Subject: RE: [Zepeda Rivas] proposal for testing/cohorting protocol

In our proposal, that would depend on the availability of RHU/medical isolation space for those who refuse testing. As an initial matter, we believe this would be a very small or non-existent group if other aspects of our proposal were implemented, including the provision where we as class counsel would speak to refusers about testing. But if someone continued to refuse, the highlighted text below would cover that situation.

- **Refusal issues:** If the benefits of being tested were explained to all class members, we believe it would be very rare for a class member to refuse a test. With this in mind:
 - The parties should work together to formulate an information sheet providing basic information about testing to class members, which would be provided at the time a test is offered.
 - Any class members who refuse to be tested should be provided an opportunity to speak with class counsel.
 - If after speaking with class counsel, they continue to decline testing, they should be cohorted in one of the RHU or medical cells, if available, or, if space restrictions render it necessary, in another dorm that could be cleared for the purpose of cohorting those who refuse.
 - ICE should refrain from transferring to another detention facility anyone who refuses to be tested on intake. Public health experts inform us that this practice presents a risk to the personnel involved in the transport and to the personnel and detainees at the receiving facility, and these concerns are consistent with the [CDC Guidance on Management of COVID-19 in Correctional and Detention Facilities](#) which strongly discourages transfers of detained persons “unless necessary.” At intake, individuals should be presented in a positive way the option of taking a test, afforded an opportunity to speak with class counsel about the test if they express reluctance, and cohorted for 14 days with anyone else who refuses if they ultimately decline to be tested.

From: Coleman, Susan E. <SColeman@bwsllaw.com>

Sent: Friday, July 24, 2020 1:20 PM

To: Sean Riordan <SRiordan@aclunc.org>; Zack, Adrienne (USACAN) <Adrienne.Zack@usdoj.gov>; Choe, Shiwon (USACAN) <Shiwon.Cho@usdoj.gov>; Garbers, Wendy (USACAN) <Wendy.Garbers@usdoj.gov>

Cc: Bill Freeman <wfreeman@aclunc.org>; Angelica Salceda <asalceda@aclunc.org>; Marty Schenker <mschenker@cooley.com>; Emilou Maclean <emilou.maclean@sfgov.org>; Bree Bernwanger <bbernwanger@lccsf.org>; Francisco Unger <funger@cooley.com>; Timothy Cook <tcook@cooley.com>; Genna Beier <genna.beier@sfgov.org>; Judah Lakin <judah@lakinwille.com>

Subject: RE: [Zepeda Rivas] proposal for testing/cohorting protocol

Counsel – what do you propose to do for the plaintiffs-detainees that refuse testing?

Susan E. Coleman | Partner

444 South Flower Street, Suite 2400 | Los Angeles, CA 90071-2953

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From: Sean Riordan [<mailto:SRiordan@aclunc.org>]

Sent: Friday, July 24, 2020 12:47 PM

To: Zack, Adrienne (USACAN); Choe, Shiwon (USACAN); Garbers, Wendy (USACAN); Coleman, Susan E.

Cc: Bill Freeman; Angelica Salceda; Marty Schenker; Emilou Maclean; Bree Bernwanger; Francisco Unger; Timothy Cook; Genna Beier; Judah Lakin

Subject: [Zepeda Rivas] proposal for testing/cohorting protocol

EXTERNAL

Dear Counsel:

We write to address the urgent need for universal and regular COVID-19 testing of class members at Mesa Verde. As you know, twelve MVDF staff and two detained class members have recently tested positive for COVID-19. While we believe that universal and regular testing should have already been occurring, in light of these developments it is imperative that ICE quickly establish such a testing regime and a plan for responding to any positive test. As the CDC's [testing guidance](#) ("CDC Guidance") states, "Before testing large numbers of asymptomatic individuals without known or suspected exposure, facility leadership should have a plan in place for how they will modify operations based on test results."

In recent days we have consulted medical and public health experts to better understand the problem and come up with potential solutions. Given that ICE has already expressed its willingness to engage in universal testing, we hope the Defendants will quickly agree to the implementation of this plan. We note that Defendants identified problematic conditions precedent to the implementation of universal testing, see Bonnar Declaration (ECF 429-1), para. 10 & n.3. Experts identified such conditions as either inconsequential or surmountable.

Specifically, we propose:

- **Intake:** ICE continue to test all arriving class members at intake and to medically isolate any such person who tests positive.
- **Universal and regular testing:** ICE test all MVDF personnel and class members on a regular basis, at least once per week, through a point of care test that returns results quickly, allowing the results to be acted upon.

- Experts inform us that the Abbott ID test already in use at MVDF is adequate for these purposes. By contrast, any test would be inadequate if it presents a significant delay in the availability of results, as Defendants have suggested is likely for tests that require offsite laboratory analysis. See Bonnar Dec. n. 3.
 - As a point of reference, some other institutions – like universities – are planning to test their populations two to three times per week to control against outbreaks. Professional sports leagues are doing this daily – they are, like DHS, multi-billion dollar operations with the possibility of widespread COVID infection if adequate mitigation measures are not implemented. Experts have advised that weekly tests are appropriate in a setting such as MVDF, and this is consistent with CDC Guidance (“Approaches for early identification of asymptomatic individuals include, initial testing of everyone in the setting, periodic (e.g., weekly) testing of everyone in the setting, and testing of new or returning entrants into the setting.”).
- **Effective contact tracing:** ICE trace and test anyone who was in contact with staff or class members who tested positive, with a contact window beyond the two days that is the current practice. Experts recommend tracing and testing all those who came into contact with a confirmed positive individual within 14 days from the date that the individual contact tested positive absent evidence that the person who tested positive became infected only more recently.
- **Arranging facility for cohorting:** The Defendants establish a plan for responding to positive tests among the general population (i.e., not including intakes). If a class member tests positive, they should be placed in medical isolation consistent with the CDC guidelines. If there is insufficient space in medical isolation cells and/or the RHU in which to isolate that person, as an alternative Plaintiffs propose that the Defendants would cohort the confirmed COVID-positive class members in a separate dorm. Thus, Defendants would:
 - Clear the class members from one of the dorms and use that dorm as the site in which to quarantine those who test positive in a cohort. The clearing of that dorm should include taking measures to ensure that air is not circulating from that dorm to other parts of the facility. This may require modifying the existing ventilation system. It should also include significant measures to ensure that staff serving that COVID-positive dorm take measures to prevent transmission to other parts of the facility (i.e., with staff limiting their engagement with other class members outside of the dorm of those who test positive except to the extent necessary). On the expectation that adoption of this protocol would increase the safety level of the remaining dorms, we would be willing to discuss a modest increase in the number of detainees housed in those dorms.
 - Refrain from adding any new individual into a dorm from which a class member was moved after testing positive until 14 days have passed or all individuals in that dorm have tested negative. The dorm from which a class member was moved essentially becomes its own temporary cohort.
- **Refusal issues:** If the benefits of being tested were explained to all class members, we believe it would be very rare for a class member to refuse a test. With this in mind:
 - The parties should work together to formulate an information sheet providing basic information about testing to class members, which would be provided at the time a test is offered.

