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ATUALIZAÇÃO E AVISO: *FRAIHAT V. ICE*

20 DE ABRIL DE 2020

Em 20 de abril de 2020 o Tribunal de Justiça no caso *Fraihat v. ICE*, Processo nº 5: 19-cv-01546-JGB-SHK (CD Cal. 20 de abril de 2020), ECF nº 133, emitiu uma ordem que afeta todas as pessoas detidas pelo serviço de imigração e fiscalização aduaneira (ICE) com fatores de risco.

Pessoas com fatores de risco são pessoas com mais de 55 anos de idade, grávidas ou com problemas de saúde ou deficiências, incluindo:

- Condições de saúde crônicas, tais como:
 - Doença cardíaca (incluindo insuficiência cardíaca, histórico de infarto do miocárdio, histórico de cirurgia cardíaca)
 - Pressão alta (hipertensão)
 - Doença respiratória crônica (incluindo asma, doença pulmonar obstrutiva crônica, incluindo bronquite crônica ou enfisema ou outras doenças pulmonares)
 - Diabetes
 - Câncer
 - Doença hepática
 - Doença renal
- Doenças autoimunes (incluindo psoríase, artrite reumatóide, lúpus eritematoso sistêmico)
- Doença psiquiátrica grave
- Histórico do transplante de órgãos
- HIV/AIDS

Para qualquer pessoa detida pelo ICE com fatores de risco, o ICE deve:

- Identificá-los e rastreá-los até 30 de abril de 2020 ou dentro de cinco dias após a detenção (o que ocorrer depois)
- Conduzir re-determinações de custódia para determinar se podem ser protegidas contra a infecção por COVID-19 em detenção ou se devem ser liberadas porque o ICE não pode protegê-las adequadamente devido à suas vulnerabilidades individuais

O ICE também deve ordenar que se atualizem seus protocolos internos para se responder à pandemia, a fim de proteger melhor as pessoas que permanecem detidas contra a infecção por COVID-19 e garantir que os requisitos desta ordem sejam implementados em **todas as instalações de detenção que detêm migrantes por mais de 72 horas em toda a nação.**

Os advogados da Fraihat estão atualmente trabalhando com o ICE para estabelecer uma linha direta à qual você pode discar para obter suporte adicional. Atualizaremos este comunicado quando a linha direta estiver sido configurada.

VISITE [SPLCENTER.ORG/FRAIHAT-V-ICE-COMMUNITY-RESOURCES](https://splcenter.org/fraihat-v-ice-community-resources) PARA MAIS INFORMAÇÕES SOBRE ESTA DECISÃO IMPORTANTE DO TRIBUNAL.

Instruções para solicitar liberdade condicional ao ICE

Estes documentos foram concebidos para ajudá-lo a solicitar liberdade condicional caso você seja um indivíduo detido de alto risco de se infectar pelo COVID-19 enquanto esteja detido, mas isso não constitui aconselhamento jurídico.

ETAPA 1. IDENTIFICAR O PATROCINADOR

Quem pode ser o patrocinador?

O patrocinador é uma pessoa que concorde em assumir a responsabilidade por você durante todo o processo do seu caso de imigração. Essa pessoa atestará ao ICE, por escrito, que: (1) oferecerão um lar para você viver depois que você deixar a detenção (2) oferecerão apoio financeiro (3) garantirão que você vá às suas audiências.

O patrocinador precisa ser um parente?

Não necessariamente. As regras não exigem que os patrocinadores sejam parentes de pessoas que solicitam liberdade condicional. No entanto, a experiência mostra que o ICE considera mais favorável quando os patrocinadores já estão familiarizados ou tenham relação próxima. Se não houver um membro da família que queira ser o patrocinador, não desista. Considere outras opções, como organizações religiosas, de apoio a imigrantes ou que pratiquem solidariedade com compatriotas em seu país.

O patrocinador precisa ser cidadão ou residente permanente dos EUA?

Não existe uma regra escrita que exija isso. No entanto, a experiência nos ensina que o ICE raramente aprova a liberdade condicional para alguém se o patrocinador não for um cidadão ou residente permanente nos EUA. Portanto, faça o possível para encontrar um patrocinador que seja cidadão ou residente. Além disso, o ICE pode usar as informações fornecidas a eles para outros fins. Consulte um advogado de imigração se você tiver mais perguntas

ETAPA 2. COLABORAR COM O PATROCINADOR PARA PREPARAR UMA CARTA DE APOIO

Qual é o objetivo da carta de apoio?

A carta de apoio é a oportunidade de mostrar ao ICE que o patrocinador honrará as promessas de dar um lar aos indivíduos detidos, apoiá-los financeiramente e garantir que eles participem de todas as suas audiências no tribunal de imigração até que o processo judicial termine.

Que informações a carta de apoio do patrocinador deve incluir?

A carta de apoio do patrocinador deve conter o seguinte:

1. Dados do Patrocinador

- nome completo do patrocinador
- endereço físico do patrocinador
- número de telefone do patrocinador
- status de imigração do patrocinador (de preferência residente permanente ou cidadão dos EUA)

2. As informações do indivíduo detido

- o nome completo
- seu número A (Alien Number)
- seu país de origem

3. Explicação sobre como o indivíduo detido e o patrocinador se conhecem

- que relação possuem (por exemplo, casados, pai / filho, primos, amigos, ou se conheceram por meio de uma organização de apoio a migrantes)
- há quanto tempo se conhecem
- histórias que mostrem como o patrocinador conhece o caráter do indivíduo detido ou qual o grau de intimidade do relacionamento

4. Compromissos do patrocinador por escrito

- promessa de que, se o indivíduo detido for libertado em liberdade condicional, ele viverá no endereço indicado pelo patrocinador

- promessa de que o patrocinador está disposto a apoiar financeiramente o indivíduo detido durante seu caso de imigração

ETAPA 3. PREENCHA O FORMULÁRIO DE PEDIDO DE LIBERDADE CONDICIONAL DO PRO SE COVID-19

Consulte o apêndice para obter o **formulário de solicitação de liberdade condicional Pro Se COVID-19** e as instruções que o acompanham.

ETAPA 4. COLHA EVIDÊNCIAS

Você precisará de documentos que comprovem várias coisas sobre você, o indivíduo detido: sua identidade; garantia de que você não perderá nenhuma audiência judicial ou compromisso com a imigração, se for liberado; e que você não representa um perigo para a comunidade.

Documentos de identidade

Existem vários documentos que podem ser usados para se estabelecer a identidade do indivíduo detido. Estes incluem: passaporte, carteira de identidade nacional, certidão de nascimento.

Documentação de que o indivíduo detido não apresenta risco de vôo

Esses documentos virão principalmente do patrocinador. Além da carta do patrocinador, você precisará de:

1. *Prova do endereço residencial do patrocinador. Verifique se qualquer documento que você vai usar contém o nome e o endereço residencial do seu patrocinador. Exemplos:*

- conta de telefone
- conta de luz
- documento de hipoteca ou arrendamento

2. *Prova do status de imigração do patrocinador. Exemplos:*

- cópia do cartão de residente permanente (green card)
- cópia do passaporte dos EUA

Documentação de que o indivíduo detido não é um perigo para a comunidade

Você tem antecedentes criminais no seu país?

