

EXHIBIT

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3. Since the outbreak of the novel coronavirus, SIFI staff have visited individuals inside Pine Prairie and LaSalle and spoken by phone to individuals at both detention centers. What SIFI staff have personally witnessed and learned in conversation with people inside these facilities reveals a grossly deficient response by the New Orleans ICE Field Office and private contractors to stem the spread of the virus. ICE has failed to give people inside LaSalle and Pine Prairie adequate information about how to protect themselves from contracting COVID-19. It has stymied their ability to practice social distancing by continuing to confine individuals in groups of dozens or larger. It has failed to increase their access to soap and fresh air. And when detained individuals express collective fear and concern, the New Orleans ICE Field Office and private contractors have responded with force and punishment.

4. The New Orleans ICE Field Office has the power and the duty to make determinations about whether to release non-citizens on parole on a case-by-case basis. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5. ICE has various other mechanisms to release people from its custody, including release on recognizance, conditional release on bond, and release on an order of supervision. These tools are available to ICE during its initial custody determinations or its redeterminations. Over the past two years, however, ICE has detained and denied release to thousands more people than it ever did before. This drastic turn is due to ICE having manipulated an algorithm in a computer risk assessment tool that it uses to generate recommendations about custody determinations.¹ The result was the tool *always* recommended confinement. And while ICE agents may manually override the recommendation, advocates allege in a recent suit that ICE in New York accepted the recommendations more than 99 percent of the time.²

¹ Compl. at 2, *Velesaca v. Decker*, Case No. 1:20-cv-01803 (S.D.N.Y. Feb. 28, 2020).

² “[T]he full ramifications of the change to the algorithm are likely even broader: It is used nationally, but the FOIA suit only revealed data from New York.” Hannah Bloch-Wehba, “A

5. Not even the COVID-19 pandemic and the attendant danger it poses inside congregates spaces has dampened the New Orleans ICE Field Office's ironclad commitment to incarceration over sound alternatives to detention. It continues to deny humanitarian parole even to those in its custody who suffer from serious medical conditions.

6. Amid this crisis, ICE has failed to provide adequate legal access for people in its custody, whether in-person, by video teleconference ("VTC"), or by phone. SIFI's primary mode of contact with confined individuals is through a free and confidential hotline through which they may reach us. Due to technology and staffing restrictions caused by the coronavirus, the hotline is now staffed Mondays and Thursdays instead of Monday through Thursday. It conducts the rest of its communications through a combination of in-person visitation, VTC, and other legal phone calls.

7. ICE's COVID-19-related restrictions on in-person visitation have made it virtually impossible to conduct in-person visitation at Pine Prairie, where contact visitation is the only option. In "guidance" published on its website on March 23 and March 24, 2020, ICE offered conflicting messages on the type of personal protective equipment legal workers would have to bring for in-person visitation. On March 23, 2020, two subsections presented different requirements. One subsection stated: "non-contact legal visitation...will continue to be permitted. In order to safeguard visitors, detainees, and ICE and facility staff, official visitors may be subject to special screening and procedures. ICE may impose additional requirements, such as mandating that visitors wear protective equipment." Another subsection stated that "all legal visitors" must "provide and wear personal protective equipment," including "disposable vinyl gloves, N-95 or surgical masks, and eye protection[]" while visiting any detention facility."

lawsuit against ICE reveals the danger of government-by-algorithm," The Washington Post (Mar. 5, 2020), available at: <https://www.washingtonpost.com/outlook/2020/03/05/lawsuit-against-ice-reveals-danger-government-by-algorithm/>

8. Up until then, I had provided SIFI staff with gloves, disinfectant wipes, and hand sanitizer, but not masks or eye protection. Not knowing which of the two statements would prevail, and out of an abundance of caution, that same day I mailed by overnight delivery several packages containing surgical masks to five SIFI staff members. The masks were not N-95 masks. Despite trying to procure them locally, I had been unable to, given the national shortage of those masks. Even if I had been able to procure them, SIFI's use of N-95 masks would have taken those masks out of circulation for use by frontline health care providers, in contravention of the priorities urged by public health experts.

