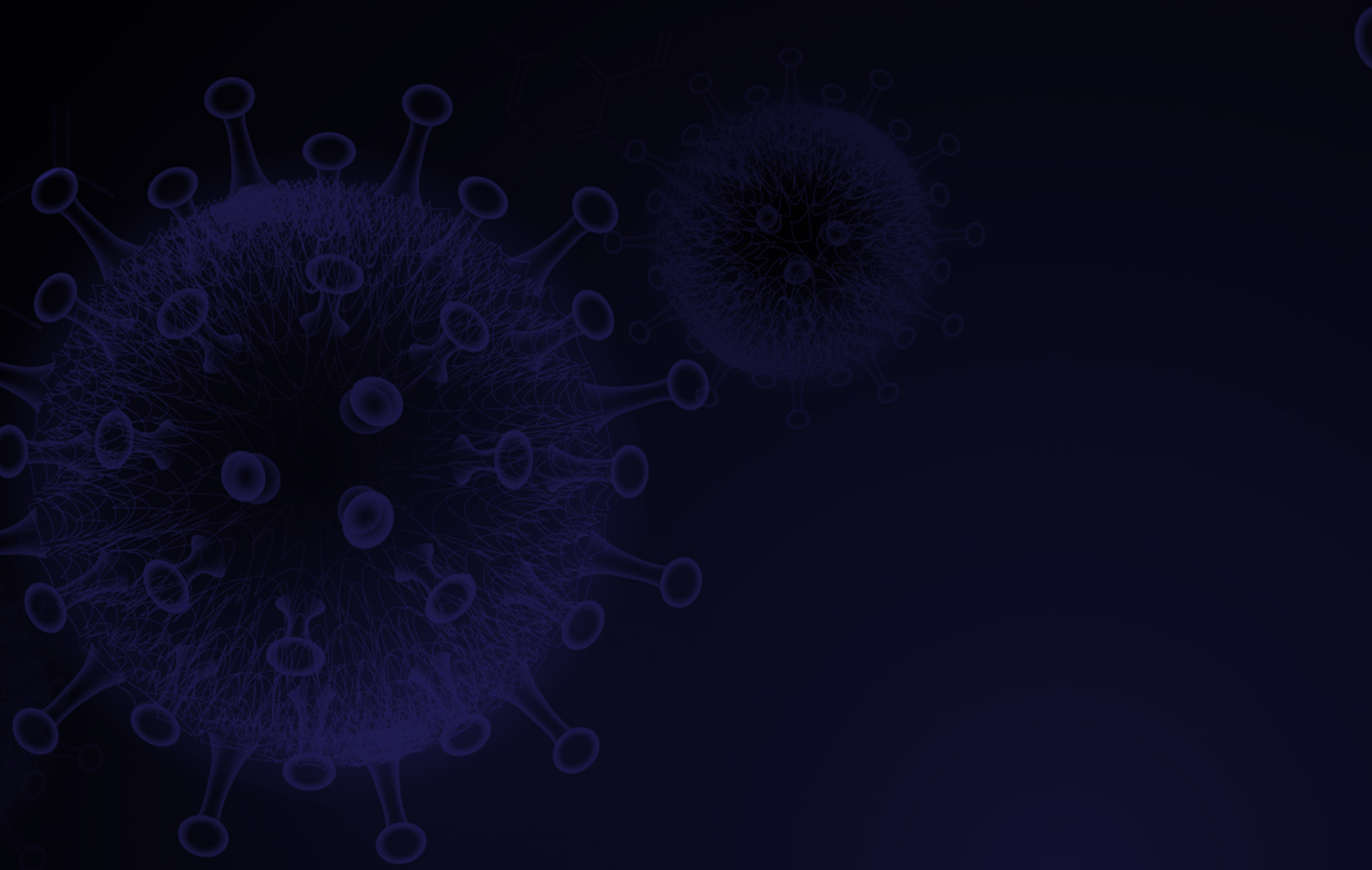

Southeast Immigrant Freedom Initiative

COVID-19 Parole Informational Guide for Sponsors

SPLC Southern Poverty Law Center

UPDATED MAY 4, 2020

ADVISORY UPDATE: *FRAIHAT V. ICE*

APRIL 20, 2020

On April 20, 2020, the Court in *Fraihat v. ICE,* Case No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020), ECF No. 133, issued an order impacting all people in Immigration and Customs Enforcement (ICE) detention with Risk Factors.

People with Risk Factors are people who are over the age of 55, who are pregnant, or have health conditions or disabilities including:

- Chronic health conditions such as:
  - Heart disease (including congestive heart failure, history of myocardial infarction, history of cardiac surgery)
  - High blood pressure (hypertension)
  - Chronic respiratory disease (including asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases)
  - Diabetes
  - Cancer
  - Liver disease
  - Kidney disease
- Autoimmune diseases (including psoriasis, rheumatoid arthritis, systemic lupus erythematosus)
- Severe psychiatric illness
- History of organ transplantation
- HIV/AIDS

For anyone in ICE detention with Risk Factors, ICE is ordered to:

- Identify and track them by April 30, 2020, or within five days of detention (whichever is later)
- Conduct custody redeterminations to determine whether they can be protected from COVID-19 infection in detention or whether they must be released because ICE cannot adequately protect them based on their individual vulnerabilities

ICE is also ordered to update their internal protocols for responding to the pandemic to better protect people who remain in detention from COVID-19 infection and ensure that the requirements of this order be implemented at **every detention facility that detains migrants for more than 72 hours across the nation.**

The Fraihat attorneys are currently working with ICE to set up a hotline where you can dial in for additional support. We will update this advisory when that hotline has been set up.

SEE SPLCENTER.ORG/FRAIHAT-V-ICE-COMMUNITY-RESOURCES FOR MORE INFORMATION ON THIS IMPORTANT COURT DECISION.

TABLE OF CONTENTS

Instructions for requesting parole from ICE

This packet is designed to assist you in supporting the parole request of a detained individual who may be at high risk should they contract COVID-19 while detained for immigration purposes. This does not constitute legal advice.

STEP 1. IDENTIFY THE SPONSOR

Who can be the sponsor?

The sponsor is a person who agrees to take responsibility for the detained individual throughout the process of their immigration case. This person will attest to ICE, in writing, that: (1) they will give you a home to live once you leave detention (2) they will give you financial support (3) they will ensure that you go to your court hearings.

Does the sponsor have to be a relative?

Not necessarily. The rules do not require sponsors to be relatives of people who apply for parole. However, experience shows us that ICE considers it more favorable if the sponsors are familiar. If there is no family member who is willing to be the sponsor, do not give up. Consider other options, such as faith organizations, support for immigrants, or solidarity with compatriots in your country.

Does the sponsor have to be a citizen or permanent resident of the U.S.?

There is no written rule that requires it. However, experience teaches us that ICE rarely approves parole for someone if their sponsor is not a citizen or permanent resident of the U.S. So do your best to locate a sponsor that is a citizen or resident. Additionally, ICE may use information provided to them for other purposes. Consult with an immigration attorney if you have further questions.

STEP 2. COLLABORATE WITH THE SPONSOR TO PREPARE A LETTER OF SUPPORT

What is the purpose of the support letter?

The letter of support is the opportunity to show ICE that the sponsor will honor promises to give the detained individual a home, support them financially, and make sure that they will go to all their hearings in immigration court until their court case is over.

What does the sponsor's letter of support have to say?

The sponsor's letter of support must contain the following elements:

1. Data on sponsor

- full name of sponsor
- physical address of sponsor
- sponsor phone number
- sponsor immigration status (preferably permanent resident or U.S. citizen)

2. The detained individual's information

- their full name
- their A number
- their country of origin

3. Explanation of how the detained individual and the sponsor know each other

- what relationship do they have (for example, married, parent / child, cousins, friends, or met through a migrant support organization)
- how long they've known each other
- anecdotes that show how the sponsor knows the detained individual's character or how close their relationship is

4. Written commitments of sponsor

- a promise that if the detained individual is released on parole, they will live at the address indicated with the sponsor
- a promise that the sponsor is willing to support the detained individual financially during their immigration case

STEP 3. COMPLETE THE PRO SE COVID-19 PAROLE REQUEST FORM

Refer to the Appendix for the **Pro Se COVID-19 Parole Request Form** and accompanying instructions.

STEP 4.COLLECT EVIDENCE

You will need documents that prove several things: the detained individual's identity, that the detained individual is not going to miss any court hearings or appointments with immigration if released, and that the detained individual is not a danger to the community.

Identity documents

There are several documents that can be included to establish the detained individual's identity. See the list of documents in the section of this guide entitled, "Parole Checklist, Documents that can prove identity."

Documentation that the detained individual is not a flight risk

These documents will come mainly from the sponsor. In addition to the sponsor's letter, you will need:

1. Proof of the sponsor's residential address. Make sure that any document you are going to use contains the name and residential address of your sponsor. Examples:

- phone bill
- utility bill
- mortgage or lease

2. Proof of the sponsor's immigration status. Examples:

- copy of permanent resident card (green card)
- copy of U.S. passport

Documentation that the detained individual is not a danger to the community.

Do you have a criminal record in your home country?

- **No:** try to get a certification of no criminal record from the government of that country
- **Yes:** include evidence that you served any sentence that was imposed, you were rehabilitated, and / or the accusation was motivated by political reasons connected to your persecution. See the list of documents in the section of this guide entitled, "Parole Checklist, Documents That Can Prove You Are Not a Danger to the Community."

STEP 5. TRANSLATE ANY DOCUMENT THAT IS NOT IN ENGLISH

For any document that is not in English, include the document in the original language, plus two things:
1. A translation of the document into English
2. A translation certificate

The translation certificate should read as follows:

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: _____

STEP 6. MAKE A FINAL REVIEW OF YOUR APPLICATION

Make sure you have met all the requirements. Use the section of this guide titled, “Parole Checklist,” to verify that you have followed all the steps.

STEP 7. SEND THE DOCUMENT

The detained individual or the sponsor can send the request. Refer to the Appendix for the **Pro Se COVID-19 Parole Request Instructions**, for information on how to look up the Enforcement and Removal Operations (ERO) Field Office the request should be sent to. If mailing the request, be sure to use a mail service that certifies the receipt of the shipment such as UPS, FedEx, or certified mail with the U.S. Post Office. Be sure to make copies of the request and all supporting documents for your records.