- **Não:** tente obter uma certificação de que não há registro criminal do governo daquele país
- **Sim:** inclua evidências de que você cumpriu qualquer sentença imposta, de que foi reabilitado e / ou que a acusação foi motivada por razões políticas relacionadas à sua perseguição. Você pode enviar qualquer coisa que considere útil, incluindo cartas de apoio da comunidade, certificado de prêmios, cartas da sua igreja etc.

ETAPA 5. TRADUZIR QUAISQUER DOCUMENTOS QUE NÃO ESTEJAM EM INGLÊS

Para qualquer documento que não esteja em inglês, inclua o documento no idioma original, além de:

1. Uma tradução do documento para o inglês
2. Um certificado de tradução

O certificado de tradução deve ter a seguinte redação:

CERTIFICATE OF TRANSLATION

I, _____, hereby state that I am fluent in the English and _____ languages, and am competent to translate from _____ to English, and that I have translated the foregoing document fully and accurately to the best of my abilities.

Signed: _____

Dated: _____

ETAPA 6. ENVIE O DOCUMENTO

Envie todos os documentos abaixo para o seu oficial de deportação:

- Formulário de solicitação de liberdade condicional Pro Se COVID-19
- Anexo A: Notificação de ordem judicial que exige re-determinações de custódia de indivíduos com fatores de risco
- Anexo B: Trechos relevantes da declaração do Dr. Homer Venters, *Sanchez Martinez v. Donahue*, Processo nº 7: 20-cv-0062-CDL-MSH (M.D. Ga, 30 de abril de 2020)
- Anexo C: Documentos do patrocinador
- Anexo D: Documentos Médicos

Instruções para preencher a solicitação de liberdade condicional Pro Se COVID-19

A solicitação de liberdade condicional Pro Se COVID-19 (ou "parole" em inglês) é um documento que você pode usar para solicitar que um ente querido seja libertado da detenção de imigração por motivos humanitários urgentes. Estas instruções anexas foram projetadas para ajudá-lo a concluir a solicitação e não devem ser usadas como aconselhamento jurídico. É sempre recomendável que o indivíduo detido tente procurar assistência e aconselhamento de um advogado de imigração experiente. No entanto, não é necessário ter um advogado para solicitar liberdade condicional humanitária.

A solicitação de liberdade condicional do Pro Se e qualquer outra documentação de suporte devem ser enviadas em inglês. Nas páginas a seguir, você encontrará um formulário de solicitação em inglês que pode ser enviado. As instruções abaixo explicam como preencher o formulário de solicitação em inglês passo a passo e página por página.

PÁGINA 1: INFORMAÇÃO BÁSICA

Escreva a data que você está enviando ou concluindo a solicitação na linha seguinte a "Date", na parte superior da primeira página. Nos Estados Unidos da América, o mês vem primeiro. Por exemplo, 15 de março de 2020 seria escrito 15/03/2020.

Anote o nome do seu oficial de deportação na linha seguinte a "Deportation Officer". Você precisará enviar a solicitação e todos os documentos de suporte ao seu oficial de deportação de Imigração e Alfândega (ICE), que trabalha no Escritório de Campo das Operações de Imposição e Remoção (ERO).

Se você não sabe quem é seu oficial de deportação, experimente:

- Preencher uma solicitação ou kite de detento do ICE
- Verificar a documentação da imigração para ver se o nome do seu oficial de deportação aparece lá
- Pedir na sua unidade se alguém pode ajudá-lo a descobrir. Muitas vezes, os Oficiais de Deportação são atribuídos aos detidos com base na grafia do sobrenome. Um sujeito detido cujo sobrenome começa com as mesmas duas letras do seu sobrenome pode ter o mesmo oficial de deportação que você.

Escreva seu nome completo na linha que termina com "(Full Name)".

Escreva seu número A na linha que termina com "(A Number)". Seu número A é um número de nove dígitos que lhe é atribuído pelas autoridades de imigração. Estará na sua documentação de imigração e em todos os documentos de identificação que lhe são fornecidos no centro de detenção, como uma pulseira ou cartão de identificação.

Escreva seu nome completo novamente na linha do primeiro parágrafo que termina com "(Full Name)".

PÁGINAS 1-2: "I. I HAVE AN ELEVATED RISK OF CONTRACTING COVID-19 AND SUFFERING SERIOUS HEALTH COMPLICATIONS" (TENHO UM RISCO ELEVADO DE CONTRAIR COVID-19 E SOFRER COMPLICAÇÕES GRAVES DE SAÚDE)

Esta seção descreve as maneiras pelas quais a detenção pode colocar uma pessoa em maior risco de pegar o coronavírus.

Use as linhas fornecidas nesta seção na página dois, depois de "I have the following medical conditions, which impact my health in the following ways," para escrever quaisquer condições médicas que você tenha e como essas condições afetam sua saúde. Se as condições forem severas ou colocá-lo em maior risco de COVID-19, certifique-se de anotar isso também. Use uma folha de papel extra para elaborar, se necessário.

Certifique-se de observar qualquer um dos seguintes tópicos, além de outras condições médicas que você possa ter:

- Doenças autoimunes
- Doença cardíaca
- Doença pulmonar
- Diabetes
- Asma
- Histórico de infecções pulmonares ou torácicas
- Vírus da imunodeficiência humana (HIV)

PÁGINA 2: “II. MY CONTINUED DETENTION IS NOT IN THE PUBLIC INTEREST” (MINHA DETENÇÃO CONTINUADA NÃO É DE INTERESSE PÚBLICO)

Você não precisa escrever nada aqui. Esta seção explica que continuar mantendo-o em um centro de detenção não é bom para ninguém.

PÁGINA 3: “III. I AM NOT A DANGER TO THE COMMUNITY” (NÃO REPRESENTO PERIGO PARA A COMUNIDADE)

Nas linhas fornecidas na terceira página, descreva porque você não é um perigo para a comunidade. Se você não tem antecedentes criminais, não deixe de dizer isso. Se você tem antecedentes criminais, explique por que isso não faz de você um perigo para a comunidade. Por exemplo, se você não tem nenhum problema criminal há muito tempo ou se já fez alguma coisa para apoiar sua comunidade (voluntário, ir à igreja, etc.), não deixe de o referir.

Nota: é uma boa ideia qualquer pessoa detida com antecedentes criminais falar com um advogado de imigração antes de enviar qualquer coisa às autoridades de imigração ou ao tribunal de imigração.

PÁGINA 3: “IV. I AM NOT A FLIGHT RISK” (NÃO REPRESENTO UM RISCO DE FUGA)

No segundo grupo de linhas fornecido na terceira página, escreva o nome e o status de imigração do seu patrocinador. Explique como o seu patrocinador conhece você e o endereço em que você estará morando após a liberação. Se você tem família nos EUA, liste seus familiares e relacionamento com cada um. Depois, declare que é importante que você participe de todas as suas futuras audiências de imigração e explique por que isso é assim e por que você quer lutar pelo seu caso.

Nota: É essencial que você inclua um patrocinador na solicitação.

PÁGINA 3-4: “V. I AM LIKELY TO SUCCEED ON MY APPLICATIONS FOR RELIEF” (É PROVÁVEL QUE EU TENHA SUCESSO EM MINHA SOLICITAÇÃO)

Nas linhas fornecidas na parte inferior da página 3 e na parte superior da página 4, descreva a ajuda de imigração que você está solicitando e por que é importante para você continuar lutando pelo seu caso.