9. The next day, on March 24, 2020, ICE issued updated guidance:

Detainee access to legal counsel remains a paramount requirement and will be accommodated to the maximum extent practicable. Unless and until it is determined to pose a risk to the safety and security of the facility, legal visitation will continue; but ICE is encouraging all legal representatives to contact the facility at which they must visit their clients in-person to determine current policies and procedures regarding legal visits. Non-contact legal visitation (e.g., Skype or teleconference) should be offered first, if available, to limit exposure to ICE detainees; but if the attorney believes the legal visit requires contact, the facility should permit the visit with the appropriate guidelines it has established.

For in-person, contact (without any physical barriers) visits to occur, the attorney must undergo screening using the same procedures as staff. ICE will require all legal visitors to provide and wear PPE (e.g., gloves, N-95 masks, and eye protection) while visiting with any client at any facility. Legal representatives may also be required to go through similar testing as employees of the detention facility, as determined by the individual facility. The overall authority to approve legal visits lies with the Warden or Facility Administrator; however, the facilities have been asked to notify its local Field Office Director as soon as possible of any denied legal visits.

For attorneys appearing in-person for court at ICE facilities, they are encouraged to contact the Executive Office for Immigration Review for any additional requirements.

10. In essence, then, ICE maintains that contact visitation is not allowed unless legal workers procure and use N-95 masks. Given that SIFI Pine Prairie legal teams or any other SIFI legal representatives cannot obtain N-95 masks for use due to the critical shortage of N-95 masks across the country, this new N-95 mask standard virtually ensures that no legal visitation will occur at Pine Prairie.

LaSalle Detention Center, Jena, LA

11. On March 20, 2020, the New Orleans ICE Field Office denied release on parole to two SIFI clients with medical complications who are confined inside LaSalle. The clients, asylum seekers, have both engaged in a hunger strike for about 140 days. Their strike is rooted in their

frustration with the way the immigration courts have treated their pleas for asylum, and, as the duration of their confinement lengthens, their desperation at being locked up, separated from family. Before the novel coronavirus was declared a pandemic, SIFI filed initial parole requests. They contained evidence from a leading medical expert in detainee health attesting that they are medically vulnerable, and documents showing they pose no risk to public safety and no flight risk, having sponsors willing to host them upon release. ICE denied their parole requests.

12. After the outbreak, SIFI renewed these requests, citing to the COVID-19 pandemic as a changed circumstance, and adding new supporting evidence. Yet, again, ICE denied release. ICE has since begin to force feed them via nasogastric tubes. Given the available data on the high rates of transmission of the novel coronavirus and the most likely method of transmission through droplets entering the mucosa, force feeding medically fragile individuals inside likely contaminated detention center medical wings may compound their risk of infection.

13. Over the past week, SIFI staff have learned that ICE and facility staff have used force to respond to confined individuals' clamor for their own health and safety. On March 26, 2020, a woman inside LaSalle called SIFI's hotline and spoke with a SIFI helpline specialist. The day prior, she said, officials used tear gas against people in a different housing unit who protested after hearing rumors that someone was diagnosed with coronavirus. Due to the fumes, those individuals, the caller, and the nearly 80 others in her housing unit had to be evacuated. ICE since acknowledged the use of force incident, but said pepper spray and not tear gas was deployed.³

14. The March 26 caller also reported woefully deficient conditions. Though guards did tell her and others about the coronavirus, they did not provide materials for her and others to disinfect

³ Noah Lanard, "ICE Detainee Were Pepper-Sprayed During a Briefing on Coronavirus," Mother Jones (Mar. 26, 2020), available at: <https://www.motherjones.com/politics/2020/03/ice-detainees-were-pepper-sprayed-during-a-briefing-on-coronavirus/>.

or clean their area. All but one toilet is broken, meaning close to 80 people must share one toilet. Staff told them they were out of toilet paper. When soap runs out, she said, it is not replaced until the next day. She also stated that she doubts the staff will tell persons detained if someone at the detention center has been diagnosed with coronavirus because it would be inconvenient for them.

15. The March 26 caller is herself suffering from a serious medical condition. She reported suffering from blood clots in her brain which cause significant pain. Though she requested medical attention about two weeks ago, she still has not been given medication.