APPENDIX A

Instructions for Completing the Pro Se COVID-19 Parole Request Form

The Pro Se COVID-19 Parole Request is a document that you can use to request that a loved one be released from immigration detention for urgent humanitarian reasons. These accompanying instructions are designed to help you complete the request and are not to be used as legal advice. It is always recommended that the detained individual attempt to seek the assistance and advice of an experienced immigration attorney. However, it is not necessary to have an attorney in order to request humanitarian parole.

The Pro Se Parole Request and any other supporting documentation must be submitted in English. The instructions below explain how to complete the request form in English step by step and page by page.

PAGE 1: BASIC INFORMATION

On the top of the first page, include the date you are sending out or completing the request in the top field marked as "*Date.*" In the United States of America, the month comes first. For example, March fifteenth, 2020 would be written as 03/15/2020.

Mark whether you are sending the request via email, fax, or mail. You will need to send the request and any supporting documents to the detained individual's Immigration and Customs Enforcement (ICE) officer who works in the Enforcement and Removal Operations (ERO) office. Follow these steps to find out which ERO office to send the request to:

- First look up the detention center here: https://www.ice.gov/detention-facilities. The page for the detention center will tell you which ERO Field Office works with people detained at that facility.
- Once you know which ERO Field Office applies, look up how to contact the ERO Field here: https://www.ice.gov/contact/ero.

In the lines provided on the first page as indicated, write down the contact information of the ERO Field Office you are sending the request to.

In the lines provided on the first page as indicated, write down the name of the person who is detained and their A number. The A number is a number assigned to them by immigration authorities. The detained individual will know their A number as it will be on their immigration paperwork and any identifying documents given to them at the detention center, such as a wristband or identification card.

PAGE 2: "I. THE APPLICANT IS MEDICALLY VULNERABLE"

On the lines provided on the second page, describe any medical conditions the detained individual may have. If the conditions are severe or puts them at greater risk of COVID-19, be sure to write this down as well. Use an extra sheet of paper to elaborate if you need to.

Be sure to note any of the following:

- Autoimmune disease(s)
- Heart disease
- Lung disease
- Diabetes
- Asthma
- History of lung or chest infections
- Human immunodeficiency virus (HIV)

PAGE 4: "IV. THE APPLICANT IS NOT A DANGER TO THE COMMUNITY"

On the lines provided on the fourth page, describe how the detained individual is not a danger to the community. If they do not have any criminal history, be sure to state so. If they do have criminal history, explain why that does not make them a danger to the community. For example, if they have not had any criminal issues in a long time or if they have done things to support their community (volunteer, go to church, etc.), state so.

Note: it is always best for any detained individual who has criminal history to speak to an immigration attorney before submitting anything to immigration authorities or the immigration court.

PAGES 5: "V. THE APPLICANT IS NOT A FLIGHT RISK"

On the lines provided at the top of the fifth page, write down your name, relationship to the detained individual, phone number, and address where indicated.

On the fifth page, indicate whether you are or are not the detained individual's sponsor. The sponsor is someone with whom the detained individual will reside. The sponsor may also provide basic necessities such as food and clothes. If you are the sponsor, check the first box, immediately to the left of "am." If you are not the sponsor, check the second box.

Whether you are or are not the detained individual's sponsor, after "I am committed to supporting the Applicant...," write on the indicated lines, how you intend to support this person. For example, will you provide them with food and clothes? Will you help them get to their immigration court dates? You can be creative and indicate anything with which you intend to help the detained individual.

If you will not be the sponsor, on the lines indicated at the bottom of the fifth page, write down the name, relationship to the detained individual, phone number, and address of the individual's sponsor where indicated.

Note: It is critical that there be a sponsor in the request. If you are not the sponsor, you must indicate someone else who will be.

PAGE 6: "VI. CONCLUSION"

Sign, date, and write your name as the person who is requesting parole on behalf of the detained individual.

FINALIZING THE PAROLE REQUEST AND SUBMITTING IT

Please refer to **Instructions for Requesting Parole from ICE** for more information about what supporting documents should be submitted in the parole request. Additionally, when you submit a humanitarian parole request because of COVID-19, we recommend that you include the reports available in the appendix called **Reports on COVID-19** as supporting evidence. You may also choose to search for more current articles and reports and include them as well.

When you have documents and evidence required for the **Pro Se COVID-19 Parole Request** (including the **Reports on COVID-19**) ready, make a copy for your own records and send the original version to the ERO Field Office you identified following the steps above. After submitting the application, we recommend that you call the ERO deportation officer to ask for updates until you receive a decision.

Pro Se COVID-19 Parole Request Form

Date: _____

Sent via: [ ] Email [ ] Fax [ ]Mail

Address(es) this letter and supporting documents was sent to:

_____

_____

_____

_____

_____

To the Deportation Officer of:

_____ _____

Name of Detained Individual A Number

REQUEST FOR PAROLE FOR URGENT HUMANITARIAN REASONS FOR THE DETAINED INDIVIDUAL NAMED ABOVE

I am writing to urge you to release the detained individual (applicant) above through this letter and the attached supporting documents. According to section 212(d)(5)(A) of the Immigration and Nationality Act (INA), the Department of Homeland Security (DHS) has the power to parole an immigrant for urgent humanitarian reasons or significant public benefit. **This application for parole is merited for urgent humanitarian reasons *and* significant public benefit.** Additionally, 212(d)(5)(B)(1) of the INA specifically notes that one scenario where humanitarian parole is justified is when the noncitizen "has a serious medical condition in which continued detention would not be appropriate."

I. THE APPLICANT IS MEDICALLY VULNERABLE

The applicant has the following medical conditions:

It is well documented that medical services in ICE detention facilities fall short of a basic standard of care. In fact, in August of 2019, a class action lawsuit alleged that, "detainees with medical and mental health conditions and those with disabilities face settings so brutal, including delays and denials of medical care, overuse of solitary confinement and lack of disability accommodations, they have led to permanent harm and 24 deaths in the last two years".[1]

1 "Trump Administration Sued Over Poor Medical Care in Immigration Centers," Politico, August 19, 2019, https://www.politico.com/story/2019/08/19/trump-administration-sued-medical-care-immigration-centers-1467605

II. THE APPLICANT FACES ELEVATED RISK OF COVID-19

Detained individuals face an elevated risk of contracting COVID-19. People in detention are highly vulnerable to outbreaks of contagious illnesses.[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]

Older populations, pregnant women and those with preexisting health conditions are even more vulnerable to contracting COVID-19, and therefore have a high likelihood of hospital admission to intensive care. 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] Given the strain on our hospitals and medical resources, particularly in rural areas where detention centers are often located, release is of the utmost urgency so as not to further overburden these healthcare workers.

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 are a very dangerous setting for outbreak and that immunodeficient people present a higher risk of serious illness, the applicant should be considered a priority for release from detention for their personal safety, the safety of other detainees and detention center staff, and to have access to the best possible medical care if exposed to COVID-19.

III. DETENTION IS NOT IN THE PUBLIC INTEREST

It is a public health necessity to minimize new cases, particularly in vulnerable groups such as those who are older or have underlying health conditions. For the safety of all detainees, detention center staff, healthcare workers, and the larger public, release of medically vulnerable individuals is necessary for public health. Further, Detention is funded by our 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.

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2 Pandemic Influenza and Jail Facilities and Populations, Laura M. Maruschak, M.A., et al, Am J Public Health, October 2009, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4504367/.

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; *see also*

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 (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.

IV. THE APPLICANT IS NOT A DANGER TO THE COMMUNITY

The Applicant is not a danger to the community for the following reasons:

V. THE APPLICANT IS NOT A FLIGHT RISK

Instead of detention, the Applicant should be paroled into the United States and released into their community. The Applicant is committed to pursuing their immigration case in the United States and appearing for all court appearances and/or check-ins. Their objective is to remain in the United States in a lawful manner. Please see below and attached evidence of the support they have in their community:

I am writing this letter to support the Applicant. My information is as follows:

_____

Name of Person Writing this Request on Behalf of the Applicant

_____ _____

Relationship to Applicant Phone Number

_____

Address

I [ ] am / [ ] am not the Applicant's sponsor.

I am committed to supporting the Applicant in the following ways:

_____

_____

_____

_____

If I am not the Applicant's sponsor, then they will live with the following sponsor:

_____

Name of Sponsor (person who the Applicant will live with if released)

_____ _____

Relationship to Applicant Phone number

_____

Address

VI. CONCLUSION

I respectfully request that the Applicant be granted humanitarian parole and released from ICE custody as soon as possible. Alternatively, should ICE not find release on parole appropriate, please release the Applicant on their own recognizance or pursuant to the Alternatives to Detention (ATD) program. Thank you.

_____ _____

Signature Date

_____

Name of Person Writing this Request

APPENDIX B

Order granting preliminary injunction in *Fraihat v. ICE*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 19-1546 JGB (SHKx)**	Date	April 20, 2020
Title	***Faour Abdallah Fraihat, et al. v. U.S. Immigration and Customs Enforcement, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) GRANTING Motions to File Amicus Briefs (Dkt. Nos. 117, 119); (2) GRANTING Plaintiffs' Emergency Motion to Certify Subclass (Dkt. No. 83); (3) GRANTING Plaintiffs' Motion for Preliminary Injunction (Dkt. No. 81); and DENYING AS MOOT Plaintiffs' Ex Parte Application to File Supplement (Dkt. No. 127) (IN CHAMBERS)**

Before the Court are: (1) two motions to file amicus briefs, (Dkt. Nos. 117, 119); (2) Plaintiffs' emergency motion to certify subclass, ("Class Certification Motion," Dkt. No. 83); (3) Plaintiffs' motion for preliminary injunction to implement protections against COVID-19, ("PI Motion," Dkt. No. 81); and (4) Plaintiffs' ex parte application for leave to file post-hearing briefing and response, (Dkt. No. 127). The Court held a telephonic hearing on the first three matters on April 13, 2020. After considering the papers filed in support of and in opposition to the matters, as well as the oral argument of the parties, the Court GRANTS motions to file amicus briefs, GRANTS the Class Certification Motion, GRANTS the PI Motion, and DENIES AS MOOT the ex parte application.

I. BACKGROUND

The country is in the midst of an unprecedented pandemic, as a result of which hundreds of millions of people have been urged to shelter in place or stay at home. However, some of us are sheltering in more fortunate circumstances than others. The central question presented by Plaintiffs' Motions is whether the conditions in which Immigration and Customs Enforcement

("ICE") detainees are held during the pandemic likely violate the Constitution, and if so, what measures can and should be taken to ensure constitutionally permissible conditions of detention.