PÁGINA 4: “VI. CONCLUSION” (CONCLUSÃO)

Se você deseja solicitar que o ICE informe alguém que não seja você sobre o resultado da sua solicitação de liberdade condicional, você pode incluir o nome e as informações de contato dessa pessoa na página 5.

Escreva o nome dessa pessoa na linha que termina com “(sponsor or family member name)”.

Escreva as informações de contato dessa pessoa na linha que termina com “(phone number or email address)”.

ANEXOS

As exposições A-B já estão incluídas. Para o Anexo C, inclua os documentos de identificação e comprovante de residência do patrocinador (uma cópia do cartão de identificação emitido pelo governo, uma cópia do seu Cartão de Residente Permanente Legal, se aplicável, uma cópia do IRS 1040 e uma cópia da fatura mostrando o endereço do patrocinador). Para o Anexo E, inclua todos os documentos médicos relevantes.

FINALIZANDO O PEDIDO DE LIBERDADE CONDICIONAL E ENVIANDO-O

Escreva seu nome completo na linha que termina com “(Full Name)”.

Escreva seu número A na linha que termina com “(A Number)”.

Se possível, faça uma cópia de sua solicitação e de qualquer documentação de suporte que você enviar para seu próprio registro.

RECURSOS ADICIONAIS PARA INDIVÍDUOS DETIDOS

Freedom For Immigrants possui uma linha telefônica gratuita que você pode usar e contar com os seus voluntários. Você pode discar 9233 para falar com um voluntário que vai tentar encontrar maneiras de apoiá-lo.

**ENVIE AS PÁGINAS SEGUINTEs PARA
O SEU PEDIDO DE LIBERDADE CONDICIONAL**

Pro Se COVID-19 Parole Request Form

Date: _____

Deportation Officer: _____
Assistant Field Office Director
Department of Homeland Security Immigration & Customs Enforcement

RE: REQUEST FOR PAROLE FOR *URGENT HUMANITARIAN REASONS*

For _____ (Full Name)

A# _____ (A Number)

To Whom it May Concern:

I, _____ (Full Name), submit this letter and supporting documents as my request for parole. According to section 212(d)(5)(A) of the Immigration and Nationality Act, the Department of Homeland Security has the power to parole an immigrant for urgent humanitarian reasons or significant public benefit. **My parole is merited for urgent humanitarian reasons and significant public benefit.** Additionally, 212(d)(5)(B)(1) of the Immigration and Nationality Act specifically notes that one scenario where humanitarian parole is justified is when the “alien has a serious medical condition in which continued detention would not be appropriate.”

The COVID-19 pandemic constitutes new circumstances that must be considered in evaluating my parole. I urgently request Humanitarian Parole due to the elevated risk I face as the COVID-19 pandemic spreads within ICE detention centers. The effect of my exposure to this virus could be deadly and given what little information we have about how to test, treat, and control this outbreak, I ask that ICE consider my parole case a priority in the highest order.

I am neither a flight risk nor a danger to the community, and my detention is not in the public interest. DHS should exercise its discretion to release me under humanitarian parole for the following reasons:

I. I HAVE AN ELEVATED RISK OF CONTRACTING COVID-19 AND SUFFERING SERIOUS HEALTH COMPLICATIONS

I am at heightened risk of contracting COVID-19 and suffering serious health complications due to my current detention. Detained individuals face an elevated risk of contracting COVID-19. People in detention are highly vulnerable to outbreaks of contagious illnesses. They are housed in close quarters and are often in poor health. According to Dr. Homer Venters, “[w]hen COVID-19 arrives in a community, it will show up in jails and prisons. This has already happened in China, which has a lower rate of incarceration than the U.S.”¹ For example, even as COVID-19 infection rates have declined in China, the virus continues to spread aggressively across its prisons.²

As Dr. Anne Spaulding put it in a presentation to Correctional facility employees, “a prison or jail is a self-contained environment, both those incarcerated and those who watch over them are at risk for airborne infections. Some make an analogy with a cruise ship. Cautionary tale #1: think of the spread of COVID-19 on the Diamond Princess Cruise Ship, January 2020. Cautionary tale #2: Hundreds of cases diagnosed in Chinese prisons.”³

¹ Dr. Homer Venters, *Four Ways to Protect Our Jails and Prisons from Coronavirus*, The Hill, Feb. 29, 2020, <https://thehill.com/opinion/criminal-justice/485236-4-ways-to-protect-our-jails-and-prisons-from-coronavirus?rnd=1582932792>

² Linda Lew, *China sends in top investigators after coronavirus erupts in jails*, South China Morning Post, Feb. 21, 2020, <https://www.scmp.com/news/china/society/article/3051858/china-sends-top-investigators-after-coronavirus-erupts-jails>.

³ Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.

Older populations, pregnant women and those with preexisting health conditions have a high likelihood of hospital admission to intensive care and might die. According to Dr. Chauolin Huang, “2019-nCoV caused clusters of fatal pneumonia with clinical presentation greatly resembling SARS-CoV. Patients infected with 2019-nCoV might develop acute respiratory distress syndrome, have a high likelihood of admission to intensive care, and might die.”⁴ The CDC recently reported that, “Older people and people of all ages with severe underlying health conditions — like heart disease, lung disease and diabetes, for example — seem to be at higher risk of developing serious COVID-19 illness.”⁵ According to another source, Jialieng Chen, “[M]ost of those who have died had underlying health conditions such as hypertension, diabetes or cardiovascular disease that compromised their immune systems.”⁶

Medical experts on incarcerated populations have strongly recommended that corrections facilities consider compassionate releases for individuals who are older or have pre-existing conditions. As corrections medical expert Dr. Anne Spaulding recently recommended:

“Consider alternatives to incarceration, in order to keep stock population down (diversionary courts, community corrections). Consider measures other than detention...Ask who you can release on their own recognizance?”⁷

Knowing that correctional facilities could be a very dangerous setting for outbreak and that immunodeficient people present a higher risk of serious illness, I should be considered a priority for release from detention for my personal safety and to have access to the best possible medical care if exposed to COVID-19.

Additionally, I am at a heightened risk of suffering life threatening complications if I am exposed to COVID-19 because I suffer from medical conditions.

I have the following medical conditions, which impact my health in the following ways:

II. MY CONTINUED DETENTION IS NOT IN THE PUBLIC INTEREST

Detention is funded by public tax dollars. Even under the best of circumstances it is a costly option when alternatives to detention exist, especially when the detained individual is neither a flight risk nor a danger to the community. It is not in the public interest to manage an outbreak in the detention center and the liability of exposing medically vulnerable people to a contagious outbreak.

4 Chaolin Huang, et al., *Clinical Features of Patients Infected with 2019 Novel Coronavirus in Wuhan, China*, 395 *The Lancet* 497 (2020), [https://doi.org/10.1016/S0140-6736\(20\)30183-5](https://doi.org/10.1016/S0140-6736(20)30183-5) (also available at <https://www.sciencedirect.com/science/article/pii/S0140673620301835>).

5 Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19), People at Higher Risk and Special Populations*, Mar. 7, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/index.html>.