- Any class members who refuse to be tested should be provided an opportunity to speak with class counsel.
 - If after speaking with class counsel, they continue to decline testing, they should be cohorted in one of the RHU or medical cells, if available, or, if space restrictions render it necessary, in another dorm that could be cleared for the purpose of cohorting those who refuse.
 - ICE should refrain from transferring to another detention facility anyone who refuses to be tested on intake. Public health experts inform us that this practice presents a risk to the personnel involved in the transport and to the personnel and detainees at the receiving facility, and these concerns are consistent with the [CDC Guidance on Management of COVID-19 in Correctional and Detention Facilities](#) which strongly discourages transfers of detained persons “unless necessary.” At intake, individuals should be presented in a positive way the option of taking a test, afforded an opportunity to speak with class counsel about the test if they express reluctance, and cohorted for 14 days with anyone else who refuses if they ultimately decline to be tested.
- **Releasing individuals to avoid increased density if dorms need to be rearranged in light of positive test results:** Given the significant possibility that at least one and possibly two dorms would have to be cleared under this plan, and to comply with the preliminary injunction’s requirement that conditions be maintained at the current level of safety, ICE will likely need to release additional class members at MVDF and/or slow or stop the arrival of new class members for a time. Otherwise, in clearing one or more dorms, the remaining dorms will be made significantly more crowded, increasing the risk of COVID-19 transmission in those remaining dorms. This should be done either voluntarily or through the Court’s revisiting of bail applications, and this should prioritize those with medical vulnerabilities.

The Defendants have already offered universal testing of some sort (Bonnar Dec. para. 10) and have apparently seriously considered a cohorting scheme similar to the one suggested here (GEO 059). We hope then that the parties can reach a quick agreement to meaningfully address the testing and cohorting issues that the recent positive test results have made all the more urgent. Everyone involved has a significant interest in ensuring that Mesa Verde doesn’t become the San Quentin of immigration detention centers. Our experts think the measures we’ve proposed, which are consistent with CDC guidance, represent a reasonable way to hedge against a tragic and deadly outcome.

We suggest the parties meet and confer to discuss this at the earliest opportunity. We hope to be able to resolve this without further litigation.

Best Regards,
Sean

Exhibit J

From: "Choe, Shiwon (USACAN)" <Shiwon.Choe@usdoj.gov>
Date: Monday, August 3, 2020 at 3:48 PM
To: "Maclean, Emilou (PDR)" <emilou.maclean@sfgov.org>, "Coleman, Susan E." <SColeman@bwslaw.com>, "Beier, Genna (PDR)" <genna.beier@sfgov.org>, "Zack, Adrienne (USACAN)" <Adrienne.Zack@usdoj.gov>, "Garbers, Wendy (USACAN)" <Wendy.Garbers@usdoj.gov>
Cc: Bill Freeman <wfreeman@aclunc.org>, "Schenker, Marty" <mschenker@cooley.com>, Angelica Salceda <asalceda@aclunc.org>, Bree Bernwanger <bbernwanger@lccrsf.org>, Judah Lakin <judah@lakinwille.com>, Amalia Wille <amalia@lakinwille.com>, Sean Riordan <SRiordan@aclunc.org>
Subject: RE: [Zepeda Rivas] Urgent update re: COVID-19 at Mesa Verde

Dear Emi:

As of now, we have received word that five detainees in Dorm B who were tested on July 30 had results come back that were positive for COVID-19. If we receive more test results today, we will let you know. Dorms B and C currently remain cohorted.

Best regards,
Shiwon

From: Maclean, Emilou (PDR) <emilou.maclean@sfgov.org>
Sent: Monday, August 03, 2020 1:56 PM
To: Choe, Shiwon (USACAN) <SChoe@usa.doj.gov>; Coleman, Susan E. <SColeman@bwslaw.com>; Beier, Genna (PDR) <genna.beier@sfgov.org>; Zack, Adrienne (USACAN) <AZack1@usa.doj.gov>; Garbers, Wendy (USACAN) <wgarbers@usa.doj.gov>
Cc: Bill Freeman <wfreeman@aclunc.org>; Schenker, Marty <mschenker@cooley.com>; Angelica Salceda <asalceda@aclunc.org>; Bree Bernwanger <bbernwanger@lccrsf.org>; Judah Lakin <judah@lakinwille.com>; Amalia Wille <amalia@lakinwille.com>; Sean Riordan <SRiordan@aclunc.org>
Subject: Re: [Zepeda Rivas] Urgent update re: COVID-19 at Mesa Verde

Dear Counsel:

We have received information from class members that there are additional COVID-19 positive results at Mesa Verde but insufficient space to segregate any further individuals who test positive.

Please notify us by 4 pm today if (a) you have received results from the recent COVID tests, and if so, the results of those tests; and (b) the plans for segregating anyone who tests positive given the acknowledged shortage of space.

Thank you,

Emi

From: "Choe, Shiwon (USACAN)" <Shiwon.Cho@usdoj.gov>
Date: Monday, August 3, 2020 at 10:08 AM
To: "Coleman, Susan E." <SColeman@bwslaw.com>, "Beier, Genna (PDR)" <genna.beier@sfgov.org>, "Zack, Adrienne (USACAN)" <Adrienne.Zack@usdoj.gov>, "Garbers, Wendy (USACAN)" <Wendy.Garbers@usdoj.gov>
Cc: Bill Freeman <wfreeman@aclunc.org>, "Schenker, Marty" <mschenker@cooley.com>, "Maclean, Emilou (PDR)" <emilou.maclean@sfgov.org>, Angelica Salceda <asalceda@aclunc.org>, Bree Bernwanger <bbernwanger@lccrsf.org>, Judah Lakin <judah@lakinwille.com>, Amalia Wille <amalia@lakinwille.com>, Sean Riordan <SRiordan@aclunc.org>
Subject: RE: [Zepeda Rivas] Urgent update re: COVID-19 at Mesa Verde

Dear counsel,

We understand that ICE has requested that GEO offer COVID-19 testing to all detainees in Dorm C. Regarding your question about rapid testing, our understanding is that Mesa Verde does not have enough rapid testing available to test all detainees. We are working to get further information.

Best regards,
Shiwon

From: Coleman, Susan E. <SColeman@bwslaw.com>
Sent: Sunday, August 02, 2020 4:37 PM
To: Beier, Genna (PDR) <genna.beier@sfgov.org>; Zack, Adrienne (USACAN) <AZack1@usa.doj.gov>; Garbers, Wendy (USACAN) <wgarbers@usa.doj.gov>; Choe, Shiwon (USACAN) <SChoe@usa.doj.gov>
Cc: Bill Freeman <wfreeman@aclunc.org>; Schenker, Marty <mschenker@cooley.com>; Maclean, Emilou (PDR) <emilou.maclean@sfgov.org>; Angelica Salceda <asalceda@aclunc.org>; Bree Bernwanger <bbernwanger@lccrsf.org>; Judah Lakin <judah@lakinwille.com>; Amalia Wille <amalia@lakinwille.com>; Sean Riordan <SRiordan@aclunc.org>
Subject: RE: [Zepeda Rivas] Urgent update re: COVID-19 at Mesa Verde

I don't have any of the other information you requested.

As for information given to detainees, as Warden Allen testified, they are not informed about who tested positive, but only that they may have been exposed. Why would they be entitled to know the names of people who have tested positive, which is protected by HIPAA?

Susan E. Coleman | Partner

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From: Beier, Genna (PDR) [mailto:genna.beier@sfgov.org]
Sent: Sunday, August 2, 2020 4:22 PM
To: Coleman, Susan E.; Zack, Adrienne (USACAN); Garbers, Wendy (USACAN); Choe, Shiwon (USACAN)
Cc: Bill Freeman; Schenker, Marty; Maclean, Emilou (PDR); Angelica Salceda; Bree Bernwanger; Judah Lakin; Amalia Wille; Sean Riordan
Subject: Re: [Zepeda Rivas] Urgent update re: COVID-19 at Mesa Verde

[EXTERNAL]

Thank you for the information. However, this does not obviate the need for Defendants to answer our questions and take the actions we identified, which relate to the safety of *all* class members and staff at Mesa Verde. We ask that you respond in full by tomorrow at 10 am.