A. Procedural Background

On August 19, 2019, Faour Abdallah Fraihat, Marco Montoya Amaya, Raul Alcocer Chavez, Jose Segovia Benitez, Hamida Ali, Melvin Murillo Hernandez, Jimmy Sudney, José Baca Hernández, Edilberto García Guerrero, Martín Muñoz, Luis Manuel Rodriguez Delgadillo, Ruben Darío Mencías Soto, Alex Hernandez, Aristoteles Sanchez Martinez, Sergio Salazar Artaga,[1] ("Individual Plaintiffs"), Inland Coalition for Immigrant Justice ("ICIJ"), and Al Otro Lado ("Organizational Plaintiffs) (collectively, "Plaintiffs") filed a putative class action complaint for declaratory and injunctive relief. ("Complaint," Dkt. No. 1 ¶¶ 21-126.) The Defendants are U.S. Immigration and Customs Enforcement ("ICE"), U.S. Department of Homeland Security ("DHS"), DHS Acting Secretary Kevin McAleenan, ICE Acting Director Matthew T. Albence, ICE Deputy Director Derek N. Brenner, ICE Enforcement and Removal Operations ("ERO") Acting Executive Associate Director Timothy S. Robbins, ERO Assistant Director of Custody Management Tae Johnson, ICE Health Service Corps ("IHSC") Assistant Director Stewart D. Smith, ERO Operations Support Assistant Director Jacki Becker Klopp, and DHS Senior Official Performing Duties of the Deputy Secretary David P. Pekoske (collectively "Defendants"). (Id. ¶¶ 127-36.)

Plaintiffs are immigration detainees with a range of serious health conditions and two organizations that provide services to detainees. (Id. at ¶¶ 21-126.) Together they claim Defendants have failed to ensure minimum lawful conditions of confinement at immigration detention facilities across the country. (Id. ¶¶ 1-13.) Plaintiffs assert four claims: (1) Due Process Clause of the Fifth Amendment - failure to monitor and prevent "Challenged Practices"[2] (all Plaintiffs and the Class against all Defendants); (2) Due Process Clause of the Fifth Amendment - failure to monitor and prevent "Segregation Practices" (Organizational Plaintiffs, Segregation Plaintiffs and Segregation Subclass against all Defendants); (3) Due Process Clause of the Fifth Amendment - failure to monitor and prevent "Disability-Related Practices" that constitute punishment (Organizational Plaintiffs, Disability Plaintiffs, and Disability Subclass against all Defendants); (4) violation of § 504 of the Rehabilitation Act ("Rehab Act"), 29 U.S.C. § 794 (Organizational Plaintiffs, Disability Plaintiffs, and Disability Subclass against DHS, ICE, and IHSC). (Compl.) On April 15, 2020 the Court Denied Defendants' motion to dismiss, sever, or transfer venue. (MTD Order, Dkt. No. 126.)

[1] The Court will refer to Individual Plaintiffs by their last names, unless Plaintiffs have the same last name, in which case the Court will use full names. The remainder of the Order will omit diacritical marks.

[2] The Court provides Plaintiffs' definitions of the Class and Subclasses, and of the Challenged Practices, Segregation Practices, and Disability Practices in its MTD Order.

On March 25, 2020, Plaintiffs filed the Class Certification and PI Motions. (Class Cert. Mot.; PI Mot.) Plaintiffs included in support of the Class Certification Motion the following documents:

- Declaration of William F. Alderman, ("Alderman Declaration," Dkt. No. 83-2 (attaching Exhibit A));
- Declaration of Michael W. Johnson, ("Johnson Declaration," Dkt. No. 83-2);
- Declaration of Stuart Seaborn, ("Seaborn Declaration," Dkt. No. 83-4 (attaching Exhibits A to J));
- Declaration of Lisa Graybill, ("Graybill Declaration," Dkt. No. 83-5);
- Declaration of Timothy P. Fox, ("Fox Declaration," Dkt. No. 83-6);
- Declaration of Alex Hernandez, ("Hernandez Declaration," Dkt. No. 83-7);
- Declaration of Aristoteles Sanchez, ("Sanchez Declaration," Dkt. No. 83-8);
- Declaration of Faour Abdallah Fraihat, ("Fraihat Declaration," Dkt. No. 83-9);
- Declaration of Jimmy Sudney, ("Sudney Declaration," Dkt. No. 83-10); and
- Declaration of Martin Munoz, ("Munoz Declaration," Dkt. No. 83-11).

In support of the PI Motion, Plaintiffs filed the following supporting documents:

- Declaration of Thomas Ragland, ("Ragland Declaration," Dkt. No. 81-2);
- Declaration of Mikhail Solomonov, ("Solomonov Declaration," Dkt. No. 81-3);
- Declaration of Maureen A. Sweeny, ("Sweeny Declaration," Dkt. Nos. 81-4, 89 (attaching Exhibit A));
- Declaration of Linda Corchado, ("Corchado Declaration," Dkt. No. 81-5);
- Declaration of Laura G. Rivera, ("Rivera Declaration," Dkt. No. 81-6);
- Declaration of Keren Zwick, ("Zwick Declaration," Dkt. No. 81-7);
- Declaration of Jamie Meyer, ("Meyer Declaration," Dkt. Nos. 81-8, 90 (attaching Exhibit A));
- Declaration of Francis L. Conlin, ("Conlin Declaration," Dkt. No. 81-9);
- Declaration of Elissa Steglich, ("Steglich Declaration," Dkt. No. 81-10);
- Declaration of Homer Venters, ("Venters Declaration," Dkt. No. 81-11 (attaching Exhibit A));
- Declaration of Dr. Carlos Franco-Paredes, ("Paredes Declaration," Dkt. Nos. 81-12, 91 (attaching Exhibit A));
- Declaration of Anne Rios, ("Rios Declaration," Dkt No. 81-13);
- Declaration of Andrew Lorenzen-Strait, ("Lorenzen-Strait Declaration," Dkt. Nos. 81-14, 92 (attaching Exhibit A)); and
- Declaration of Andrea Saenz, ("Saenz Declaration," Dkt. No. 81-15 (attaching Exhibit A)).

Defendants opposed the Class Certification and PI Motions on April 3, 2020. ("Class Certification Opposition," Dkt. No. 94; "PI Opposition," Dkt. No. 95.) In support of the Oppositions, Defendants included the Declaration of Lindsay M. Vick, ("Vick Declaration," Dkt. No. 95-1, 110 (attaching Exhibits 1 to 13, including declarations of Dr. Ada Rivera and

several Declarations of Captain Jennifer Moon).) Defendants also included evidentiary objections to several of Plaintiffs' declarations. (See Dkt. Nos. 95-15 to 95-25.)

Plaintiffs replied on April 9, 2020, ("Class Certification Reply," Dkt. No. 111; "PI Reply," Dkt. No. 113), and responded to Defendants' evidentiary objections, (Dkt. Nos. 97-107). In support of their Replies, Plaintiffs included the declaration of Elizabeth Jordan, ("Jordan Declaration II," Dkt. No 113-1 (attaching Exhibits A to G, and Appendix 1)), and the supplemental declaration of Homer Venters, ("Venters Declaration II," Dkt. No. 113-2).

On April 9, 2020, the Court also received two motions to file amicus briefs. (Dkt. No. 117, 119.) The Court GRANTS the motions and accepts as filed[3] the amicus briefs of : (1) Casa de Paz, Church World Service – Jersey City, Clergy & Laity United for Economic Justice, Detention Watch Network, El Refugio, First Friends of New Jersey & New York, and Freedom for Immigrants ("Casa de Paz, et al. Amicus," Dkt. No. 117-2); and (2) Public Health Experts ("Public Health Amicus," Dkt. No. 119-2).

On April 10, 2020, Defendants filed a supplement to their Opposition, ("Defendants' Supplement," Dkt. No. 121.) Defendants attached the following documents to the Supplement:

- Declaration of Gabriel Valdez, ("Valdez Declaration," Dkt. No. 121-1);
- Declaration of Michael Nelson, ("Nelson Declaration," Dkt. No. 121-2);
- Declaration of John Bretz, ("Brez Declaration," Dkt. No. 121-3);
- COVID-19 Detained Docket Review Guidance, dated April 4, 2020 (April 4 Docket Review Guidance," Dkt. No 121-4).

Defendants also attached several decisions from district courts, and a recently filed case, regarding the release of immigration detainees or prisoners. (Dkt. Nos. 121-5 to 121-11.) On April 12, 2020, Plaintiffs submitted a supplement. ("Jordan Declaration III," Dkt. No. 122 (attaching Exhibits A to D).) On the morning of the April 13, 2020 hearing, Defendants submitted supplemented their filing with a recent ICE policy document. (Dkt. No. 124-1.)

After the hearing, Defendants filed a further factual supplement at the Court's request. ("Holt Declaration," Dkt. No. 125-1.) Plaintiffs filed an ex parte application to file a response, which Defendants opposed. (Dkt. Nos. 127, 128.) The ex parte application is DENIED AS MOOT

[3] At the April 13, 2020 hearing, the Court noted that Defendants could comment on the Amicus Motions by filing a supplement the next day, but Defendants declined to do so. The Court finds the briefs informative, and absent Defendants' articulation of a sound reason to reject the briefs, the Court exercises its "broad discretion" to allow them. Hoptowit v. Ray, 682 F.2d 1237, 1260 (9th Cir. 1982), abrogated on other grounds by Sandin v. Conner, 515 U.S. 472 (1995).

B. Facts[4]

In this Section the Court summarizes relevant background on COVID-19, the risk posed to immigration detainees, ICE's systemwide actions and inactions in response to that threat, Plaintiffs' critique of that response, and the current conditions of confinement at about a dozen facilities nationwide.

1. Risk of COVID-19 Spread in Immigration Detention Facilities

The novel coronavirus known as SARS-CoV-2 causes a disease known as COVID-19, and is a viral pandemic. (Meyers Decl. ¶ 20; Venters Decl. ¶ 5.) As of late March 2020, the outbreak was in its early stages in the United States, though cases had been identified in each state, and infection rates are growing exponentially. (Id. ¶ 6.) As of the drafting of this Order, more persons have tested positive for COVID-19 in the United States than in any other country. More than 41,000 deaths have been reported in the U.S., and many tens of thousands more are expected in the coming weeks.