6 Jieliang Chen, *Pathogenicity and transmissibility of 2019-nCoV—A Quick Overview and Comparison with Other Emerging Viruses*, *Microbes and Infection*, Feb. 4, 2020, <https://doi.org/10.1016/j.micinf.2020.01.004> (also available at: <https://www.sciencedirect.com/science/article/pii/S1286457920300265>).

7 Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.

III. I AM NOT A DANGER TO THE COMMUNITY

I do not wish to do anyone harm. I am not a danger to the community for the following reasons and I contribute to my community in the following ways:

IV. I AM NOT A FLIGHT RISK

I am not a flight risk. The following people and organizations will support me with housing, meals, and transportation to my hearings:

V. I AM LIKELY TO SUCCEED ON MY APPLICATIONS FOR RELIEF

I am committed to pursuing my application(s) for relief in the United States. I am eligible for relief from removal and therefore have a strong incentive to appear for future hearings. My objective is to remain in the United States in a lawful manner. I have every incentive to, and will comply with, all obligations required to enable me to remain in the United States. I have already demonstrated my commitment to seeing my case through to the end by remaining in detention to fight my case in spite of the extreme mental and physical health difficulties discussed above.

I want to keep fighting my case for the following reasons:

VI. CONCLUSION

For the above reasons, I respectfully request that I be granted humanitarian parole and released from ICE custody.

If you would like further information, please do not hesitate to contact me. I look forward to hearing from you, and thank you in advance for your assistance in this urgent matter. I give ICE permission to, and request that ICE share any decision regarding this request with:

_____ (sponsor or family member name)

at _____ (phone number or email address).

The Exhibits you will find attached to this letter are:

Exhibit A: Notice of court order requiring custody re-determinations of individuals with risk factors

Exhibit B: Relevant excerpts from Dr. Homer Venters’s declaration, *Sanchez Martinez v. Donahue*, Case No. 7:20-cv-0062-CDL-MSH (M.D. Ga Apr. 30, 2020)

Exhibit C: Sponsor Documents

Exhibit D: Medical Documents

Sincerely,

_____ (Full Name)

A# _____ (A Number)

Notice of court order requiring custody re-determinations of individuals with risk factors

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Exhibit A

NOTICE OF COURT ORDER REQUIRING CUSTODY RE-DETERMINATIONS OF INDIVIDUALS WITH RISK FACTORS FOR COVID-19

IF YOU ARE

- **OVER THE AGE OF 55**
- **PREGNANT**
- **HAVE MEDICAL OR MENTAL HEALTH ISSUES OR A DISABILITY THAT PLACES YOU AT RISK OF COVID-19**

THEN ICE MUST REVIEW WHETHER IT CAN CONTINUE DETAINING YOU.

On April 20, 2020, a federal court approved a “class action” in a lawsuit called *Frailhat v. ICE*, which challenges medical conditions in ICE detention facilities. A class action is a law suit brought on behalf of a group of people. You are part of this “class” if you have one of the following Risk Factors which puts you at risk of harm from coronavirus/COVID-19:

Being over the age of 55;	Kidney disease
Being pregnant;	Auto-immune diseases
Having chronic health conditions, including: cardiovascular disease (congestive heart failure, history of myocardial infarction or, history of cardiac surgery)	Chronic respiratory disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases);
High blood pressure	Severe psychiatric illness
Liver disease	History of transplantation
Diabetes	HIV/AIDS
Cancer	

If you have any of these Risk Factors above, then ICE **must** review whether it can continue to hold you in detention. This applies even if you have previously been denied parole, bond, or habeas. This also applies no matter your custody classification, even if you have previously been convicted of a crime that subjects you to mandatory detention.

The lawyers representing the class are working to make sure that ICE follows the court’s April 20 order regarding its response to the COVID-19 pandemic, but will not be able to represent you in your immigration case. The law firms for the class are the Southern Poverty Law Center, Civil Rights Education & Enforcement Center, Disability Rights Advocates, Orrick Herrington & Sutcliffe LLP, and Willkie Farr & Gallagher LLP.

If you need additional information about the court's April 20 order or wish to provide additional information, please contact: To Be Provided Pursuant to Order that ICE Ensure Confidential Calling Method

EXHIBIT B

Relevant excerpts from Dr. Homer Venters's declaration, *Sanchez Martinez v. Donahue*, Case No. 7:20-cv-0062-CDL-MSH (M.D. Ga Apr. 30, 2020)

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DECLARATION OF HOMER VENTERS, M.D.

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

BACKGROUND

1. I am a physician, internist and epidemiologist with over a decade of experience in providing, improving and leading health services for incarcerated people. My clinical training includes a residency in internal medicine at Albert Einstein/Montefiore Medical Center (2007) and a fellowship in public health research at the New York University School of Medicine (2009). My experience in correctional health includes two years visiting immigration detention centers and conducting analyses of physical and mental health policies and procedures for persons detained by the U.S. Department of Homeland Security. This work included and resulted in collaboration with ICE on numerous individual cases of medical release, formulation of health-related policies as well as testimony before the U.S. Congress regarding mortality inside ICE detention facilities.
2. After my fellowship training, I became the Deputy Medical Director of the NYC Jail Correctional Health Service. This position included both direct care to persons held in NYC's 12 jails, as well as oversight of medical policies for their care. This role included oversight of chronic care, sick call, specialty referral and emergency care. I subsequently was promoted to the positions of Medical Director, Assistant Commissioner, and Chief Medical Officer. In the latter two roles, I was responsible for all aspects of health services including physical and mental health, addiction, quality improvement, re-entry and morbidity and mortality reviews as well as all training and oversight of physicians, nursing and pharmacy staff. In these roles I was also responsible for evaluating and making recommendations on the health implications of numerous security policies and practices including use of force and restraints. During this time, I managed multiple communicable disease outbreaks including H1N1 in 2009, which impacted almost a third of housing areas inside the adolescent jail, multiple seasonal influenza outbreaks, a recurrent legionella infection and several other smaller outbreaks.
3. In March 2017, I left Correctional Health Services of NYC to become the Director of Programs for Physicians for Human Rights. In this role, I oversaw all programs of Physicians for Human Rights, including training of physicians, judges and law enforcement staff on forensic evaluation and documentation, analysis of mass graves and mass atrocities, documentation of torture and sexual violence, and analysis of attacks against healthcare workers.
4. In December 2018 I became the Senior Health and Justice Fellow for Community Oriented Correctional Health Services (COCHS), a nonprofit organization that promotes

evidence-based improvements to correctional practices across the U.S. In January 2020, I became the president of COCHS. I also work as a medical expert in cases involving correctional health and I wrote a book on the health risks of jail (*Life and Death in Rikers Island*) which was published in early 2019 by Johns Hopkins University Press. A copy of my curriculum vitae, which includes my publications, a listing of cases in which I have been involved and a statement of my compensation, is attached to this report.