From: "Coleman, Susan E." <SColeman@bwsllaw.com>
Date: Sunday, August 2, 2020 at 1:37 PM
To: "Beier, Genna (PDR)" <genna.beier@sfgov.org>, "Zack, Adrienne (USACAN)" <Adrienne.Zack@usdoj.gov>, "Garbers, Wendy (USACAN)" <Wendy.Garbers@usdoj.gov>, "Choe, Shiwon (USACAN)" <Shiwon.Choe@usdoj.gov>
Cc: Bill Freeman <wfreeman@aclunc.org>, "Schenker, Marty" <mschenker@cooley.com>, "Maclean, Emilou (PDR)" <emilou.maclean@sfgov.org>, Angelica Salceda <asalceda@aclunc.org>, Bree Bernwanger <bbernwanger@lccrsf.org>, Judah Lakin <judah@lakinwille.com>, Amalia Wille <amalia@lakinwille.com>, Sean Riordan <SRiordan@aclunc.org>
Subject: RE: [Zepeda Rivas] Urgent update re: COVID-19 at Mesa Verde

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Mr. Yao Saeturn was released to his family and is no longer in custody.

Susan E. Coleman | Partner
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From: Beier, Genna (PDR) [mailto:genna.beier@sfgov.org]

Sent: Saturday, August 1, 2020 5:06 PM

To: Zack, Adrienne (USACAN); Garbers, Wendy (USACAN); Choe, Shiwon (USACAN); Coleman, Susan E.

Cc: Bill Freeman; Schenker, Marty; Maclean, Emilou (PDR); Angelica Salceda; Bree Bernwanger; Judah Lakin; Amalia Wille; Sean Riordan

Subject: [Zepeda Rivas] Urgent update re: COVID-19 at Mesa Verde

[EXTERNAL]

Dear Counsel,

We learned this morning that a medically vulnerable, 65 year-old class member detained in Dorm C, Mr. Yao Saeturn, tested positive for COVID-19, and has now been hospitalized. Mr. Saeturn is 65 years old, suffers from hypertension, high cholesterol, and ulcers, and has mobility impairments. See Dkt. 128-2. We understand that Mr. Saeturn had been exhibiting symptoms of COVID-19 for an extended period of time before he was taken to the medical unit. Despite requests for medical attention, we understand he was not taken to the medical unit until yesterday. We understand that he and other class members in Dorm C were informed of the positive test last night. If these accounts are correct, Mr. Saeturn is the fourth class member who has tested positive for the virus.

We write to ask for further information regarding Mr. Saeturn's status, and about the risks to other class members. As Defendants may be aware, Kern County has recently experienced a critical shortage of hospital beds for COVID-19 patients; avoiding further transmission is not only imperative to the health and well-being of class members in Defendants' custody, but to the community at large. As of Thursday, [local news reports](#) noted there were only two ICU beds open in Kern County.

We further call on Defendants to take immediate action to protect all class members from what could be the beginning of a COVID-19 outbreak at Mesa Verde. Plaintiffs hope that Defendants will act with the urgency this life-or-death scenario demands.

Requests for information

- Can you confirm that Mr. Saeturn tested positive for coronavirus? What symptoms is he experiencing? Where is he currently being held? What medical treatment is being provided to him? Can you facilitate communication between Mr. Saeturn and his attorneys, Lisa Knox and Susan Beaty?

- Warden Allen confirmed that detainees had been transferred from Dorm B to Dorms C and D. We understand that at least one individual was transferred from Dorm B to Dorm A. Can you confirm that transfers have also taken place from Dorm B to Dorm A? Please name all individuals transferred between dorms in the past 14 days.
- Class members have reported having no or little information about positive tests of either staff or detainees. What information have class members been provided regarding the positive tests of both detainees and staff at Mesa Verde?
- Plaintiffs have thus far been provided no information about contact tracing of staff. Please provide details about whether infected staff have had contact or close contact with other staff, and whether those staff contacts have been tested.
- Have the individuals in Dorms B and C been offered rapid testing? Have any staff?
- What is the capacity of local Kern County hospitals to absorb Mesa Verde detainees suffering from complications of COVID-19?

Actions to Protect Class Members (as well as staff and the surrounding community)

- Plaintiffs ask that Defendants promptly offer rapid testing to all detainees AND GEO/WellPath staff to gauge the scope of any outbreak. While confirmatory tests sent to a laboratory are welcome, 4-7 days for results is an unacceptable delay in light of the risks of transmission in congregate settings.
- Provide immediate access to class counsel if any class member expresses reluctance to be tested, prior to classifying an individual as a refuser.
- Plaintiffs further ask that Defendants release class members, such as Mr. Saeturn, who have medical vulnerabilities that place them at high risk of suffering severe outcomes or death if they contract COVID-19. Concerns regarding flight risk can be ameliorated with alternatives to detention or home-arrest like conditions.
- Plaintiffs request that Defendants cease any new intakes into the facility until universal periodic testing has been implemented and there is available space for COVID-infected class members.

In light of the seriousness of this situation, we believe that Defendants should take the necessary actions immediately, and we request that Defendants respond to us no later than 10:00 a.m. Monday, August 3, providing the information requested and informing us of what actions have been taken. We intend to file a supplemental CMC statement on Monday afternoon outlining the information we have learned and Defendants' response to this communication. We hope that the parties can agree in principle that Defendants must do everything within their capacity to respond to this - the looming threat of an outbreak.

Thank you,

Genna
She/Her/ella
Deputy Public Defender
San Francisco Office of the Public Defender

Exhibit K

From: "Zack, Adrienne (USACAN)" <Adrienne.Zack@usdoj.gov>

Date: Monday, August 3, 2020 at 6:34 PM

To: Sean Riordan <SRiordan@aclunc.org>, Angelica Salceda <asalceda@aclunc.org>, "Beier, Genna (PDR)" <genna.beier@sfgov.org>, "Ugarte, Francisco (PDR)" <francisco.ugarte@sfgov.org>, Bree Bernwanger <bbernwanger@lccrsf.org>, Timothy Cook <tcook@cooley.com>, Marty Schenker <mschenker@cooley.com>, Judah Lakin <judah@lakinwille.com>, Amalia Wille <amalia@lakinwille.com>, "Maclean, Emilou (PDR)" <emilou.maclean@sfgov.org>, Bill Freeman <wfreeman@aclunc.org>

Cc: "Choe, Shiwon (USACAN)" <Shiwon.Cho@usdoj.gov>, "Garbers, Wendy (USACAN)" <Wendy.Garbers@usdoj.gov>, "Coleman, Susan E." <SColeman@bwslaw.com>

Subject: Zepeda Rivas - COVID testing update

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Counsel,

The names and information of the detainees in this message are designated CONFIDENTIAL pursuant to the protective orders.

Mr. Yao Saeturn, [REDACTED] was seen in medical on July 31, 2020, for complaints of cough, chest pain, and sore throat. He was sent to the emergency room for COVID-19 testing, which came back positive. He was admitted to the hospital. On August 2, 2020, Mr. Saeturn was released on an order of supervision from ICE custody.

Because Mr. Saeturn had been housed in Dormitory C at Mesa Verde, that dorm was placed on cohort for 14-day monitoring. Arrangements to test those housed in C Dorm are in progress. The 31 detainees on cohort are listed below. We will provide further updates regarding contact tracing as available.