Doctors believe the virus is transmitted from person to person by respiratory droplets and by touching surfaces, and have found transmission occurs at close quarters of 3-6 feet. (Meyers Decl. ¶ 20.) Currently there is no vaccine available, and everyone is at risk of infection. (Id.) Serious illness and death from COVID-19 is most common among individuals with underlying health conditions like heart, lung, or liver disease, diabetes, or old age. (Id. ¶ 21; Franco-Paredes Decl. at 1.) Available data show a fatality rate about 15% among these high-risk groups. (Id. at 2). Individuals who survive may experience permanent loss of respiratory capacity, heart conditions, kidney damage, and other complications. (Id. at 4-5.)

The risks of infectious disease in prisons and jails are significantly higher than outside for several reasons. (Meyer Decl.) First, social distancing to prevent the spread of the disease by respiratory droplets is often impossible in "congregate settings," due to poor ventilation and inadequate space, and jails and prisons often lack access to personal protective equipment like masks, gowns and eye shields. (Id. ¶ 9.) Second, jails and prisons often lack resources for diagnosing and treating infectious disease. (Id. ¶¶ 14-15.) Simple segregation or solitary confinement measures as an outbreak management technique tend to backfire: they result in less

[4] The parties have submitted hundreds of pages of documents supporting their respective filings, as well as extensive evidentiary objections and responses. To the extent that the Court relies on objected-to evidence, the objections are overruled. Capitol Records, LLC v. BlueBeat, Inc., 765 F. Supp. 2d 1198 n.1 (C.D. Cal. 2010). "District courts, though, 'may give . . . inadmissible evidence some weight . . . [to] prevent[ ] irreparable harm before trial.'" Weride Corp. v. Kun Huan, 2019 WL 1439394, at *5 (N.D. Cal. Apr. 1, 2019) (quoting Johnson v. Couturier, 572 F.3d 1067, 1083 (9th Cir. 2009)). For the purposes of the preliminary injunction, "evidentiary issues 'properly go to weight rather than admissibility.'" Id. (quoting Go Daddy Operating Co., LLC v. Ghaznavi, 2018 WL 1091257, at *14 (N.D. Cal. Feb. 28, 2018). Thus, the Court takes the objections under advisement in considering the Motions.

medical attention and increased chances of death. (Id. ¶ 10; see also Venters Decl. ¶ 10 ("[isolated detainees] quickly experience increased psychological distress that manifests in self-harm and suicidality, which requires rapid response and intensive care outside the facility . . ."). Unless an individual is held in a negative pressure room, his or her respiratory droplets may still flow outwards to the rest of the facility. (Meyers Decl. ¶ 10.) Third, people held in jails and prisons are more likely than others to have chronic underlying health conditions that make them susceptible to infectious disease. (Id. ¶ 13.) Finally, new information about COVID-19 suggests it may be transmissible through shared bathrooms and cell toilets without lids. (Venters Decl. II ¶ 2(a).)

On April 2, 2020, six ICE detainees and five ICE staff at detention facilities had tested positive for COVID-19. That number has dramatically increased. As of the drafting of this Order, ICE reports 124 confirmed detainee cases at 25 facilities around the country and thirty confirmed cases of ICE detention facility staff at many of the same locations.[5] Due to shortages in testing nationwide and because asymptomatic individuals may spread the disease, the known cases are likely the "tip of the iceberg." (Venters Decl. ¶ 7.)

An immigration facility outbreak would also menace the non-detained: a surge in preventable cases would further strain local hospital and healthcare resources. (Id. at 8; Seaborn Decl., Ex. E at 4 ("a detention center with a rapid outbreak could result in multiple detainees—five, ten or more—being sent to the local community hospital where there may only be six or eight ventilators over a very short period.").) In the "alternate scenario," a facility outbreak is averted and a community's "survival is maximized." (Id. (also noting that many detention centers are in remote areas with limited access to health facilities).)

2. CDC Guidance and ICE's Systemwide Response to COVID-19

On March 6, 2020, ICE Health Services Corp ("IHSC") provided interim guidance to detention facilities. (Venters Decl. ¶ 14.) The ICE website also provides guidance, which is updated periodically. See ICE Guidance on COVID-19, ICE, https://www.ice.gov/covid19. The ICE Guidance purports to incorporate or be consistent with CDC guidance. (Id.)

On March 23, 2020, the CDC issued interim guidance on management of COVID-19 in correctional and detention facilities ("CDC Interim Guidance," Jordan Decl. III, Ex. D.). The guidance mentions many of the same risks of COVID-19 transmission noted above, and notes several others, including: the inability of detainees to exercise frequent handwashing, restrictions on soap or paper towels, the likelihood of introduction of the disease due to staff ingress and egress and detainee transfers, and limited options for medical isolation. (CDC Interim Guidance at 2.) The CDC Interim Guidance provides recommendations on a wide range of topics,

[5] The number of ICE staff at detention facilities does not appear to include individuals such as guards, vendors, or medical service providers who work at those facilities and are not employed by ICE. ICE Guidance on COVID-19, U.S. Immigration and Customs Enforcement, https://www.ice.gov/coronavirus.

including protocols for medical isolation, quarantines, social distancing, prevention by cleaning and disinfecting, pre-intake screening, and temperature checks. (Id. at 3.) With respect to detainees at higher risk of severe illness from COVID-19, the guidance notes:

- They should not be cohorted with other infected individuals, and if cohorting is unavoidable, "all possible accommodations" should be made to prevent transmission;
- Detained populations have a higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages;

(Id. at 16, 20.) Individuals who are quarantined[6] or in medical isolation,[7] should be housed, in order of preference, separately in single cells or as a cohort with 6 feet of personal space assigned each individual in all directions. (Id. at 16, 20 (providing six more granular types of preferences based on the type of wall, door, and ventilation).) One of the least desirable quarantine or isolation methods is to house detainees in a cohort, in multi-person cells without solid walls or a solid door, without excellent ventilation, without social distancing, and without an empty cell between occupied cells. (Id.)

After the CDC Interim Guidance was issued, ICE released a second important policy document in the form of Memorandum dated March 27, 2020 ("Action Plan"), which is addressed to detention wardens. (Vick Decl., Ex. 1.) The Action Plan recognizes that the "combination of a dense and highly transient detained population" presents "unique challenges . . . to mitigate the risk of infection." (Id. at 1.) The Plan applies to ICE-dedicated facilities, but does not apply to "intergovernmental partners and non-dedicated facilities." (Id. at 1.) The Memorandum confirms that ICE views the IHSC recommendations as "best practices," not commands or even performance standards, with the further caveat that the "CDC remains the authoritative source." (Id. at 1, 5 (providing a link to CDC Guidance on COVID-19 in Detention

[6] "Quarantine refers to the practice of confining individuals who have had close contact with a COVID-19 case to determine whether they develop symptoms of the disease. Quarantine for COVID-19 should last for a period of 14 days. Ideally, each quarantined individual would be quarantined in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the individual should be placed under medical isolation and evaluated for COVID-19." CDC Interim Guidance at 4. The guidance notes it is preferable to quarantine individuals in separate rooms. A group of quarantined individuals held in the same living space is called a "cohort." Id. at 3.

[7] "Medical isolation refers to confining a confirmed or suspected COVID-19 case (ideally to a single cell with solid walls and a solid door that closes), to prevent contact with others and to reduce the risk of transmission. Medical isolation ends when the individual meets pre-established clinical and/or testing criteria for release from isolation, in consultation with clinical providers and public health officials . . . ." CDC Interim Guidance at 4. Individuals should be isolated in separate rooms. A group of isolated individuals held in the same living space is also called a "cohort." Id. at 3.

Facilities).) The Action Plan includes some, but not all of the CDC policies, and provides advice that sometimes conflicts with the CDC policies.

On April 4, 2020, ICE released docket review guidance, which ordered Field Office Directors ("FODs") across the country to identify individuals in certain CDC-defined categories for heighted risk of death due to COVID-19, and to make individualized determinations regarding continued custody. ("Docket Review Guidance," Dkt. No. 121-4.) Per the Docket Review Guidance, vulnerable detainees who are mandatorily detained do not receive any consideration, however. The Docket Review Guidance is described in greater detail in the next Section. See Section I.B.3.

Most recently, on April 10, 2020, ICE Enforcement and Removal Operations ("ERO") issued COVID-19 Pandemic Response Requirements. ("Pandemic Response Requirements," Dkt. No. 124-1.) The Pandemic Response Requirements set forth "mandatory requirements" for all facilities housing ICE detainees as well as best practices. (Id. at 3.) Dedicated detention facilities—those housing only ICE detainees—as well as non-dedicated facilities with mixed populations, including local jails, "must" (1) comply with their applicable detention standards and facility contract[8]; (2) comply with the CDC Interim Guidelines and the March 27, 2020 Action Plan; (3) notify the local FOD and FMC of known or suspected COVID-19 cases; and (4) notify the FOD and FMC "as soon as practicable" of any detainee meeting CDC's criteria for higher risk of harm, (id. at 5-7). Whereas the April 4, 2020 Docket Review Guidance drew the line for vulnerable individuals at sixty years of age and listed pregnancy as a qualifying condition for release, the Pandemic Response Requirements raise the age to 65 and omit pregnancy.

The Pandemic Response Requirements also state all facilities housing ICE detainees must:

- Instruct staff and detainees to wear cloth face coverings when PPE supply is limited;
- Provide staff and detainees with no cost unlimited access to supplies for hand cleansing, including liquid soap, water, paper towels or dryers, and no-touch receptacles;
- Require all persons in the facility to avoid touching their eyes, nose, or mouth without cleaning their hands first;
- Prohibit sharing of eating utensils, dishes, and cups;
- Prohibit non-essential contact such as handshakes, hugs, and high-fives;
- Staff should clean shared equipment like radios and weapons;
- Where possible, restrict transfers of detained non-ICE populations and facilities

[8] The Court observes that different detention standards apply to different facilities. Thus, some facilities will only comply with the legacy Immigration and Naturalization Service 2000 National Detention Standards, whereas others will comply with more recent Performance-Based National Detention Standards, which came out in 2008 and were revised in 2011 ("PBNDS"). See ICE Detention Standards, https://www.ice.gov/factsheets/facilities-pbnds.

- "Efforts should be made" to reduce the population to approximately 75% of capacity, to promote social distancing

(Id. at 7-14.) In addition, the Pandemic Response Requirements for the first time acknowledge the CDC's tiered housing preferences for individuals under medical isolation (e.g. separate single cells with solid walls and door are much preferable to cohorted multi-person cells without solid barriers). (Id. at 15.) The Response Requirements also note that if the number of confirmed cases at a facility exceeds individual isolation spaces, ICE must be promptly notified to arrange transfer.