TRANSMISSION OF COVID-19

5. Information and understanding about the transmissibility of the coronavirus disease of 2019 (COVID-19) is rapidly evolving. New information is relevant to the health of ICE detainees and staff.
 - a. In addition to transmission by aerosolized droplets expelled from the mouth by speaking, coughing, sneezing, and breathing, COVID-19 appears to be transmissible through aerosolized fecal contact. This is relevant because the plume of aerosolized fecal material that occurs when a toilet is flushed is not addressable in many detention centers because ICE detainee toilets generally lack lids. This mode of transmission would pose a threat to anyone sharing a cell with a person who has COVID-19 and could occur before a person becomes symptomatic. This mode of transmission could also extend beyond cellmates, especially in circumstances where common bathrooms exist or where open communication between cells exists.¹
 - b. CDC and state guidance now recommend the use of protective masks for anyone who is in close contact with others, at less than 6 feet distance.² This recommendation applies to staff and detainees alike.

COVID-19 IN ICE DETENTION

6. COVID-19 is a viral pandemic. This is a novel virus for which there is no established curative medical treatment and no vaccine.
7. ICE has not been able to stop the spread of COVID-19 in detention centers. ICE reported that, as of April 7, there were 19 detained people in 11 facilities, 11 ICE employees in 6 facilities, and 60 ICE employees not assigned to a facility who had all tested positive for COVID-19. As of April 20, less than two weeks later, ICE reported a jump to 220 detained people in 28 facilities, 30 ICE employees in 9 facilities, and 86 ICE employees

¹ <https://www.medpagetoday.com/infectiousdisease/covid19/85315>.

² <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

not assigned to a facility who had tested positive for COVID-19.³ These numbers, which do not include non-ICE staff and contractors at the facilities, are likely just the tip of the iceberg in terms of the number of ICE staff and detainees who are already infected but are unaware due to the lack of testing nationwide, and the fact that people who are infected can be asymptomatic for several days.

8. When COVID-19 impacts a community, it will also impact the detention facilities. In New York, one of the areas of early spread in the U.S., multiple correctional officers and jail and prison inmates have become infected with COVID-19. The medical leadership in the NYC jail system have announced that they will be unable to stop COVID from entering their facilities and have called for release as the primary response to this crisis. Staff are more likely to bring COVID-19 into a facility, based solely on their movement in and out every day.
9. Once COVID-19 is inside a facility, ICE will be unable to stop the spread of the virus throughout the facility given long-existing inadequacies in ICE's medical care and also in light of how these facilities function. ICE has faced longstanding challenges in maintaining adequate health staffing for many years, and the outbreak of this pandemic will dramatically worsen this problem.
10. I have been inside multiple ICE detention facilities, both county jails that house ICE detainees and dedicated facilities. My experience is that the densely packed housing areas, the structure of health services, food services, recreation, bathroom and shower facilities for detained people, as well as the arrangement of entry points, locker rooms, meal areas, and control rooms for staff, all contribute to many people being in small spaces.
11. Detention facilities are designed to force close contact between people and rely on massive amounts of movement every day from one part of the facility to another, e.g., for programming, access to cafeterias, commissary, and medical, just to name a few. This movement is required of detained people as well as staff. My experience managing smaller outbreaks is that it is impossible to apply hospital-level infection control measures on security staff. In a hospital or nursing home, staff may move up and down a single hallway over their shift, and they may interact with one patient at a time. In detention settings, officers move great distances, are asked to shout or yell commands to large numbers of people, routinely apply handcuffs and operate heavy doors/gates, operate large correctional keys and are trained in the use of force. These basic duties cause the personal protective equipment they are given to quickly break and become

³ *ICE Guidance on COVID-19*, IMMIGRATION & CUSTOMS ENFORCEMENT (Updated Apr. 20, 2020), <https://www.ice.gov/coronavirus>.

useless, and even when in good working order, may impede their ability to talk and be understood, in the case of masks. For officers working in or around patients at risk or with symptoms, there may be an effort to have them wear protective gowns, as one would in any other setting with similar clinical risks. These gowns cover their radios, cut down their ability to use tools and other equipment located on their belts and in my experience working with correctional staff, are basically impossible to use as a correctional officer.

12. Efforts to lock detained people into cells will worsen, not improve this facility-level contribution to infection control. Units that are comprised of locked cells require additional staff to escort people to and from their cells for showers and other encounters, and medical, pharmacy and nursing staff move on and off these units daily to assess the welfare and health needs of these people, creating the same movement of virus from the community into the facilities as if people were housed in normal units.

ICE RESPONSE TO COVID-19 IN DETENTION CENTERS IS DEFICIENT

13. On the whole, ICE's response to the COVID-19 pandemic is grossly deficient and at odds with recommendations of the CDC regarding detention settings in a manner that threatens the health and survival of ICE detainees. I've reviewed available documents regarding their planning, including the March 6, 2020 interim guidance sheet provided by ICE Health Service Corps,⁴ March 27, 2020 Memorandum to ICE wardens ("March 27 memo"),⁵ ICE's guidance on its website,⁶ the April 4, 2020 Docket Review memo,⁷ and the April 10, 2020 ERO COVID-19 Pandemic Response Requirements ("ERO document").

A. The March 6 and March 27 Memoranda

14. I have reviewed ICE's March 6 and March 27, 2020 documents addressing COVID-19 (together, the "March 2020 ICE Protocols"); although I understand the March 6 interim guidance policies to be superseded by the April 10, 2020 ERO document, it is worth noting that these policies were deficient and at odds with recommendations of the CDC regarding detention settings in a manner that threatens the health and survival of ICE detainees. The April 10 ERO document mandates compliance with the March 27 memo, which also fails to comply with CDC guidance.

15. ICE's March 27 memo takes the dangerous approach of limiting clinical guidelines for COVID-19 response to the detainees being provided direct care by ICE Health Services

⁴ <https://www.aila.org/infonet/ice-interim-reference-sheet-coronavirus>.

⁵ <https://www.ice.gov/doclib/coronavirus/attF.pdf>.

⁶ <https://www.ice.gov/covid19>.

⁷ <https://www.ice.gov/doclib/coronavirus/attk.pdf>.

Corps (IHSC) staff, which represents approximately 13,000 detainees.⁸ As a result, detention centers operated by public and private contractors are not provided with this guidance. This approach to management of the COVID-19 outbreak ensures that vital information would remain in these facilities, instead of being acted upon by ICE. As a result, ICE could not have known when its own policies or even basic standards of infection control were being followed.

16. The March 2020 ICE Protocols failed to address the key recommendation of the CDC on the need for adequate staffing and training of staff. ICE's March 27 memo simply states that "facilities are expected to be appropriately staffed," but provides no guidance whatsoever on how that could be accomplished in the context of existing staffing gaps, a decreased workforce, and increased needs resulting from steps required to screen, monitor and treat detainees for COVID-19. CDC Detention Guidelines make clear the need for a concrete plan for ensuring adequate staffing as part of the COVID-19 response.⁹ These guidelines also make clear the need to orient staff to the critical need to stay home if and when they experience symptoms of COVID-19 infection. The March 27 guidance mentions only the "expectation" of appropriate staffing levels rather than implementing any meaningful oversight system to ensure that staffing levels are appropriate. Critically, appropriate staffing levels refers not only to a sufficient number of staff but also to a sufficient number of qualified staff. In my experience, many facilities rely heavily on guards and LPNs to do medical work that they are not qualified to do; likewise, many facilities rely on RNs to do medical work that only doctors or physician-assistants are qualified to do. There is no indication whatsoever that ICE is implementing procedures to ensure not only sufficient numbers of staff but also sufficient numbers of qualified staff. This is a very serious defect because access to qualified medical professionals is crucial during this rapidly evolving pandemic.
17. The March 2020 ICE Protocols failed to address the key recommendation of the CDC on the need for adequate intake screening of detainees. CDC Detention Guidelines make clear that everyone arriving in a detention facility should be screened for signs and symptoms of COVID-19, but the March 2020 ICE Protocols relied on questions about travel or other known contacts as a precursor to temperature checks and other sign and symptom checks. It is likely that almost everyone in the general public who is not practicing social distancing is in contact with the COVID-19 virus, and these questions give a false impression that they will somehow help identify those most likely to have this type of contact. According to the CDC, the appropriate focus should be on checking for active symptoms including fever and known sick contacts of any type every time a

⁸ <https://www.ice.gov/ice-health-service-corps>.