- (1) Gabriel Yucute-Camey, [REDACTED]
- (2) Juan Lopez-Garcia, [REDACTED]
- (3) Isidro Benavides Caballo, [REDACTED];
- (4) Edwin Alas Alfaro, [REDACTED]
- (5) Antonio Gonzalez-Agaton, [REDACTED]
- (6) Julio Palma Aguilar, [REDACTED]
- (7) Benjamin Hernandez Garcia, [REDACTED]
- (8) Jose Camarena Navarrete, [REDACTED]
- (9) Kevin Arias Romero, [REDACTED];
- (10) Pedro Nunez, [REDACTED];
- (11) Jose Alfaro Henriquez, [REDACTED]
- (12) Samuel Rios-Alvarado, [REDACTED];
- (13) Jose Argueta-Rivera, [REDACTED];
- (14) Roberto Ramirez-Pineda, [REDACTED];
- (15) Angel Ordaz Camacho, [REDACTED]
- (16) Oscar Vigil, [REDACTED];

- (17) Alejandro Flores-Banuelos, [REDACTED];
- (18) Luis Aguilar Carrion, [REDACTED];
- (19) Deepak Sahota, [REDACTED];
- (20) Walter Cruz-Zavala, [REDACTED];
- (21) Raleigh Figueras, [REDACTED];
- (22) Ivan Hernandez Pelayo, [REDACTED];
- (23) Reynaldo Dungo, [REDACTED];
- (24) Walter Carillo Torres, [REDACTED];
- (25) Jose Villanueva, [REDACTED];
- (26) Asif Qazi, [REDACTED];
- (27) Jose Robles Flores, [REDACTED];
- (28) Pedro Narvaez, [REDACTED];
- (29) Dilbagh Singh, [REDACTED];
- (30) Levi Cruz Menjivar, [REDACTED]; and
- (31) Francisco Mendoza-Canales, [REDACTED].

As previously reported, all 33 detainees in Dorm B were offered testing, of which 32 consented and 1 refused. All lab results have returned. 27 detainees in B Dorm tested negative for COVID-19. The following detainees from Dorm B tested positive and have been informed of their results: Israel Marin-Parra, [REDACTED]; German Najera-Grajeda, [REDACTED]; Marcos Najera-Sandoval, [REDACTED]; Jose Ruiz, [REDACTED]; and Benito Villalobos-Sura, [REDACTED]. These five individuals have been removed from Dorm B; two have been placed in the RHUs and three are in intake holding cells with cots.

Mr. Oscar Bonilla Solano, [REDACTED], who was taken off of medical isolation last week, has been transferred from Mesa Verde for removal.

Adrienne Zack
Assistant United States Attorney
Northern District of California
450 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
415.436.7031
Adrienne.Zack@usdoj.gov

Exhibit L

Message

From: Pham, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0B0CFA9BCD2549128980F8A3D94D8F74-PHAM, ALEXA]
Sent: 5/27/2020 9:11:24 PM
To: Bonnar, Erik S [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abddfacc231ce4bf7a76952a374f0421e-Bonnar, Eri]
Subject: RE: COVID-19 Testing Operational Plan [CMD]

10-4.

Alexander Pham
Assistant Field Office Director
DHS/ICE/ERO
800 Truxtun Ave.
Bakersfield, CA 93301

Office
Fax

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From: Bonnar, Erik S <[REDACTED]>
Sent: Wednesday, May 27, 2020 2:10 PM
To: Pham, Alexander <[REDACTED]>
Subject: FW: COVID-19 Testing Operational Plan [CMD]

Looks like we have been moved to the bench for now.

From: Jennings, David W <[REDACTED]>
Date: Wednesday, May 27, 2020, 1:59 PM
To: Hott, Russell <[REDACTED]>, Bonnar, Erik S <[REDACTED]>
Subject: RE: COVID-19 Testing Operational Plan [CMD]

Good to go thanks!

Field Office Director
San Francisco, CA

Sent with BlackBerry Work
(www.blackberry.com)

From: Hott, Russell <[REDACTED]>
Date: Wednesday, May 27, 2020, 13:42
To: Jennings, David W <[REDACTED]>

Subject: RE: COVID-19 Testing Operational Plan [CMD]

Hey DJ,

Henry backed away from the full testing, but he still wants to move forward with testing all new intake throughout the phases. The focus will be on IHSC-staffed sites first before retooling.

You're not off the radar just yet, but it won't be the same plan from the initial discussions.

Thanks,
Russ

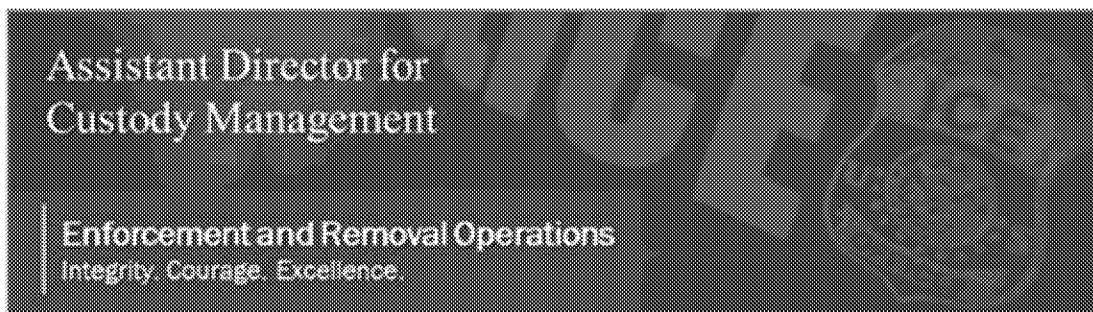
From: Jennings, David W <[REDACTED]>
Sent: Wednesday, May 27, 2020 4:36 PM
To: Hott, Russell <[REDACTED]>
Subject: FW: COVID-19 Testing Operational Plan [CMD]

Hi - we submitted some concerns about being a test place - in short we have no place to cohort anyone who refuses, is positive, etc - were we
Removed from the list?

Field Office Director
San Francisco, CA

Sent with BlackBerry Work
(www.blackberry.com)

From: ERO Assistant Directors <[REDACTED]>
Date: Wednesday, May 27, 2020, 13:19
Subject: COVID-19 Testing Operational Plan [CMD]



To: Field Office Directors and Deputy Field Office Directors

Effective May 26, 2020, ERO is exploring options to expand COVID-19 testing at detention facilities utilizing molecular testing methodologies to detect SARS-CoV-2 recognized by the Centers for Disease Control and Prevention (CDC) and technology that has been approved by and granted Emergency Use Authorization (EUA) by the U.S. Food and Drug Administration (FDA), including a combination of the Abbott ID NOW instruments for Rapid RNA testing as well as

existing laboratory testing capabilities from commercial laboratories. Only molecular tests to detect SARS-CoV-2 with a current FDA EUA should be used.

Because asymptomatic or pre-symptomatic detainees can be positive for COVID-19 and can transmit the virus to other detainees, ERO will expand the testing of detainees to aid in slowing transmission by identifying those asymptomatic or pre-symptomatic individuals who test positive and isolating them quickly and then quarantining contacts.

All facilities must have written plans to address: 1) additional personal protective equipment (PPE) requirements to ensure safety of staff performing testing, 2) testing operations including detainee movement, 3) continuity of operations for routine health services, and 4) housing considerations during testing and following receipt of results, to include a) housing and care of detainees that test positive if medical housing capacity is exceeded, b) cohorting and housing and monitoring of detainees that test negative but were exposed to detainees that test positive [asymptomatic, positive detainees are considered contagious beginning 48 hours before specimen collected], c) housing detainees that test negative and were not exposed to detainees that test positive, and d) housing detainees that refuse testing and are not tested.