For additional operational background, Defendants provide the declaration of the Deputy Assistant Director for Clinical Services and Medical Director of IHSC. (Vick Decl., Ex. 2 ¶ 1.) The IHSC Deputy Assistant Director oversees clinical services at the 20 IHSC-staffed facilities, which hold approximately 13,500 detainees. (Id. ¶ 2.) The Deputy Director states that IHSC is following CDC guidance in testing for COVID-19, but does not specify what the guidance calls for. (Id. ¶ 9.) Similarly, she states ICE has a pandemic workforce protection plan and that ICE instituted "applicable parts of the plan" in January 2020, but she does not attach excerpts of the plan, specify what the plan requires, or explain how it will address the needs of medically vulnerable detainees. (Id. ¶ 6.)

ICE appears to be engaging in at least some centralized monitoring of facility conditions, though Defendants do not submit evidence that they are enforcing IHSC or CDC guidelines at all ICE facilities. The best evidence of coordinated pandemic tracking is the ICE website, which is regularly updated with information about reported staff and detainee COVID-19 cases. Second, IHSC Field Medical Coordinators ("FMCs") receive reports from medical leadership at contract facilities.[9] (Id. ¶ 11.) Each facility is supposed to report to FMCs any detainee they identify as "meeting CDC requirements for cohorting monitoring, or isolation." (Id.) Until April 10, 2020, Defendants did not require facilities to provide ICE with information about which detainees are most vulnerable to severe illness or death from COVID-19. Defendants do not provide information about any independent tracking they conduct with regard to disabled or medically vulnerable individuals before or during the pandemic.

3. Individualized Release Determinations

The number of individuals in ICE custody has slightly decreased since the declaration of a national emergency. As of March 13, 2020, ICE had 35,980 single adults in custody. (Holt Decl. ¶ 13.) More than half of ICE's average daily population at that time had not been convicted of a criminal offense and had no pending criminal charge. (Seaborn Decl., Ex. F.) A month later, on

[9] Further declarations submitted by Defendants clarify that FMCs "oversee" clinical services at Intergovernmental Service Agreement Facilities ("IGSA"), and "ensure" the medical care provided by contractors meets detention standards under the contract. (Vick Decl., Ex. 2 ¶¶ 2-3.) The FMCs "monitor" but do not provide hands-on care, or direct the care. (Id.)

April 13, 2020, ICE indicated that 31,709 individuals were in its custody, (Holt Decl. ¶ 13), of whom approximately 14,000 have no prior criminal conviction and no pending criminal charges.[10]

There are a number of tools available to ICE to decrease population density or to release medically vulnerable individuals. ICE may choose to release people on bond or conditional parole, and in the past, has exercised detention authority to release individuals with serious vulnerabilities or medical conditions. (Saenz Decl. ¶ 18.) Under previous Republican and Democratic Administrations, agency policy and practice was to limit detention of noncitizens who are pregnant or nursing, elderly, or suffer from serious physical or mental illness. (Lorenzen-Strait Decl. ¶ 4-7 (noting that this authority was also exercised to release individuals vulnerable to medical harm but not yet ill).) Even individuals required to be detained by statute can be and were released pursuant to ICE guidelines and policies, and statutory and regulatory provisions. (Id. ¶ 2 (citing INA §§ 212(d)(5), 235(b), 236, 241; 8 C.F.R. §§ 1.1(g), 212.5, 235.3, 236.2(b)); Sweeney Decl. ¶¶ 2-5. But see Holt Decl. ¶ 10 (noting ICE's current policy does not allow the exercise of discretion to release those subject to mandatory detention even if at higher risk for COVID-19).)

In recent years, legal services organizations observed an increase in parole denials by ICE. (Rivera Decl. ¶¶ 14-16; Corchado Decl. ¶ 23.) Since the pandemic, medically vulnerable detainees have had parole requests denied, (Rivera Decl. ¶ 13), pending for weeks without decision, (Corchado Decl. ¶ 13; see also Rios Decl. ¶ 25), or have not been able to secure hearings at all. For example, the Chicago ICE field office indicated it was closed, leaving attorneys and clients uncertain if they would receive a decision. (Zwick Decl. ¶ 34.)

In the absence of prompt system-wide action by ICE to address the threat of COVID-19, dozens of detainees and their counsel filed individual and group habeas petitions for release. Plaintiffs include an appendix of twenty-nine such petitions. (Jordan Declaration II, Appendix 1.) In all but six of the cases the petitioners secured release. (Id.) In many of the cases where release was not secured, the petitioners obtained another form of relief, including a bond hearing or class certification, or their request was denied without prejudice. Defendants, in turn, submit four immigration habeas decisions in which the court did not find a likelihood of success on the merits, one criminal release decision, and one recently filed habeas petition. (Dkt. Nos. 121-5 to 121-11.)

On April 4, 2020, ICE issued Docket Review Guidance to ICE FODs providing for the potential release or use of alternatives to detention for detainees vulnerable to serious illness or death from COVID-19. The Docket Review Guidance notes that on March 18, 2020, FODs were instructed to review the cases of noncitizens over the age of 70 or pregnant to determine whether continued detention was appropriate. (Id. at 1.) The April 4 Docket Review Guidance notes the categories are expanded to include:

- Pregnant detainees or those having delivered in the last two weeks

[10] ICE Currently Detained Population, https://www.ice.gov/detention-management.

- Detainees over 60 years old
- Detainees of any age having chronic illnesses which would make them immune-compromised, including but not limited to
    - Blood disorders
    - Chronic kidney disease
    - Compromised immune system
    - Endocrine disorders
    - Metabolic disorders
    - Heart disease
    - Lung disease
    - Neurological and neurologic and neuro development conditions

(Id. at 1-2.) The Docket Review Guidance asks FODs to "please" identify "all cases within your [areas of responsibility] that meet any of the criteria above and validate that list with assistance from IHSC or your [FMC] to ensure the conditions listed are still present and do result in the detainee potentially having a higher risk for serious illness from COVID-19." (Id. at 2.) The guidance goes on to request FODs to review these cases to determine whether ongoing detention is appropriate, but notes that presence of a risk factor "may not always be determinative." (Id.) The guidance does not acknowledge that individuals who are detained under 8 U.S.C. § 1226(c) may be released, and remarks that even in cases of discretionary detention, an at-risk individual should not be released in cases of potential danger to property or persons. (Id.)

In a supplemental filing ICE notes individualized release determinations began prior to this April 10, 2020 Docket Review Guidance. (Holt Decl. ¶ 10.) Since March 2020, ICE has released 693 individuals using a methodology similar to the Docket Review Guidance. (Holt Decl. ¶ 10.) ICE does not state how many eligible detainees have been identified, and notes that the time needed for each review depends on the complexity of the case. (Id. ¶ 11.)

4. Plaintiffs' Criticisms of ICE's Systemwide Action or Inaction

Plaintiffs sharply criticize ICE's March 6, 2020 guidelines. For example, the guidelines focus on questionnaires, rather than checking for active symptoms of staff, and tend to ignore that COVID-19 has arrived in full force and can be carried by asymptomatic individuals. (Venters Decl. ¶ 10(a).) In addition, the guidelines do not include access to hand sanitizer and use of masks for individuals with a cough; do not include guidance for administrators to plan surge capacity needs; do not provide guidance on when to test patients for COVID-19 other than by reference to the CDC; do not propose identification of individuals with high risk of illness and death from COVID-19; and largely ignore CDC guidelines for social distancing strategies. (Id. ¶ 10(b)-(f).) To the extent ICE envisions use of "isolation rooms," Plaintiffs contend, most facilities only have 1-4 rooms that fit that definition and so will be quickly overrun. (Id. ¶ 16.)

In their Reply, Plaintiffs argue that even after the March 27, 2020 Action Plan and April 4 Docket Review Guidance, ICE's systemic response to the COVID-19 pandemic falls short of

CDC benchmarks. (PI Reply at ;Venters Decl. II.) Dr. Venters notes several discrepancies and gaps in ICE's global response, including that it:

- Does not require symptomatic detainees be given a mask and placed in medical isolation;
- Does not mandate nose and mouth coverings for those who cannot engage in social distancing;
- Does not present a plan for isolation when the number of people needing to be isolated exceeds existing isolation rooms or cells;
- Does not limit transportation of detainees;
- Does no identify what precautions should be taken to protect people with risk factors in ICE custody;
- Fails to include certain risk factors identified by the CDC and which FODs and their staff may not be aware;
- Delegates medical screening for custody review to FODs and staff who are not medical professionals, and advises them to check with medical professionals only after the fact;
- Does not urgently command risk factor screening measures, but merely requests them, without any timeline;
- Fails to account for the fact that detained populations are 10-15 years more progressed than chronological age;
- Does not ensure risk factors reflect evolving data and science;
- Does not include nationwide surveillance, coordination, or communication measures.

(Venters Decl. ¶¶ 3-4.)

Plaintiffs also argue that ICE systematically fails to track individuals with disabilities and medical vulnerabilities, both before and during the COVID-19 pandemic. In support of this contention, they include an Office of the Inspector General report, which discusses ICE's Risk Classification Assessment ("RCA") tool, which was designed to assist with release and custody classification decisions. ("OIG Report," Jordan Decl., Ex. A.) The OIG Report explains that when ICE Enforcement and Removal Operations ("ERO") detains a noncitizen, it uses the RCA to generate recommendations for detention or release, including for alternatives to detention, unless the person is mandatorily detained. (Id. at 5-6.)

The OIG Report provides some information on at least one of ICE's screening mechanisms: it notes that RCA questions on "special vulnerabilities" conflict with ICE's Performance Based National Detention Standards ("PBNDS") medical screening guidance. For example, an ICE ERO officer using the RCA tool does not have medical training and might not ask questions in a private setting, whereas the PBNDS call for someone with training—a medical professional or trained detention officer—to conduct the screening. (Id. at 12.) The OIG Report contrasts the PBNDS medical screening questions, which include 31 fields, with the RCA special vulnerabilities "checklist" which includes only yes/no data fields for (as relevant to this case)

"serious physical illness," "disabled," "elderly," and "pregnant." (OIG Report, Appendix G, at 29.)