⁹ Guidance for Correctional & Detention Facilities ("CDC Detention Guidelines")

<https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

person, whether a staff member or detained person, enters an ICE facility. The March 2020 ICE Protocols also failed to clearly mandate that all symptomatic patients be immediately given a mask and placed in medical isolation, and that all staff who have further contact with that patient wear personal protective equipment, as set forth in the CDC Detention Guidelines. These protocols also failed to address the now-standard CDC advice that everyone who cannot engage in social distancing wear a face covering.¹⁰

18. The March 2020 ICE Protocols provided no guidance about identification of high-risk patients at the time of entry or any special precautions that would be enacted to protect them. The protocol also failed to address the identification of high-risk patients who have already been admitted.
19. The March 2020 ICE Protocols stated that people with suspected COVID-19 contact would be monitored for 14 days with symptom checks. The protocols were written as if this would be a rare occurrence, reflecting smaller outbreak management, but the prevalence of COVID-19 has grown to such an extent that a large share of newly arrived people will have recent contact with someone who is infected. ICE would need to use this level of monitoring for every person arriving in detention. Accordingly, ICE would need to dramatically expand its medical facilities and staffing to conduct this daily monitoring of every newly arrived person for 14 days. The protocols failed to contemplate these necessary changes.
20. The March 2020 ICE Protocols failed to address the key recommendation of the CDC on the need for monitoring and care of symptomatic patients.
 - a. The CDC Detention Guidelines make clear that patients who exhibit symptoms of COVID-19 should be immediately placed in medical isolation. The March 2020 ICE Protocols only invoked this response for newly arrived detainees who also answered yes to screening questions. This approach results in a failure to actively screen the large majority of detainees: people who are already detained.
 - b. CDC Detention Guidelines clearly indicate the need for twice-daily monitoring of patients who are symptomatic or in quarantine, and ICE only mandated a daily check.
 - c. ICE made no mention of access to masks for patients in quarantine settings.
 - d. ICE failed to present a plan for how isolation would be conducted when the number of people exceeded the number of existing isolation rooms or cells, a near certainty.

¹⁰ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

21. The March 2020 ICE Protocols failed to address the key recommendation of the CDC Detention Guidelines on the need for social distancing. ICE's March 27 memo mentions social distancing briefly, but fails to address how ICE facilities will enact modified meal or recreation times and also fails to address the most common scenarios in which high risk detainees find themselves in close quarters, including shared cells, medication lines, bathroom facilities, common walkways and day rooms, sally ports and transportation. Again, because there is no cure for COVID-19, social distancing remains the most effective means of prevention, and ICE failed to meaningfully implement this precaution in its March 2020 guidance.
22. The March 2020 ICE Protocols failed to address the recommendation of the CDC Detention Guidelines on the need to limit transportation of detainees as a means to limit the spread of COVID-19. CDC Detention Guidelines state that transfers should be limited to those that are absolutely necessary and that receiving facilities must have capacity to isolate symptomatic patients upon arrival. ICE protocols failed to address these issues. CDC Detention Guidelines make clear the need for a clear plan for all aspects of transport of suspected COVID-19 infected people, and ICE does not have or did not report such a plan. The CDC Detention Guidelines recommend a level of infection control measures in transportation of symptomatic or potentially COVID-19 positive patients that would require far more staffing and training than ICE has the capacity to provide for large scale transfers: "If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case – including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to properly isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE . . . and that the transport vehicle is cleaned thoroughly after transport." In other words, transferring people between facilities, as ICE routinely does and as I understand is still going on, requires far more measures than ICE implements and should be ceased.
23. The March 2020 ICE Protocols failed to address the recommendation of the CDC Detention Guidelines on the need for environmental cleaning of both housing areas and other common spaces within facilities. CDC Detention Guidelines provide clear details about the types of cleaning agents and cleaning processes that should be employed, while ICE provided no guidance to facilities on this critical issue. Reliance on detainees for conducting critical environmental cleaning, without proper training, protection or supervision, represents a gross deviation from correctional practices, and will likely contribute to the spread of COVID-19 throughout the ICE detention system.

B. The April 4, 2020 Docket Review Guidance

24. None of the ICE COVID-19 protocols set forth sufficient policies or protocols addressing release of medically vulnerable detained people in light of the significant risks to those people posed by COVID-19. This must be done immediately and is in contrast to the efforts made in many prison and jail systems across the country.
25. The April 4 list of risk factors for serious illness and death from COVID-19 infection developed by ICE is inconsistent with CDC guidelines and fails to adequately advise facilities on which detainees are at elevated risk. This list is included in a memo to Field Office Directors regarding Docket Review, and fails to include very basic risk factors identified by the CDC, including body mass index over 40 and being a current or former smoker.¹¹ By apparently assigning this process to field directors and their staff, who are not medical professionals, advising security staff to check with medical professionals after the fact, and failing to include CDC-identified risk factors, this docket review process will likely leave many people with true risk factors in detention. This is particularly the case if they're detained under certain immigration law provisions, where the guidance recommends officers not release them despite risks. Thus, the guidance appears to be just that – guidance, and the risk factors are not determinative. In fact, the guidance appears to not make these risk factors determinative for release—even for people who are not subject to mandatory detention. ICE also identifies people under the age of 60 in this cohort but the age of 55 is appropriate. Because detained people have consistently been identified as having higher levels of health problems that reflect that they are 10-15 years more progressed than chronological age, numerous organizations and research studies have used the age of 55 to define the lower limit of older detainees.¹² ICE also limits the high risk period for women to 2 weeks after child birth, yet one of the most serious increased risk during pregnancy is hypercoagulable state, which increases the risk of blood clots in the large veins of the lower extremities, and sometimes in the lung which can prove fatal. This risk extends to 6 weeks post-partum and also occurs independently with COVID-19 infection.¹³ Accordingly, ICE should include these definitions in its list of risk factors. ICE should also put in place a mechanism to ensure that risk factors reflect the evolving science and data concerning COVID-19, since it is likely that additional risk factors will emerge as more data is collected.
26. The April 4 promulgation of an incomplete list of risk factors in a memo relating to discretion for release occurs in a complete vacuum of guidance on special protection and

¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> and <https://www.cdc.gov/mmwr/volumes/69/wr/mm6913e2.htm>.

¹² <https://nicic.gov/aging-prison> and <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3464842/>.