ERO will execute a phased approach across its network to ensure the safety and security of staff and detainees within its care during the pandemic. Testing will begin with all existing detainees and continue with new intake. New intake cases should be cohorted for 14 days before being tested and introduced to classification and general population.

Phase 1: ERO has identified four facilities which will serve as pilot locations for 100% testing. The pilot will continue for 30 days. Within these facilities, the medical contractor and IHSC (when staffed) will proceed with the testing of all new intake detainees and voluntary staff.

Phase 2: Within 30 days of the pilot completion, ERO will focus additional testing at IHSC-staffed facilities. Within these facilities, IHSC will proceed with the testing of all new intake detainees.

Phase 3: Within 45 days of the pilot completion, ERO will focus additional testing at dedicated facilities. Within these facilities, the medical contractor will proceed with the testing of all new intake detainees.

Phase 4: Within 60 days of the pilot completion, ERO will focus additional testing at detention facilities with an ERO population of 100 or greater and facilities experiencing widespread transmission (25 positive cases or more). Within these facilities, the medical contractor will proceed with the testing of all new intake detainees.

Phase 5: Within 120 days of the pilot completion, ERO will focus additional testing at detention facilities with an ERO population of 50 or greater. Within these facilities, the medical contractor will proceed with the testing of all new intake detainees.

Phase 6: Within 240 days of the pilot completion, ERO will focus additional testing at detention facilities with an ERO population of 10 or greater. Within these facilities, the medical contractor will proceed with the testing of all new intake detainees.

ERO will continue to provide testing for COVID-19, symptomatic detainees, as recommended by the Centers for Disease Control and Prevention (CDC), regardless of the phase of the facility.

The additional testing of asymptomatic detainees will assist in slowing transmissions within a detention setting. ERO recognizes it may also increase the number of COVID-19 positive tests reflected on the agency's public website. However, ERO will be able to better utilize this information for the management of an outbreak at the affected facility.

For additional questions, please contact ICE_ERO_CMD@ice.dhs.gov.

Russell Hott

Acting ERO Assistant Director, Custody Management

This message was sent in concurrence with AD Field Operations.

This message expires one year from the date it was sent, pursuant to ERO [policy](#).

To protect the homeland through the arrest and removal of aliens who undermine the safety of our communities and the integrity of our immigration laws.



Enforcement and Removal Operations
Integrity. Courage. Excellence.

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Exhibit M

Message

From: Pham, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0B0CFA9BCD2549128980F8A3D94D8F74-PHAM, ALEXA]
Sent: 6/4/2020 11:20:56 PM
To: Gonzalez, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=61f88186aba3498dbe11ba4368cf67a9-Gonzalez, N]
Subject: FW: MV Expanded COVID-19 Testing
Attachments: Plan

FYI

Alexander Pham
Assistant Field Office Director
DHS/ICE/ERO
800 Truxtun Ave.
Bakersfield, CA 93301
[REDACTED] Office
[REDACTED] Fax

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From: Pham, Alexander
Sent: Thursday, June 4, 2020 4:06 PM
To: Chang, Richard F <[REDACTED]>
Subject: FW: MV Expanded COVID-19 Testing

FYI

Alexander Pham
Assistant Field Office Director
DHS/ICE/ERO
800 Truxtun Ave.
Bakersfield, CA 93301
[REDACTED] Office
[REDACTED] Fax

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From: Pham, Alexander
Sent: Thursday, June 4, 2020 4:06 PM
To: Jennings, David W <[REDACTED]>
Subject: MV Expanded COVID-19 Testing

Sir,

Per our discussion, below are some key points regarding implementation of COVID-19 testing and the potential outcomes at our facility. I have also attached the email received from Facility Administrator Nathan Allen with the expanded testing plan from GEO's end for your reference.

- MV has 2 medical isolation cells and 3 restrictive housing unit cells. All are currently occupied as is generally always the case
- If/when the first positive case is identified, that subject will need to be placed in medical isolation which will potentially lead to immediate logistical issues
- The corresponding housing unit would also have to be locked down/placed in cohort which means no detainees in or out
- If/when a second positive case is identified, there will likely be no logistical way to cohort/isolate which would then require the clearance of an entire housing unit/dorm in order to accommodate the positive case cohorts
- At present, the thought is to identify the least egregious cases for release if necessary so as to be able to free up a dorm for positive case cohorts. This would present a problem in that if dorm A (with all of the medium-low classification cases) is the unit found to yield the positive case, that entire unit would be placed in quarantine/cohort status which would restrict our movement and/or release of those detainees.
- The resulting decision would then have to be to release cases from the other three units which is where all the more egregious cases are currently housed (likely 25-40 detainees) in order to allow for reorganization and creation of a cohort unit for positive cases only

Please let me know if there is anything I may have missed. If there is anything else that I think of after the fact, I will send a follow-up.

Alexander Pham
Assistant Field Office Director
DHS/ICE/ERO
800 Truxtun Ave.
Bakersfield, CA 93301

Office
Fax

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Petitioners-Plaintiffs,

v.

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

Respondents-Defendants.

Case No. 3:20-CV-02731-VC

**DECLARATION OF FRANCISCO M. UNGER
IN SUPPORT OF PETITIONERS-PLAINTIFFS'
MOTION FOR TEMPORARY RESTRAINING
ORDER**

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I, Francisco M. Unger, declare as follows:

1. I am an associate with the law firm of Cooley LLP, co-counsel of record in the above-captioned matter for named Plaintiffs and the provisional Class. I have knowledge of the following, and if called as a witness, I could and would testify competently thereto.

2. Attached hereto are the following true and correct copies of the following documents produced by defendant GEO Group, Inc. in response to a request for production of documents served by Plaintiffs:

<u>Exhibit</u>	<u>Document Description</u>
A	Email from Nathan Allen to Cheryl Nelson and Paul Laird, dated June 4, 2020. (GEO_07064).
B	Email from Nathan Allen to Cheryl Nelson, dated July 1, 2020. (GEO_07202).
C	Department of Homeland Security survey, dated April 10, 2020. (GEO_00003).
D	Email from Nathan Allen to Alexander Pham, dated June 4, 2020. (GEO_01052).
E	Email from Nathan Allen to Paul Laird and Cheryl Nelson, dated July 2, 2020. (GEO_06391).
F	Email from Paul Laird to Nathan Allen, dated June 25, 2020. (GEO_08822).
G	Email from Brooke Sanchez-Othon to Janese Mull and Nathan Allen, dated July 6, 2020. (GEO_06238).
H	Email from Nathan Allen to Cheryl Nelson, dated May 26, 2020. (GEO_06450).

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

Executed on August 3, 2020 in Cambridge, Massachusetts.

/s/ Francisco M. Unger
Francisco M. Unger

Exhibit A

Message

From: Cheryl Nelson [REDACTED]
Sent: 6/5/2020 7:32:45 AM
To: Nathan Allen [REDACTED]
CC: Paul Laird [REDACTED]
Subject: Re: Plan [REDACTED]

Got it, please keep us posted on growing developments.

Cheryl Nelson
DIRECTOR OF OPERATIONS, GEO SECURE SERVICES

The GEO Group, Inc. ®
Western Region Office
6100 Center Drive, Suite 825
Los Angeles, CA 90045

Tel: [REDACTED] Fax: [REDACTED]
Mobile: [REDACTED]

[REDACTED]
www.geogroup.com

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From: Nathan Allen [REDACTED]
Sent: Thursday, June 4, 2020 1:48 PM
To: Cheryl Nelson [REDACTED]
Cc: Paul Laird [REDACTED]
Subject: Plan [REDACTED]

Just got off the phone with Alex. He said he's going to engage his chain again due to what happens if a positive test(s) comes up. During the conversation he was under the impression if a detainee tested positive (even with no symptoms) we could leave him in the dorm during the 14 day cohort. Told him we wouldn't be able to do that with all the protocols (IHSC/Public Health) in place, the continued exposure to the other detainees, and the need to do follow up tests before a positive can be cleared to return to GP. I'll follow up if I hear anything else.