Apart from this limited tool, and any reports provided by facilities to IHSC FMCs regarding detainee health, it appears ICE does not have a centralized screening, let alone tracking, mechanism or procedure to identify medically vulnerable or disabled individuals in its custody during the COVID-19 pandemic. Plaintiffs repeat the refrain from their Complaint that ICE has failed to ensure compliance with detention standards, and this failure extends to COVID-19 protocol compliance. (Compl. ¶¶ 522-537; PI Mot. at 12 (incorporating by reference additional OIG reports, dealing with management and oversight of detainee medical care).)

5. Reported Immigration Detention Facility Conditions

Plaintiffs provide evidence of the recent conditions at fourteen facilities in Alabama, California, Colorado, Georgia, Louisiana, and Texas. Plaintiffs also include anecdotal evidence of conditions in about fifteen additional facilities nationwide. Although the facts are cumulative, the Court summarizes the conditions below, by state and locality, along with any response provide by the government.

a. Etowah County Detention Center (Gadsen, Alabama)

An Etowah County immigration detainee, Hernandez, states that as of March 24, 2020, he had not received formal education about COVID-19, though there was an informative flyer in the dorm, which is in English only. (Hernandez Decl. ¶ 3.) Hernandez had not had his body temperature checked and has not seen other individuals having their temperatures taken. (Id. ¶ 4.) Soap must be purchased at commissary, and Hernandez did not observe officers wearing gloves or masks. (Id. ¶ 4.) New detainees and guards enter the facility regularly. (Id. ¶ 5.) Recently, a transferee reported feeling sick, and went to medical, where he did not have his temperature taken or receive any treatment, but was restricted to his cell. (Id. ¶ 6.) Individuals in Hernandez's unit demanded the transferee be removed. Two individuals tied nooses around their necks and stepped onto railings of the second floor, threatening suicide unless the facility took preventive action. (Id.) After this incident, detainees in the unit were provided one surgical mask each, and the unit is on lockdown except for two half-hour increments daily. (Id. ¶¶ 6-7.)

Defendants state that Etowah screens each detainee for disabilities upon admission. (Vick Decl., Ex. 11 ¶ 7 (not stating which disabilities are screened, or how many individuals qualify as disabled at Etowah).) Defendants do not state whether Etowah has identified detainees at greater risk for contracting COVID-19, and do not say what measures are being taken to protect those detainees. However, they do note Etowah provides a list of "chronic care" detainees and two detainees over the age of 60. (Id. ¶ 11.) They state that as of April 8, 2020, there are no confirmed COVID-19 cases at Etowah. (Id. ¶ 13(a)-(c); Nelson Decl. ¶ 17(a).) The facility has increased sanitation frequency and supplies, including hand sanitizer, soap, masks, and gloves "readily available" for both staff and detainee use. (Vick Decl., Ex. 11 ¶ 15.)

An FMC assigned to Etowah reports that he has been informed of Etowah's COVID-19 protocols, and the facility is conducting intake screenings for COVID-19 symptoms (but not for COVID-19 risk factors), and following ICE and CDC guidance. (See generally Nelson Decl.) Etowah's population is "within . . . approved capacities." (Id. ¶ 18.) For group movements, the detainees are reminded to practice social distancing, and are not crowded in holding areas. (Id. ¶ 29.)

b. Adelanto ICE Processing Center (Adelanto, California)

Plaintiffs state that as of March 18, 2020, two dorms in the Adelanto West building were in quarantine or cohorting. (Rios Decl. ¶ 17.) On the morning of March 19, 2020 the Adelanto East building was also quarantined. (Id.) Al Otro Lado observed guards standing in groups in close proximity, and detainees report to the organization that guards did not wear gloves or masks in early to mid March. (Id. ¶ 22.) Detainees clean most of the facility and do not have masks themselves, and report a shortage of cleaning supplies. (Id. ¶ 23.) One Adelanto detainee, a sixty-three-year-old asylum seeker who is not subject to mandatory detention told his attorney on March 20, 2020 that he was confined with about 80 detainees, none of whom appear to be ill, but is residing in close quarters with four other individuals. (Ragland Decl. ¶ 10.) Nurses and doctors had not visited to perform check-ups on the quarantined individuals. (Id.)

Fraihat, who was held at Adelanto until a recent successful habeas petition,[11] is fifty-eight and suffers from asthma, among other medical conditions. (Fraihat Decl. ¶¶ 3-4.) As of March 24, 2020, he had not received information about COVID-19 from ICE or Adelanto staff, and noted that soap was not easier to access, despite the outbreak. (Id. ¶ 6.) He stated that social distancing is not possible due to the close quarters. (Id.) He observed newly detained individuals still arrive at the facility, and that he had not had his temperature checked. (Id. ¶ 7; see also Sudney Decl. ¶ 9.) A guard told Fraihat that older individuals are cohorted in a unit that shares a door with a unit for individuals exhibiting COVID-19 symptoms. (Fraihat Decl. ¶ 8.)

Munoz, a sixty-year-old detainee released on April 2, 2020,[12] described conditions in the Adelanto dorm for older individuals. (Munoz Decl.) He stated individuals in the unit have not had temperature checks or tests and are not spaced more than six feet apart. (Id. ¶¶ 3-5.) Guards move between units for count, and detainees who deliver meals also circulate between the units, as do the pill pass nurses. (Id. ¶ 8; Fraihat Decl. ¶ 11.) Some guards wear masks and gloves, but older detainees cannot access PPE, to his knowledge. (Id. ¶ 9.) If a detainee had a fever, he or she would have to submit a "kite," which takes 24 hours to review. (Sudney Decl. ¶ 12.)

Defendants respond that Adelanto screens each detainee for disabilities upon admission. (Vick Decl., Ex. 10 ¶ 7 (not stating which disabilities are screened or how many at Adelanto qualify as disabled).) Defendants also state Adelanto has identified detainees "at greater risk for contracting COVID-19," (Id. ¶ 11), but do not say what measures are being taken to protect those

[11] Fraihat v. Wolf, Case No. 20-00590 (C.D. Cal. Mar. 30, 2020).

[12] Munoz v. Wolf, Case No. 20-00625 (C.D. Cal. Apr. 2, 2020).

detainees, or whether the criteria used conform with CDC guidelines. The facility has increased sanitation frequency and supplies. (Id. ¶ 15.)

Defendants state that as of April 10, 2020, there are no confirmed COVID-19 cases at Adelanto, and no housing units on monitoring for COVID-19. (Id. ¶ 13(a)-(b); Valdez Decl. ¶ 17(a)) The facility has negative pressure rooms onsite and can admit patients to the local hospital when needed. (Valdez Decl. ¶ 16.) Individuals believed to have been exposed to COVID-19, who are asymptomatic, are placed in cohorts with restricted movement. (Id. ¶ 15.) Two suspected cases received negative test results, and two more detainees are now being monitored due to unverifiable travel history and a fever. (Id. ¶ 17 (COVID-19 test pending, in the latter case).) Adelanto's population is "within . . . approved capacities," but it is not clear whether cohorted detainees have empty cells between them. (Id. ¶ 18.) Detainees are reminded to practice social distancing during "group movements," and detainees are not crowded into law libraries, intake areas, or holding rooms. (Id. ¶ 30.)

c. Otay Mesa Detention Center (San Diego, California)

As of March 20, 2020, Al Otro Lado staff observed Otay Mesa employees shaking hands, patting shoulders, and working in close proximity to each other. (Rios Decl. ¶ 9.) Attorneys were allowed to enter the facility for non-contact video teleconference visits, without screening procedures. (Id. ¶ 8.) Visiting attorneys did not have their temperature taken, and were not asked if they had COVID-19 symptoms. (Id.) Telephones were not cleaned prior to the visit. (Id. ¶ 11.) Detainees reported cleaning pods and laundering clothes without protective gear other than gloves. (Id. ¶¶ 15-16.) The week prior, from March 13-17, Al Otro Lado staff could not schedule bond hearings for detainees at Otay Mesa, and as a result, medically vulnerable detainees could not be released. (Rios Decl. ¶ 5.) At least one client was transferred to Houston due to the delays. (Id. ¶ 6.) As of April 17, 2020, ICE reports that eighteen detainees and eight ICE staff at Otay Mesa have tested positive for COVID-19.[13]

d. Aurora Contract Detention Facility (Aurora, Colorado)

According to the reports of a detainee who was a practicing doctor in New Jersey, with medical licenses in New York and New Jersey, as of March 21, 2020, Aurora had taken few steps to prepare for COVID-19, except distributing information and implementing some screening measures. (Solomonov Decl. ¶ 4.) Up to eighty people live in a dorm with a maximum capacity of eighty-two. (Id. ¶¶ 6, 9.) The dorm consists of four- to eight-person cells, where it is "impossible to stay away from other people." Detainees do not have access to hand sanitizer, have not been tested for COVID-19, have no access to masks, and have not changed cleaning procedures. (Id. ¶ 7.) Eighty detainees share a single sink with a timed faucet that only stays on for a few seconds and that has low water pressure. (Id. ¶ 8.) According to another detainee's report, the only guaranteed way to get bar soap is to buy it for $3 at commissary. (Zwick Decl. ¶ 20.)

[13] ICE Guidance on Covid-19, https://www.ice.gov/coronavirus.

Colorado has been under a state of emergency since March 10, 2020. (Solomonov Decl. (attaching Elizabeth Jordan Declaration ¶ 4).) Nevertheless, Aurora added about thirteen new people to the declarant's dorm from March 18 to 21, 2020, and some purportedly came from jails with symptomatic individuals. (Id. ¶ 6.) The screening procedures for transferees consisted of a questionnaire and temperature check, and the detainees were concerned about asymptomatic individuals gaining admission to their dorm. (Id. ¶ 11.) A lieutenant declared on March 20, 2020 that there were no coronavirus cases in the facility, and told detainees to wash their hands. (Id. ¶ 11.) As of April 20, 2020, two ICE employees or facility staff have tested positive for COVID-19 at Aurora.[14]

e. Folkston ICE Processing Center (Folkston, Georgia)

On March 19, 2020, a detainee caller from Folkston reported he lacked access to soap and sanitizer, and at least one person in his housing unit had symptoms of cough, fever, or shortness of breath, but had not been removed from the unit. (Rivera Decl. ¶ 21.) A Southeast Immigrant Freedom Initiative ("SIFI") attorney visiting Folkston on March 16, 2020 was required to undergo a temperature check and questionnaire, and provided her own gloves and disinfectant wipes. (Id. ¶ 19.)

f. Stewart Detention Center (Lumpkin, Georgia)

The week before March 23, 2020, SIFI attorneys entering Stewart were not required to submit to temperature checks or to pass screening. (Rivera Decl. ¶ 22.) Some but not all facility staff wore gloves, and no staff wore masks. (Id.)