¹³ <https://www.acog.org/patient-resources/faqs/womens-health/preventing-deep-vein-thrombosis> and <https://www.medpagetoday.com/infectiousdisease/covid19/85865>.

clinical management of people with those risk factors while in detention. This Memo describes an overly discretionary decision-making process for release that does not sufficiently favor depopulation as public health requires and that has no urgency to it. Reviews and releases must be undertaken immediately.

27. The April 4 ICE memo to Field Directors on identification and release of detained people with risk factors for serious illness and death from COVID-19 infection is both incomplete and revelatory. ICE has omitted multiple important risk factors identified by the CDC in its own list but has also failed to create any surveillance of the outbreak across facilities that includes the number of patients experiencing symptoms, confirmed COVID-19 infection or hospitalization by presence or absence of CDC risk factors.

C. The April 10, 2020 ERO Document

28. The ERO document identifies multiple areas of COVID-19 response that all facilities holding ICE detainees must supposedly adhere to. Multiple sections of this document reflect inconsistencies or critical omissions from CDC Detention Guidelines for response to COVID-19. In addition, ICE is unlikely to ensure compliance with the policies laid out in this document due to longstanding lack of information systems, quality assurance and oversight mechanisms that are standard in other carceral or detention settings. These inconsistencies and omissions increase the risk that facilities holding ICE detainees will not follow evidence-based practices in infection control and that ICE detainees will experience higher risks of serious illness and death because of these deficiencies.
29. The ERO document omits key aspects of CDC guidelines for self-monitoring and quarantine for staff and detainees who have had contact with suspected or known cases of COVID-19.
 - a. Staff who have contact with a known or suspected case of COVID-19 are only mentioned in one section of this document “Exposed employees must then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).” This omits several critical aspects of CDC guidelines that bear on this very scenario, contacts between critical staff and COVID-19 suspected or known cases. The CDC guidelines include the following directives:¹⁴
 - i. Pre-Screen: Employers should measure the employee’s temperature and assess symptoms prior to them starting work. Ideally, temperature checks should happen before the individual enters the facility.

¹⁴ <https://www.cdc.gov/coronavirus/2019-ncov/community/criticalworkers/implementing-safety-practices.html>.

- ii. Regular Monitoring: As long as the employee doesn't have a temperature or symptoms, they should self-monitor under the supervision of their employer's occupational health program.
 - iii. Wear a Mask: The employee should wear a face mask at all times while in the workplace for 14 days after last exposure. Employers can issue face masks or can approve employees' supplied cloth face coverings in the event of shortages.
 - iv. Social Distance: The employee should maintain 6 feet and practice social distancing as work duties permit in the workplace.
 - v. Disinfect and Clean work spaces: Clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment routinely.
- b. In addition, the ERO document provides no guidance on how facilities should act if one of these staff members with a known/suspected contact becomes ill at work. The CDC provides clear guidance however:
- i. "If the employee becomes sick during the day, they should be sent home immediately. Surfaces in their workspace should be cleaned and disinfected. Information on persons who had contact with the ill employee during the time the employee had symptoms and 2 days prior to symptoms should be compiled. Others at the facility with close contact within 6 feet of the employee during this time would be considered exposed."
- c. Key CDC recommendations for detainees who have contact with a known or suspected case of COVID-19 are similarly left out of the ERO document. The ERO document addresses this aspect of facility management with the following: "If an individual is a close contact of a known COVID-19 case or has traveled to an affected area (but has no COVID-19 symptoms), quarantine the individual and monitor for symptoms two times per day for 14 days." This omits several critical aspects of CDC guidelines that bear on this very scenario, the quarantine of detainees who have contacts with suspected or known cases. In the section on "Management," the CDC Detention Guidelines include specific protocols applicable to quarantine. Examples of these protocols include:¹⁵

¹⁵ <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#management>.

- i. Provide PPE to staff working in quarantine settings, and masks to detainees in these settings.
 - ii. **Quarantined individuals should be monitored for COVID-19 symptoms twice per day, including temperature checks.**
 - iii. **Meals should be provided to quarantined individuals in their quarantine spaces.** Individuals under quarantine should throw disposable food service items in the trash. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.
30. The ERO document mandates that every facility holding ICE detainees have a COVID-19 mitigation plan in place. The ERO document specifies the following: “Consistent with ICE detention standards, all facilities housing ICE detainees are required to have a COVID-19 mitigation plan that meets the following four objectives:
 - a. To protect employees, contractors, detainees, visitors to the facility, and stakeholders from exposure to the virus;
 - b. To maintain essential functions and services at the facility throughout the pendency of the pandemic;
 - c. To reduce movement and limit interaction of detainees with others outside their assigned housing units, as well as staff and others, and to promote social distancing within housing units; and
 - d. To establish means to monitor, cohort, quarantine, and isolate the sick from the well.
31. My experience in reviewing policies and procedures in detention settings around the nation is that many facilities holding ICE detainees do not have such a plan and that since a critical part of the CDC recommendations include preparation for COVID-19, many facilities have already failed to meet many basic elements of the COVID-19 responses recommended by the CDC. Even if ICE is able to ensure and report that every facility has created such a plan, it is likely that the lack of COVID-19 response plan to prepare many facilities and respond to the early stages of the outbreak will increase the risk of serious illness or death. Many ICE facilities are in the throes of COVID-19 infection, and waiting until this pandemic is at its peak to require a mitigation plan represents a gross deviation from both CDC guidelines and basic correctional practice. Key areas of work that must be conducted before COVID-19 arrives include training of staff, ordering of supplies,

planning for quarantine housing and monitoring, and identification of surge staffing. Starting these basic tasks immediately makes it much less likely that facilities will succeed in their efforts to slow spread of the virus.

32. The ERO document identifies a list of high-risk conditions that is inconsistent with the guidance given by ERO just days earlier and fails to adhere to CDC guidelines.
 - a. The new ERO document fails to identify pregnant or post-partum women. The ERO docket review guidelines dated April 4, 2020, failed to identify smoking history or body mass index over 40 as risk factors, both of which are included by the CDC.
 - b. The age for older detainees was indicated as 65 in the new ERO document and 60 in the prior document. The correct age, based on correctional standards, should be 55.
33. The purpose of the ERO document's identification of high-risk patients is unclear beyond custody review, but it fails to establish any higher level of protection from COVID-19 infection.
 - a. The prescribed actions in the ERO document regarding high-risk detainees include identifying who they are, emailing their name, location, medical issues and medications, and facility point of contact information to ICE headquarters apparently for review for release.
 - b. No guidance is given about how these high-risk patients can be protected from being infected with COVID-19, unless and until they are in a quarantine area or have been identified as symptomatic.
 - c. Having identified the detainees who are at increased risk of serious illness and death, and initiated a process to effectuate their release based on that risk, ICE must also create increased surveillance of these detainees, including twice daily symptom checks with temperature checks.
34. The ERO document creates an unwieldy and unrealistic process for facilities to notify ICE headquarters regarding high risk detainees.
 - a. The process of requiring every facility to send emails about every individual detainee with risk factors is unwieldy and unlikely to be effective. I have created

surveillance tools for high risk patients in multiple detention scenarios and several key elements of this process are problematic:¹⁶

- i. The process of emailing thousands of names with relevant information, or even spreadsheets, tables and other documents from over 150 facilities creates an unreliable and error prone system for finding the most vulnerable detainees inside ICE facilities.
- ii. The process identified by ICE is static, meaning that as detained people move from one facility to another, there will be no way for their location to be automatically updated with their high-risk status, requiring labor intensive and error-prone records reviews.
- iii. This approach will not allow for day to day management of the high-risk population by ICE leadership, since there will not be any way to be automatically notified when people are released, become ill for non-COVID-19 reasons, or even to automatically cross check the new COVID-19 cases against this initial batch of hundreds or thousands of emails.
- iv. ICE should create single portal into which every facility can enter data on the detainees who meet CDC criteria for being high-risk. I employed such a portal as Chief Medical Officer of the NYC jail system, and we relied on this before and after the implementation of an electronic medical record as a way to identify high-risk patients and then track them from one facility to another. This type of approach is also essential for ICE to meet its stated obligations regarding re-entry planning for people who are leaving amid the COVID-19 crisis and coordination with local and state public health partners.
- v. The net effect to this cumbersome and inefficient process will be that it will move unacceptably slowly in a fast-changing situation, far fewer detainees with risk factors will actually be released than could have occurred based on policies, and more high-risk patients will be at risk of serious illness and death in ICE detention.