Nathan (Nate) Allen
Facility Administrator, GEO Secure Services

The GEO Group, Inc. ®
Mesa Verde ICE Processing Center
425 Golden State Ave
Bakersfield, CA 93301

Tel: [REDACTED] Mobile: [REDACTED]
Fax: [REDACTED]

[REDACTED]
www.geogroup.com

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Exhibit B

Message

From: Nathan Allen [REDACTED]
Sent: 7/1/2020 10:32:06 PM
To: Cheryl Nelson [REDACTED]
CC: Paul Laird [REDACTED]
Subject: Re: MVIPC POSITIVE COVID CASE ON INTAKE

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Nathan Allen [REDACTED]
Sent: Wednesday, July 1, 2020 10:21:40 PM
To: Cheryl Nelson [REDACTED]
Cc: Paul Laird [REDACTED]
Subject: Re: MVIPC POSITIVE COVID CASE ON INTAKE

The AFOD said they are going to try and move the 4 that came with the positive detainee someplace in the morning, they'll have to stay in intake for the night. The positive will stay in med ISO. The two that came in a different vehicle but were allegedly with the 5 at the ICE office are stagers and might leave in the morning. We have two female stagers coming in tonight that will go into the medical hold room until the morning when they leave.

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Nathan Allen [REDACTED]
Sent: Wednesday, July 1, 2020 9:27:39 PM
To: Cheryl Nelson [REDACTED]
Cc: Paul Laird [REDACTED]
Subject: Re: MVIPC POSITIVE COVID CASE ON INTAKE

Will do.

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Cheryl Nelson [REDACTED]
Sent: Wednesday, July 1, 2020 9:21:09 PM
To: Nathan Allen [REDACTED]
Cc: Paul Laird [REDACTED]
Subject: Re: MVIPC POSITIVE COVID CASE ON INTAKE

Copy. Please keep us posted on the disposition of the remaining detainees who rode in the same vehicle with the positive case, as well as those who allegedly had close contact with the positive case when they were together at the ICE office.

Sent from my Verizon, Samsung Galaxy smartphone

Get Outlook for Android

From: Nathan Allen [REDACTED]
Sent: Wednesday, July 1, 2020 8:37:41 PM
To: Cheryl Nelson [REDACTED]
Cc: Paul Laird [REDACTED]
Subject: Fwd: MVIPO POSITIVE COVID CASE ON INTAKE

Hi Cheryl, as discussed. I'll let you know what ICE does with the other potential exposures as I cannot put them in the dorms (with the risk of spreading an infection) and I do not have space for 6 in cohort. Alex and Janese are fully aware.

Sent from my Verizon, Samsung Galaxy smartphone
Get Outlook for Android

From: Wendy M. Baca [REDACTED]
Sent: Wednesday, July 1, 2020, 8:26 PM
To: Pham, Alexander; Mull, Janese N; Nathan Allen; [REDACTED]; Nowell, James A
Cc: Obasi, Uruaku A; Brooke Sanchez-Othon; Richard M. Medrano; Kenneth Lassiter; Tiffany Thompson
Subject: [EXTERNAL] MVIPO POSITIVE COVID CASE ON INTAKE

ALL FYSA-

The following detainees arrived at MVIPO 7/1/20 at approximately 1700. Detainee [REDACTED] was the only detainee who did not decline testing and tested positive on the Abbott ID NOW test. Detainee [REDACTED] was placed into medical isolation/negative pressure and a nasopharyngeal swab specimen has been collected to be sent for more sensitive testing. The other 4 detainees are being held in intake and will need to be cohorted for 14 days and monitored.

[REDACTED]

Two other detainees (stagers listed below) arrived at approximately 1800 and reported being in the same holding cell at the ICE/ERO office. They too are being held in intake pending information on how they were held at the ERO Office.

[REDACTED]

More to come.

Thank you,
Wendy

Wendy Baca, Acting HSA
Mesa Verde ICE Processing Center
Private Prisons Division
wellpath

425 Golden State Avenue
Bakersfield, California 93301
[REDACTED]

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Exhibit C



Department of Homeland Security Office of Inspector General

The Department of Homeland Security Office of Inspector General is conducting a review of ICE's ability to manage the COVID-19 pandemic at its facilities. The purpose of these questions is to collect information about challenges and needs of facilities in responding to the coronavirus 2019 (COVID-19) pandemic, among facility staff and the detained population. Your responses to the questions below should reflect the numbers of staff and detainees, as well as the status and operations of the facility, on the day that you respond to the survey. You have been identified as the best resource at the facility to respond to the survey. To better understand the scope and possible growth of the pandemic, we may follow-up with a similar survey at a later date to collect updated information on the facility's status.

We request that you respond no later than **Wednesday, April 15th**. If we do not receive a response, we will contact you by phone to follow up. Completion of this survey is required, and we appreciate your assistance and willingness to provide the information, especially during this very busy time. In addition, if you have any questions about the survey, please e-mail OIGCOVID19.ICESurvey@oig.dhs.gov. Thank you.

Name of facility

Mesa Verde ICE Processing Center

Your full name

Nathan Allen

Your title

Facility Administrator

Your e-mail address

Your phone number

QUESTIONS ABOUT FACILITY STAFF

1. Total number of staff who **have been tested** for COVID-19:
2. Total number of staff who **have tested positive** for COVID-19:
3. Total number of staff who **are in precautionary self-quarantine**:
4. Total number of staff who **are unavailable to work** due to community mitigation measure (considered non-essential; absent for child care due to school closures, weather and safety leave, etc.):

QUESTIONS ABOUT STAFF RESOURCES, SUPPLIES, AND GUIDANCE

5. Do you believe the facility has enough of the following protective equipment and supplies on hand for **all facility staff (including non-medical and medical)** to use if a COVID-19 outbreak occurs in the facility?

- a. Nitrile or latex gloves ☒ Yes ☐ No
- b. Standard surgical masks ☒ Yes ☐ No
- c. N95 respirators ☒ Yes ☐ No

d. Hand sanitizer ☐ Yes ☒ No

e. Face shields or goggles ☒ Yes ☐ No

f. Disinfectant cleaning agents ☒ Yes ☐ No

6. Have **all facility staff (including non-medical and medical staff)** been trained in the proper fitting, use, and disposal of the above protective equipment? ☒ Yes ☐ No

7. Has the facility received guidance from the following offices that addresses how to prevent, control and mitigate an outbreak of COVID-19 in the facility?

a. ICE Headquarters ☒ Yes ☐ No

b. ICE Health Service Corps (IHSC) ☒ Yes ☐ No

8. What are the facility's contingency staffing plans in the event the facility is not capable of providing adequate services and care to detainees during the COVID-19 pandemic?