16. Another caller from LaSalle reported symptoms consistent with COVID-19. He called on March 19, 2020, and complained of having a fever, chest pain, difficulty breathing while trying to sleep, and of coughing blood. He reported having been tested for the flu and having returned a negative result; however, to his knowledge, he had not been tested for coronavirus. The only treatment he reported receiving inside LaSalle was ibuprofen, syrup, and salt, which had not helped. He reported sharing a unit, HD, with others who had symptoms of coughing, fever, or shortness of breath. None had been removed from the unit. New people were being brought into the unit. Facility staff were not routinely using gloves. He reported that a different housing unit, OD, had been quarantined earlier for two to three weeks. His understanding was that some individuals inside that unit had been infected with the common flu.

Pine Prairie Detention Center, Pine Prairie, LA

17. ICE and its private contractors have also used force in the past week against individuals confined inside Pine Prairie. An SPLC legal worker received a call from a man inside the facility on March 24, 2020 as the incident unfolded. He told her that he could see some eight guards

wearing riot gear, and also the assistant warden. As at LaSalle, ICE confirmed the incident in a published report and explained ICE or its agents used pepper spray against those in its custody.⁴

18. The escalating dangers to people in ICE custody make it all the more important for SIFI staff to maintain contact with clients and potential clients in confinement. A SIFI legal worker conducted in-person visitation with several individuals at Pine Prairie on March 16 and March 20, 2020. She wore a mask and gloves both times. The first time, she observed that none of the facility staff or detained people wore masks or gloves. That day, she met with five individuals, seated a table about six feet from those she visited. The five individuals she visited independently gave her a consistent message: none had received any information about the coronavirus. They also mentioned lacking access to hand soap. When she asked them whether facility staff had changed any protocols in response to the pandemic, they said their conditions had not changed in any noticeable way. The five individuals had engaged in a hunger strike and had been subjected to solitary confinement. Three of them independently told her that while segregated inside one- or two-person cells, they were not given water to drink for almost a week, and they were forced to drink water from the toilet.

19. Her second visit, on March 20, 2020, was with five individuals confined inside a quarantined unit, Charlie Alpha. That time, some staff wore masks; others did not. As before, she sat at a six-foot table in the visitation area. Because the table is located in a common area, the visits were not private or confidential. The five men from the quarantine unit wore masks but no gloves. As they waited in the common area, they sat alongside other detained people awaiting visitation

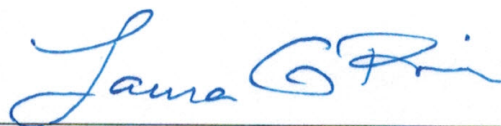
⁴ Ben Fox, Philip Marcelo, and Nomaan Merchant, “Trump administration urged to free migrants as virus surges,” Associated Press (March. 25, 2020), available at: <http://www.wboc.com/story/41938213/trump-administration-urged-to-free-migrants-as-virus-surges>.

who did not have masks or gloves. They told her that they were only given masks when they left the dorm, not while they were inside of it. They also told her that detained individuals are still cleaning the dorms, and they are given neither masks nor gloves. Guards and ICE agents sometimes wear masks and gloves when they enter Charlie Alpha and sometimes do not. Several of them also reported to her that ICE continues to bring new people into confinement at Pine Prairie, putting those new people into the Charlie Alpha unit, a known high-risk unit.

20. The same legal worker had a VTC call with someone inside Pine Prairie on March 18, 2020. The man was wearing a mask and gloves. He told her that he and roughly sixty others inside his housing unit, Charlie Alpha, were under quarantine. Guards had told those in Charlie Alpha that someone inside that unit was suspected of having COVID-19. The suspected COVID-19 carrier had been removed from the Charlie Alpha unit. Everyone else remained inside Charlie Alpha. He told her that detained people inside Charlie Alpha were responsible for cleaning their own unit. They had access to some chemicals to clean with. However, they had no access to hand soap or hand sanitizer, only the limited soap given to them for showers. The guards had not taken any measures to space people out inside the unit.

21. Since the onset of this pandemic, SIFI and partner organizations have to date submitted three letters to ICE and facility administrators requesting information about their response plans and urged them to release people from custody. As of now, SIFI has received no response.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 29, 2020 in Decatur, Georgia.

A handwritten signature in blue ink that reads "Laura G. Rivera". The signature is written in a cursive style with a horizontal line underneath the name.

Laura G. Rivera, Esq.