35. The ERO document fails to include vital elements of CDC guidelines on preventing the spread of COVID-19 inside detention settings:

¹⁶ <https://cochs.org/files/health-it-hie/nyc-meaningful-use.pdf>;
https://www.researchgate.net/publication/264512394_Data-Driven_Human_Rights_Using_the_Electronic_Health_Record_to_Promote_Human_Rights_in_Jail.

- a. The ERO document fails to mention or provide guidance on key aspects of social distancing including:
 - i. Intake pens
 - ii. Clinical and medication lines
 - iii. Bathroom and shower areas
 - iv. Sally ports
 - v. Staff entry, symptom checking, meal and locker room areas
- b. The ERO document fails to include guidance on the importance of communication with detainees about changes to their daily routine and how they can contribute to risk reduction, both of which are explicitly identified by the CDC guidelines. This is particularly important in a cross-cultural, multi-lingual setting like ICE detention. Simply posting signs is insufficient to communicate with detained people or staff, particularly during a stressful and chaotic situation like an outbreak. My personal experience leading both small and large scale outbreak responses behind bars is that frequent communication, in housing areas and other parts of detention settings where detained people are held, and where staff work, is critical to delivering important messages about infection control and also hearing about what is working and what isn't.
- c. The ERO document fails to include many critical aspects of cleaning and disinfection outlined in CDC guidelines including:
 - i. CDC guidelines identify a higher level of cleaning and disinfection after a person has been identified as a suspected COVID-19 case. This common sense approach is critical to ensuring that the most high-risk scenarios encountered by detainees and staff alike are responded to appropriately.
 - ii. The ERO document only mentions cleaning of vehicles after transport of a known/suspected case but fails to mention anything about the housing area, cell, bunk or personal effects of detainees, or the computer, equipment or other belongings of staff.
 - iii. CDC guidelines indicate that in settings where people are held overnight, response to a known or suspected COVID-19 case should include closing off areas used by the person who is sick, opening outside doors and windows to increase air circulation in the area and

waiting 24 hours (or as long as possible) before cleaning/disinfecting.

- iv. The ERO document fails to establish what PPE should be utilized by staff or detainees cleaning areas occupied by a known or suspected COVID-19 case.
- d. CDC guidelines clearly recommend against transfer of detainees between facilities, as a means to prevent the regional spread of COVID-19. This approach is only mandated with regard to non-ICE detainees by the April 10 ERO document, leaving transfers of people in custody of ICE unrestricted.
- e. The ERO document requires that everyone in facilities engage in hand washing for 20 seconds with soap and water but fails to address how this can be accomplished in facilities that utilize metered faucets that make this process essentially impossible.
- f. The ERO document fails to establish or mandate a respiratory protection program, a critical guideline of the CDC: **“If not already in place, employers operating within the facility should establish a respiratory protection program as appropriate, to ensure that staff and incarcerated/detained persons are fit tested for any respiratory protection they will need within the scope of their responsibilities.”** Simply giving out N95 or other masks to staff and detainees and failing to train them and identify the high-risk tasks or scenarios they will encounter serves only to decrease the overall effectiveness of infection control and increase the risk of serious illness and death in ICE facilities. The ERO document gives some details about cloth masks, but there is no mention of any plan to train, record or supervise members of the respiratory protection team, despite the CDC clearly including security personnel in this team.¹⁷

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

- a. If an individual does not clear the screening process, follow the protocol for a suspected COVID-19 case¹⁸ – including putting a face mask on the individual,

¹⁷ <https://www.cdc.gov/niosh/npptl/hospresptoolkit/programeval.html>. CDC definition of healthcare personnel includes “paid and unpaid persons who provide patient care in a healthcare setting or support the delivery of healthcare by providing clerical, dietary, housekeeping, engineering, security, or maintenance services.”

¹⁸ <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Medicalisolation>.

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

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

D. Critical Issues the ICE Has Failed to Address Absent Direct CDC Guidance

37. ICE does not have any mechanisms to monitor or promote the health of all people in its charge. This failure is documented in many reports about ICE's inadequate healthcare system, but now poses a grave risk to their survival as ICE struggles to mount a competent response to COVID-19 across more than 150 facilities, on behalf of roughly 40,000 detainees and almost as many direct and contract staff. ICE's failure to properly monitor and oversee medical care at its detention centers has been a chronic concern in the health services provided to ICE detainees prior to this outbreak and has been cited as a core failure of ICE in its obligations to establish quality assurance throughout its detention network.¹⁹ There is no indication that ICE can adequately monitor the response across its system to COVID-19. Absent robust and centralized oversight, ICE will not be able to provide a coordinated response informed by on-the-ground data from detention centers. This is in stark contrast to many prison systems across the country that are coordinating their efforts, including with health departments.
38. ICE has no plan or even capacity to provide daily clinical guidance to all of the clinical staff it relies on to care for ICE detainees, whether at ICE-operated facilities or contract facilities. The differing levels of oversight and clinical involvement across the various types of ICE facilities means that ICE is unable to promulgate and support a consistent set of clinical practices for all ICE detainees. This is a core failure because of the new nature of COVID-19 and constantly changing clinical guidance on how to treat patients. Daily briefings with health administrators and medical and nursing leadership should be

¹⁹ <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>;
<https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

held; both are a core aspect of outbreak management and provide a critical avenue for receiving feedback on real-time conditions inside facilities. ICE has not articulated any plan to ensure that this type of basic communication is in place across its network of detention settings. This guidance should also include uniform recommendations on when and how to transport patients to the hospital. Failure to implement this kind of procedure—particularly in light of the other defects described herein—poses a significant risk to the health and lives of ICE detainees.

39. As ICE determines to release people from detention, they should be afforded symptom screening akin to what is done with staff, but the release of detainees to the community will lower their own risks of infection and will also serve to flatten the overall epidemic curve by decreasing the rate of new infections and the demands on local hospital systems. From a medical and epidemiologic standpoint, people are safer from COVID-19 infection when not detained, and the epidemic curve of COVID-19 on the general community is flattened by having fewer people detained.

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

Signed this 28th day of April, 2020 in Port Washington, NY.



Homer Venters

EXHIBIT C

Sponsor Documents

EXHIBIT D

Medical Documents