Health Services: The contract medical provider has schedules and plans in place to meet detainee health care needs 24/7. Detainees who present issues beyond facility care or staffing compliment will be sent to local hospitals.
Food Service: Additional staff members will be assigned to the food service department to ensure meals are delivered.
Operations: Security rosters will be adjusted to cover all essential posts. Non-essential programs and services will be

QUESTIONS ABOUT ICE DETAINEES AT FACILITY

9. Total number of ICE detainees at facility:

10. Total number of ICE detainees who **have been tested** for COVID-19:

11. Total number of ICE detainees who **have tested positive** for COVID-19:

12. Total number of ICE detainees who **are in isolation** for suspected COVID-19 symptoms or exposure:

13. Total number of ICE detainees who **are being monitored** for suspected COVID-19 symptoms or exposure:

14. Total number of ICE detainees **released from the facility** for reasons (i.e., detainee is in a high risk group) related to COVID-19 pandemic:

15. Do you believe the facility has enough of the following resources to maintain proper hygiene and protection **among ICE detainees**?

a. Masks for detainees who exhibit COVID-19 symptoms or test positive for COVID-19: ☒ Yes ☐ No

b. Liquid soap for detainee use: ☐ Yes ☒ No

c. Hand sanitizer for detainee use: ☐ Yes ☒ No

16. How many ICE detainees can the facility hold in quarantine or isolation if a detainee **exhibits suspected COVID-19 symptoms**?

17. How many ICE detainees can the facility hold in quarantine or isolation if a detainee **tests positive for COVID 19**?

18. How many negative pressure rooms does the facility have?

QUESTIONS ABOUT FACILITY'S MEDICAL PRACTICES

19. Does the facility conduct risk assessments on ICE detainees to determine potential COVID-19 exposure? ☒ Yes ☐ No

20. What is the protocol, if any, to determine whether an ICE detainee should be tested for COVID-19?

Providers follow protocols set forth by the CDC, IHSC, and GEO. If a detainee with a history of exposure to a laboratory-confirmed case of COVID19 presents with or complains of fever and/or respiratory illness, the detainee is placed in isolation and a test will be administered. If the detainee has not had close contact, providers use judgment to determine if a patient has signs/symptoms of COVID19 and whether the patient should be isolated and tested. +

a. If the facility has testing protocols in place, how many ICE detainees have met the testing protocols but have **not** been tested?

21. Does the facility have the capacity to test ICE detainees for COVID-19 on-site? ☒ Yes ☐ No

a. If yes, how many on-site COVID-19 testing kits does the facility have ?

OVERALL QUESTIONS

22. Do you believe the facility is prepared to handle the COVID19 pandemic? ☒ Yes ☐ No

23. What are the major challenges, if any, facing the facility regarding the COVID-19 pandemic?

Additional hand sanitizer dispensers and refills are backordered; staff have been authorized to use personal-sized alcohol based hand sanitizer in the interim.

24. What other measures other than the ones described above has the facility taken to prepare for, prevent, control, and mitigate an outbreak of COVID-19 in the facility?

CDC guidelines "Stop the Spread" are posted in all detainee areas. All staff and visitors are screened with a signs and symptoms questionnaire and are temperature checked. All new detainees undergo a questionnaire and temperature check. Enhanced cleaning is being completed throughout the day. Social distancing is being conducted to the maximum extent. +

25. Is there anything else you would like to tell us about the facility's handling of the COVID-19 pandemic?

The detainees have unfettered access to bar soap for personal use at all times. In addition, the facility has been under constant guidance from the GEO Groups' corporate and health services offices since the onset of the virus, as well as being in constant communication with the local ICE ERO and IHSC components in regards to oversight of COVID-19 updates and monitoring. +

26. Date survey was completed

**After saving the completed survey, please attach it to an e-mail to
OIGCOVID19.ICESurvey@oig.dhs.gov**

Exhibit D

Message

From: Nathan Allen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=95372494BFF540869C456E468F370223-NATHAN ALLE]
Sent: 6/4/2020 1:21:42 PM
To: Pham, Alexander [REDACTED]
Subject: Plan
Attachments: Mesa Verde COVID Testing 6.4.20 FA.docx

Hi Alex, just an FYI. I had to submit another plan based off of what you sent the other day; this is what was submitted. Seems like a lot, but it covers what your directives were, and some stuff regarding possible positive tests. The issue is going to be the same as last time regarding housing for multiple positives. Don't want you to get something coming down from your side about the plan without you knowing.

Nathan (Nate) Allen
Facility Administrator, GEO Secure Services

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Mesa Verde ICE Processing Center
425 Golden State Ave
Bakersfield, CA 93301

Tel: [REDACTED] Mobile: [REDACTED]
Fax: [REDACTED]

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www.geogroup.com

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Exhibit E

Message

From: Paul Laird [REDACTED]
Sent: 7/2/2020 10:30:49 AM
To: Nathan Allen [REDACTED]; Cheryl Nelson [REDACTED]
Subject: Re: Assistance with Cohorting Exposed Detainees

I assume they are going to Adelanto? Have you discussed it with James?

From: Nathan Allen [REDACTED]
Sent: Thursday, July 2, 2020 10:23 AM
To: Cheryl Nelson [REDACTED]
Cc: Paul Laird <[REDACTED]>
Subject: Fw: Assistance with Cohorting Exposed Detainees

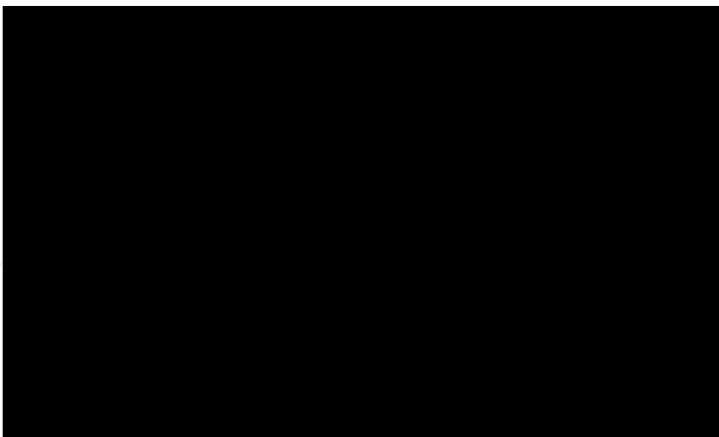
Looks like we're dodging a bullet. Waiting on paperwork to come so we can get them ready. The only requirement per IHSC is notifying the receiving facility how many more days of the 14-day cohort they have remaining. We are also doing a paperwork drill to possibly move the detainees out of B dorm back into C & D while still trying to maintain the upper/lower bunk scheme (50 per dorm). This at the request of Alex and Janese.

From: Mull, Janese N [REDACTED]
Sent: Thursday, July 2, 2020 10:08 AM
To: Valdez, Gabriel A [REDACTED]
Cc: Pham, Alexander [REDACTED]; Nathan Allen [REDACTED]; Lowes, Diane R [REDACTED]; Gonzalez, Nancy [REDACTED]
Subject: [EXTERNAL] Assistance with Cohorting Exposed Detainees

AFOD Valdez,

Thank you very much for assisting ERO Bakersfield with housing and cohorting the following six (6) detainees exposed to another detainee who tested positive for COVID-19:

1
2
3
4
5
6



If there are any questions or concerns, please feel free to contact me.

Again, THANK YOU!

Janese Mull
Assistant Field Office Director
U.S. Department of Homeland Security (DHS) | Immigration and Customs Enforcement (ICE)
Enforcement and Removal Operations (ERO) | Bakersfield Sub Office
800 Truxtun Avenue | Bakersfield, CA 93301
Mobile: [REDACTED]

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Exhibit F

Message

From: Nathan Allen [REDACTED]
Sent: 6/25/2020 9:57:46 AM
To: Paul Laird [REDACTED] Cheryl Nelson [REDACTED]
Subject: Re: Detainee Testing - New Intakes

Copy, will do.