Defendants state that Stewart screens each detainee for disabilities upon admission. (Vick Decl., Ex. 12 ¶ 7.) Defendants state Stewart has identified detainees at greater risk for contracting COVID-19, but do not say what measures are being taken to protect those detainees in particular. (Id. ¶ 11.) They state that as of April 2, 2020, there are no confirmed detainee COVID-19 cases at Stewart but there is one suspected case. (Id. ¶ 13(a)-(c).) They do not state whether any housing unit is being cohorted or quarantined. The facility has increased sanitation frequency and supplies, including hand sanitizer, soap, masks, and gloves, which are "readily available" for both staff and detainee use. (Id. ¶ 15.) Defendants do not state what special accommodations or measures have been taken to protect Stewart detainees at risk of severe illness or death as a result of COVID-19.

As of April 10, 2020, Defendants knew of thirty suspected cases of COVID-19 in the facility, and they were placed on "medical observation," and there were five confirmed cases in the facility. (Bretz Decl. ¶ 17.) Those five individuals are "isolated and receiving medical treatment" consistent with CDC guidelines. (Id. ¶ 14.) The facility now provides 24-hour

[14] ICE Guidance on Covid-19, https://www.ice.gov/coronavirus.

access to disinfectants, sanitizer, and soap in every housing unit, and is "encouraging . . . general population to use these tools often and liberally." (Id. ¶ 16.) As of April 17, 2020 seven detainees and one ICE staff member tested positive for COVID-19 at Stewart.[15]

g. Irwin Detention Center (Ocilla, Georgia)

One detainee at Irwin reported to SIFI staff that there were confirmed cases of COVID-19 in the facility and that it was under quarantine. (Rivera Decl. ¶ 17.) A March 19, 2020, a detainee caller reported that neither ICE nor guards had given information about COVID-19, and that at least one person in his housing had a worsening cough, but had not been removed from the unit. (Id. ¶ 18.) As of April 17, ICE Reports one COVID-19 case at Irwin.[16]

h. South Louisiana ICE Processing Center (Basile, Louisiana)

The legal director of Las Americas Immigrant Advocacy Center reports that detainees have no access to soap or sanitizer, and that guards ran out of gloves. (Corchado Decl. ¶ 10.) Toilet paper is limited, adding to hygiene concerns, and multiple people in the barracks were coughing. (Id. ¶ 10.) One immune-compromised detainee was working in the facility kitchen until at least March 20, 2020. (Id. ¶ 11.) Las Americas reports HIV positive detainees are scheduled to be transferred by bus and/or plane, through various detention centers. (Id. ¶ 12.) Parole-eligible detainees with family in the U.S. have had pending parole applications for up to three weeks. (Id. ¶ 13.)

i. LaSalle Detention ICE Processing Center (Jena, Louisiana)

SIFI staff received a March 19, 2020 call from an individual held at LaSalle who complained of fever, chest pain, difficulty breathing while trying to sleep, and of coughing blood. (Rivera Decl. ¶ 11.) The detainee stated he tested negative for the flu but had not been tested for COVID-19, and he could only obtain ibuprofen, syrup, and salt. He reported sharing a unit with others with similar symptoms. (Id. ¶ 11.) He stated that GEO staff were not routinely using gloves. (Id. ¶ 11.) On March 20, 2020, SIFI received information from two clients who had engaged in a 120-day hunger strike that they would likely be force fed on March 23 or 24, 2020. (Id. ¶ 13.) The ICE field office twice denied their parole applications, despite evidence of medical vulnerability. (Id.) ICE Response to requests for release "remains spotty" and many applications are denied or receive no decision for months. (Id. ¶¶ 14-15.) As of April 17, 2020, one detainee has tested positive at this facility.[17]

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[15] ICE Guidance on Covid-19, https://www.ice.gov/coronavirus.

[16] ICE Guidance on Covid-19, https://www.ice.gov/coronavirus.

[17] ICE Guidance on Covid-19, https://www.ice.gov/coronavirus.

j. Pine Prairie Detention Center (Pine Prairie, Louisiana)

As of March 16, 2020, detainees informed a SIFI staff member that they lacked access to hand soap, and that the facility operator, GEO Group, had not altered protocols in response to the pandemic. (Rivera Decl. ¶ 7.) During a visit, the SIFI staff member submitted to a temperature check and questionnaire, but noted staff and detainees did not wear masks or gloves. (Id. ¶ 6.) On March 18, 2020, a detainee told SIFI staff that he and about 60 others in Charlie Alpha unit were under quarantine, after someone in the unit was suspected of having COVID-19. (Id. ¶ 8.) Individuals in the unit had to clean their own unit, and had no access to hand soap or sanitizer, except soap they had for showers. (Id.) No spacing measures had been implemented. (Id.) The following day, a detainee in another unit stated they were receiving hygiene supplies every two days, and that two individuals with COVID-19 symptoms had been removed from the unit.

On the day after that, March 20, 2020, a SIFI member visited detainees from the quarantined unit, but staff did not check her temperature. (Id. ¶ 10.) The staff member observed some staff wore masks and others did not. (Id.) The detainees stated they did not have masks inside the unit, and that detainees were still cleaning the dorm without gloves. (Id.) Transferees or newly detained individuals continued to be admitted to the unit. (Id.) As of April 17, 2020, four detainees at Pine Prairie have tested positive.[18]

k. Joe Corley Detention Facility (Conroe, Texas)

Las Americas received several complaints from clients concerned about the lack of preventive measures a Joe Corley Detention Facility. (Corchado Decl. ¶ 17.) The facility places 36 people in each barrack. (Id. ¶ 22.) Cafeteria workers organized a three-day strike, and access to food was disrupted, resulting in one detainee suffering an epileptic seizure. (Id. ¶ 18.) Clients report to Las Americas there are others in their dorms sick with what seems like the flu, and who have been denied medical visits. (Id. ¶ 19.) Two clients have asthma and have not received inhalers, and another detainee with bullets in his legs has not been able to obtain pain medication. (Id. ¶¶ 18-21.) Deportation Officers have informed all but one Las Americas clients that ICE will not consider their parole applications, because they were formerly placed in Migrant Protection Protocols ("MPP"), even though such individuals are eligible and similarly situated clients have obtained parole before. (Id. ¶ 23.)

l. Houston Contract Detention Facility (Houston, Texas)

A detainee at this facility declares that as of March 24, 2020, he did not receive formal information about COVID-19 beyond informational flyers, and observed no increase in cleaning supplies to support additional handwashing. (Sanchez Decl. ¶ 7.) Detainees with cleaning assignments had to mop and sweep without gloves or protective equipment, and guards did not wear gloves or masks. (Id. ¶ 7.) Social distancing in the 40-person open dorm with bunk beds

[18] ICE Guidance on Covid-19, https://www.ice.gov/coronavirus.

four feet apart was not possible. (Id. ¶ 10.) The week prior, new transferees from Otay Mesa were added to the facility. (Id. ¶ 11.) As of April 20, 2020, one ICE employee tested positive at this facility.

m. South Texas ICE Processing Center (Pearsall, Texas)

On March 17, 2020, six detainees reported they had not received information about COVID-19 from the facility. (Steglich Decl. ¶ 6.) Detainees did not know what precautionary measures they should be taking, and no protective gear was available. (Id.) New arrivals continued to come to the facility, without information as whether they had been screened. (Id. ¶ 7.) None of the detainees reported temperature checks. (Id.) Court rooms at the facility were functioning as normal, with judges, attorneys, court staff, and respondents in close proximity. (Id. ¶ 10.) Respondents were held in a crowded, closed cells before and after their hearings. (Id. ¶ 11.)

n. Other Facilities

Plaintiffs also provide declarations from legal service providers about the response to COVID-19 at immigration detention facilities in their region. An immigration legal services provider covering New Jersey facilities with COVID-19 cases reports that transferees continue to arrive in housing units where people exhibited symptoms of the virus. (Saenz Decl. ¶¶ 7-9.) At Bergen County Jail, clients are locked down in close quarters with their cellmates for all but a few hours a day, have no recreation or phone access, and must use toilets that cannot be flushed regularly. (Id. ¶ 13.) The conditions at Hudson County Jail in Kearny have been similar. (Id.) The service provider, New York Immigrant Family Unity Project, submitted release requests to ICE for 16 particularly vulnerable people, but ICE had not answered as of March 23, 2020. (Id. ¶ 15.)

The National Immigrant Justice Center ("NIJC") covers the following facilities: McHenry County Jail in Woodstock, Illinois; Jerome Combs Detention Center in Kankakee, Illinois; Boone County Jail in Burlington, Kentucky; Clay County Detention Center in Brazil, Indiana; Kenosha County Detention Center in Kenosha, Wisconsin; Pulaski County Detention Center in Ullin, Illinois; Dodge County Detention Center in Juneau, Wisconsin; Otay Mesa Detention Center in San Diego California; Cibola County Correctional Center in Milan, New Mexico; and South Texas Detention Complex in Pearsall, Texas. (Zwick Decl. ¶¶ 3-4.) NIJC notes that "[m]ost clients reported that they received no information whatsoever from ICE or facility staff, much less medical staff, about the virus, and were learning what they knew almost exclusively from watching television." NIJC clients reported lack of access to soap, water, hand sanitizer, disinfectants, or other necessary supplies. (Id. ¶¶ 15-25.)

Another organization, Friends of Miami-Dade Detainees ("FOMDD"), provided anecdotes regarding Krome Service Processing Center in Miami, Florida; Broward Transitional Center in Pompano Beach, Florida, and Glades County Jail in Moore Haven Florida. (Conlin Decl. ¶ 2.) FOMDD has not been allowed to bring cleaning supplies, masks, gloves, or hand

sanitizer to the facilities. (Id. ¶ 4.) Detainees at these facilities reportedly lack adequate soap and cleaning materials. (Id. ¶ 7.)