From: Paul Laird [REDACTED]
Sent: Thursday, June 25, 2020 9:56 AM
To: Nathan Allen [REDACTED] Cheryl Nelson [REDACTED]
Subject: Re: Detainee Testing - New Intakes

Nate: I think the plan is sufficient for your testing protocols moving forward. However, the plans falls short of identifying mitigating procedures you could put in place for detainees who do not consent to testing and are placed directly into a unit. We cannot just throw up our hands and say there isn't anything we can do. We should at a minimum identify specific areas within the unit for new arrivals. Maybe it is in a row of bunks in the front, maybe in the back etc, but we can't just scatter them throughout the unit without any controls. Whether it be tape on the floor, privacy curtains, or any other strategy you can identify, it would be better than just saying we are unable to do anything. I know we have discussed this multiple times before, and it appears there has been no creative effort to come up with some mitigating strategies.

Please work with Cheryl and let's discuss your ideas tomorrow.

From: Nathan Allen [REDACTED]
Sent: Thursday, June 25, 2020 9:37 AM
To: Cheryl Nelson [REDACTED]
Cc: Paul Laird [REDACTED]
Subject: Detainee Testing - New Intakes

Hi Cheryl, IHSC was onsite conducted training with the HSA yesterday afternoon on the Abbott machine. The HSA needs to conduct some additional training with the nurses today. Currently, our new AFOD (Janese Mull) has indicated they will be looking to begin testing new intakes beginning Friday or Monday. This attached plan is the one we went over last week when we knew the machine was supposed to come. Alex reviewed it last week and was okay with it and I sent it over this morning to AFOD Mull for her review.

Nathan (Nate) Allen
Facility Administrator, GEO Secure Services

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Mesa Verde ICE Processing Center
425 Golden State Ave
Bakersfield, CA 93301

Tel: [REDACTED] Mobile: [REDACTED]
Fax: [REDACTED]

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Exhibit G

Message

From: Brooke Sanchez-Othon [REDACTED]
Sent: 7/6/2020 9:22:05 AM
To: Nathan Allen [REDACTED]; Mull, Janese N [REDACTED]
CC: Wendy M. Baca [REDACTED]
Subject: [EXTERNAL] Re: COVID-19 Testing of all Inmates Inquiry

We would use the oropharyngeal swabs and they would be sent for processing to cardiotropic labs.

Brooke Sanchez Othon, RN BSN CCHP
Clinical Operations Specialist
wellpath

PH [REDACTED]
WellpathCare.com

From: Nathan Allen <[REDACTED]>
Sent: Monday, July 6, 2020 9:17:06 AM
To: Mull, Janese N; Brooke Sanchez-Othon
Cc: Wendy M. Baca
Subject: [EXT] Re: COVID-19 Testing of all Inmates Inquiry

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The testing would be by using the normal swap kits or with the Abbott?

From: Mull, Janese N <[REDACTED]>
Sent: Monday, July 6, 2020 8:55 AM
To: Brooke Sanchez-Othon <[REDACTED]>; Nathan Allen <[REDACTED]>
Cc: Wendy M. Baca <[REDACTED]>
Subject: [EXTERNAL] RE: COVID-19 Testing of all Inmates Inquiry

10-4!

Thank you!

Janese Mull
Assistant Field Office Director
U.S. Department of Homeland Security | Immigration and Customs Enforcement
Enforcement and Removal Operations (ERO) | Bakersfield Sub Office
800 Truxtun Avenue | Bakersfield, CA 93301
Office: [REDACTED]
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From: Brooke Sanchez-Othon <[REDACTED]>

Sent: Monday, July 6, 2020 8:51 AM

To: Mull, Janese N <[REDACTED]>; Nathan Allen <[REDACTED]>

Cc: Wendy M. Baca <[REDACTED]>

Subject: Re: COVID-19 Testing of all Inmates Inquiry

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact ICE SOC SPAM with questions or concerns.

AFOD Mull,

Please see attached testing plan for all detainees. Please note this has already been sent up to ICE by AFOD Pham and denied due to the housing restrictions we face. Testing all detainees will potentially cause the same housing issue we had last week but on a larger scale. Completing the testing is not the issue it is just what we will need to do with the results once they are received. Please let us know if you need anything else.

Thank you!

Brooke Sanchez Othon, RN BSN CCHP
Clinical Operations Specialist

wellpath

PH [REDACTED]
WellpathCare.com

From: Mull, Janese N <[REDACTED]>

Sent: Monday, July 6, 2020 8:26 AM

To: Nathan Allen

Cc: Wendy M. Baca; Brooke Sanchez-Othon

Subject: [EXT] COVID-19 Testing of all Inmates Inquiry

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Good Morning Nathan,

We have been advised (by counsel) that it would be in our best interest to evaluate how long it would take (and why) to conduct COVID-19 testing for all detainees and detail how it would be done and what testing would be used.

If possible, can I please obtain this information by 12pm today. If that is not possible, please advise.

Thanking you in advance!

Janese Mull

Assistant Field Office Director

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Exhibit H

Message

Sent: 5/26/2020 9:15:15 AM
To: Cheryl Nelson [REDACTED]
Subject: Staff testing

The AFOD mentioned during he would rather not have staff testing as that may also impact ERO functions, i.e., an asymptomatic person testing positive would require possible dorm cohorts and detainee testing protocols.

Nathan (Nate) Allen
Facility Administrator, GEO Secure Services

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

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

17 Petitioners-Plaintiffs,

18 v.

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

24 Respondents-Defendants.

Case No. 3:20-cv-02731-CV

**[PROPOSED] TEMPORARY RESTRAINING
ORDER**

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[PROPOSED] TEMPORARY RESTRAINING ORDER

Plaintiffs-Petitioners filed a sealed administrative motion containing a Motion for Temporary Restraining Order on August 4, 2020, refiled their Motion for Temporary Restraining Order on the public docket on August 5, and filed an amended proposed order on August 5. On August 4, the federal government defendants filed an opposition and defendant GEO, Inc., filed a declaration in opposition. The Court heard the parties' positions on Plaintiffs-Petitioners' Motion on August 5. Having considered the parties' filings and the arguments presented, Plaintiffs' Motion for Temporary Restraining Order is GRANTED.

The Court concludes that Plaintiffs-Petitioners have met their burden of showing: (1) a likelihood of success on the merits that Defendants' current practices as to COVID-19 testing and the cohorting of class members in Dorm C at the Mesa Verde Detention Facility (MVDF) violate the Due Process Clause of the Fifth Amendment because such practices exhibit deliberate indifference; (2) that those practices are causing and will cause irreparable harm to MVDF class members absent a temporary restraining order; (3) that the balance of equities weighs in Plaintiffs-Petitioners' favor; and (4) that the public interest favors granting the motion.

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Civil L. R. 65-1, and the Court's equitable powers, the Court orders Defendants as follows:

1. within 24 hours, administer a point-of-care COVID-19 test (i.e., a test that returns rapid results) to all class members at MVDF, and administer such a test to all class members at MVDF on a weekly basis thereafter;
2. maintain the current practice of not admitting new class members to MVDF;
3. maintain the population levels at each dormitory within MVDF in a manner consistent with the Court's preliminary injunction order (ECF No. 357), specifically including a maximum of 35 class members in each dormitory¹;
4. maintain a dormitory to segregate detainees who test positive for COVID-19; and

¹ Defendants have represented that there were 138 class members detained at MVDF on June 9, 2020, the date the preliminary injunction issued (ECF No. 484-1). Across the facility's four dorms, the average population on June 9 was accordingly approximately 35.

ORDER TO SHOW CAUSE

IT IS SO ORDERED.

THE HONORABLE VINCE CHHABRIA
UNITED STATES DISTRICT JUDGE