II. LEGAL STANDARD

A. Provisional Class Certification

Courts in the Ninth Circuit "routinely grant provisional class certification for purposes of entering injunctive relief." Carrillo v. Schneider Logistics, Inc., 2012 WL 556309, at *9 (C.D. Cal. Jan. 31, 2012) (citing Baharona-Gomez v. Reno, 167 F.3d 1228, 1233 (9th Cir. 1999)). Federal Rule of Civil Procedure 23 ("Rule 23") governs the litigation of class actions. A party seeking class certification must establish the following prerequisites:

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). After satisfying the four prerequisites of numerosity, commonality, typicality, and adequacy, a party must also demonstrate one of the following: (1) a risk that separate actions would create incompatible standards of conduct for the defendant or prejudice individual class members not parties to the action; (2) the defendant has treated the members of the class as a class, making appropriate injunctive or declaratory relief with respect to the class as a whole; or (3) common questions of law or fact predominate over questions affecting individual members and that a class action is a superior method for fairly and efficiently adjudicating the action. See Fed. R. Civ. P. 23(b)(1)-(3).[19]

A trial court has broad discretion regarding whether to grant a motion for class certification. See Bateman v. Am. Multi-Cinema, Inc., 623 F.3d 708, 712 (9th Cir. 2010). However, "[a] party seeking class certification must affirmatively demonstrate [] compliance with [Rule 23]—that is, [the party] must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). A district court must conduct a "rigorous analysis" that frequently "will entail some overlap with the merits of the plaintiff's underlying claim." Id. at 351. "Courts typically proceed claim-by-claim in determining whether the Rule 23 requirements have been met, particularly as to the Rule 23(a)(2) and (b)(3) requirements of common questio[ns] and predominance." Allen v. Verizon California, Inc., 2010 WL 11583099, at *2 (C.D. Cal. Aug. 12, 2010).

Rule 23 further provides that "[w]hen appropriate, an action may be brought or maintained as a class action with respect to particular issues," Fed. R. Civ. P. 23(c)(4), or the

[19] While some circuits have adopted an "ascertainability" prerequisite to certification, the Ninth Circuit has not. Briseno v. ConAgra Foods, Inc., 844 F.3d 1121, 1124 n.4 (9th Cir. 2017).

"class may be divided into subclasses that are each treated as a class under this rule," Fed. R. Civ. P. 23(c)(5). "This means that each subclass must independently meet the requirements of Rule 23 for the maintenance of a class action." Betts v. Reliable Collection Agency, Ltd., 659 F.2d 1000, 1005 (9th Cir. 1981).

B. Preliminary Injunction

"A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right." Munaf v. Geren, 553 U.S. 674, 690 (2008) (citations omitted). An injunction is binding only on parties to the action, their officers, agents, servants, employees and attorneys and those "in active concert or participation" with them. Fed. R. Civ. P. 65(d).

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). The Ninth Circuit employs the "serious questions" test, which states "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011). "A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right." Munaf v. Geren, 553 U.S. 674, 690 (2008) (citations omitted).

III. DISCUSSION

A. Rule 23(a) Requirements

Plaintiffs request provisional certification of the following two subclasses ("Subclasses"):

> Subclass One: All people who are detained in ICE custody who have one of the Risk Factors placing them at heightened risk of severe illness and death upon contracting the COVID-19 virus.[20]

[20] The Risk Factors are defined as being over the age of 55; being pregnant; or having chronic health conditions, including: cardiovascular disease (congestive heart failure, history of myocardial infarction, history of cardiac surgery); high blood pressure; chronic respiratory disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases); diabetes; cancer; liver disease; kidney disease; autoimmune diseases (psoriasis, rheumatoid arthritis, systemic lupus erythematosus); severe psychiatric illness; history of transplantation; and HIV/AIDS.

> Subclass Two: All people who are detained in ICE custody whose disabilities place them at heightened risk of severe illness and death upon contacting the COVID-19 virus.[21]

(Class Cert. Mot. at 2-3.) Plaintiffs argue that the putative class members are at risk of serious illness or death due to a systemwide failure to implement adequate preventive measures. (Id.)

1. Numerosity

A class satisfies the prerequisite of numerosity if it is so large that joinder of all class members is impracticable. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). To be impracticable, joinder must be difficult or inconvenient but need not be impossible. Keegan v. American Honda Motor Co., 284 F.R.D. 504, 522 (C.D. Cal. 2012). There is no numerical cutoff for sufficient numerosity. Id. However, forty or more members will generally satisfy the numerosity requirement. Id.

The Court finds the class is sufficiently numerous that joinder of all class members would be impracticable. Although Plaintiffs do not know the exact number of people in ICE detention with the specified Risk Factors or Covered Disabilities, the Court agrees that "general knowledge and common sense indicate that [the class] is large." Inland Empire-Immigrant Youth Collective v. Nielsen, 2018 WL 1061408, at *7 (C.D. Cal. Feb. 26, 2018). At the time Plaintiffs filed, about 40,000 individuals were in immigration detention facilities nationwide. (Seaborn Decl., Ex. F (attaching ICE's published Average Daily Population as of 03/14/2020).) Plaintiffs estimate about 1400 individuals over the age of 50 are in ICE custody, and about 2400 individuals with Chronic Obstructive Pulmonary Disease, for example. (Class Cert. Mot. at 3-4.)

Defendants assert unconvincingly that Plaintiffs "fail to show that there are at least 40 individuals" with the defined factors. (Class Cert. Opp'n at 11.) However, Plaintiffs are not required to provide irrefutable proof of the number of individuals in the putative class. Where the relief sought is "only injunctive or declaratory," the numerosity requirement is somewhat relaxed, and "even speculative or conclusory allegations regarding numerosity" are sufficient to permit certification. Sueoka v. United States, 101 F. App'x 649, 653 (9th Cir. 2004). In addition, Defendants do not meaningfully question Plaintiffs' estimates. Defendants' own declarations suggest that detention facilities track the numbers of disabled detainees, and if this is true, it stands to reason that the government would counter Plaintiff's numbers with their own data. (Vicks Exs. 10-12, ¶¶ 7, 11 (noting IHSC believes facilities are tracking the numbers of individuals with disabilities, and some are tracking those with COVID-19 risk factors).)

[21] Covered Disabilities include: cardiovascular disease (congestive heart failure, history of myocardial infarction, history of cardiac surgery); high blood pressure; chronic respiratory disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases); diabetes; cancer; liver disease; kidney disease; autoimmune diseases (psoriasis, rheumatoid arthritis, systemic lupus erythematosus); severe psychiatric illness; history of transplantation; and HIV/AIDS.

Defendants next argue that a finding of impracticability of joinder is barred by the fact that two Named Plaintiffs have sought and obtained release, and "scores if not hundreds" of ICE detainees have sought release across the country. (Class Cert. Opp'n at 12.) Defendants fail to articulate why this fact is relevant to the impracticability inquiry. If anything it tends to show the turmoil, expense, and difficulty caused by a piecemeal approach. Moreover, Plaintiffs' Motions seek a centralized ICE process of COVID-19 harm reduction for the most at-risk individuals, not release on bond. It would be inconvenient and difficult, if not impossible, for detainees to obtain timely relief by filing conditions of confinement suits for each detention facility or unit in the country. Given the many obstacles to accessing counsel during the COVID-19 pandemic, the Court is concerned that many putative class members would not be able to proceed on their own, a fact which further highlights the impracticability of joinder.

2. Commonality

The commonality requirement is satisfied when plaintiffs assert claims that "depend upon a common contention . . . capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Wal-Mart, 564 U.S. at 350; see also id. ("What matters to class certification . . . is not the raising of common questions . . . but, rather, the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.") (internal quotation marks and citations omitted). Differences among putative class members sometimes impede the generation of such common answers. Id. In the Ninth Circuit, "Rule 23(a)(2) has been construed permissively. . . . The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Staton v. Boeing Co., 327 F.3d 938, 953 (9th Cir. 2003).

Plaintiffs present the Court with shared factual and legal issues more than adequate to support a finding of commonality. Stated in general terms, the common question driving this case is whether Defendants' system-wide response—or the lack of one—to COVID-19 violates Plaintiffs' rights. One shared factual question is therefore what, if any, nationwide measures ICE has taken in response to COVID-19 to protect the health of vulnerable immigration detainees and whether those measures are legally sufficient. The existence, scope, and adequacy of those measures are central to all of Plaintiffs' claims.

Three shared legal questions are whether the supposed systemwide actions or inactions: (1) amount to deliberate indifference and expose detainees to a substantial risk of harm, Gordon v. County of Orange, 888 F.3d 1118, 1124-25 (9th Cir. 2018); Brown v. Plata, 563 U.S. 493, 505 n.3 (2011); (2) result in conditions of confinement more restrictive than criminal detention and that constitute punishment, Jones v. Blanas, 393 F.3d 918, 934 (9th Cir. 2004); (3) or deprive detainees of the benefits of an Executive Agency program, solely on the basis of disability, 29 U.S.C. § 794 (a). Plaintiffs identify several additional common issues that would satisfy Rule 23(a)(2)'s standard. (Class Cert. Mot. at 11-12.) Even one issue common to each class is all that is required. Haley v. Medtronic, Inc., 169 F.R.D. 643, 648 (C.D. Cal. 1996).

Defendants argue that the proposed classes "flunk" the commonality requirement due to the factual variation between facilities and between the degree of COVID-19 threat to each individual. (Class Cert. Opp'n at 14.) For example, Plaintiffs provide evidence of the conditions at many geographically dispersed detention facilities, where the COVID-19 response differs somewhat. In addition, Plaintiffs themselves have varying medical conditions and risk factors.

The Court disagrees that these differences defeat commonality. Despite Plaintiffs' admitted differences, each putative class member finds herself in similar situation. Each class member claims entitlement to a minimally adequate national rescue response from ICE. Indeed, the variety of facility COVID-19 countermeasures tends to support Plaintiffs' contention that ICE has failed to institute the well-ordered, mandatory relief effort to which they claim entitlement. This facility doesn't have adequate soap and handwashing facilities. That one does not provide PPE for detainees cohorted with someone thought to be exposed to the virus. This person may die of COVID-19 because of hypertension, and that one may die because of HIV. Yet across all facilities and individuals, the question remains: is ICE required to adopt a global response, and is that response adequate? Parsons, 754 F.3d at 681-82 (finding commonality satisfied where "policies and practices of . . . systemic application expose[d] all inmates in [Arizona Department of Corrections] custody to a substantial risk of serious harm."). As a result, the factual differences are not of the sort that likely affect entitlement to relief or that are likely to change the outcome of the legal analysis. Califano v. Yamasaki, 442 U.S. 682, 701 (1979); Dukes, 564 U.S. at 348, 358.

3. Typicality

"The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992). The typicality inquiry focuses on the claims, not the specific facts underlying them. Just Film, Inc. v. Buono, 847 F.3d 1108, 1116 (9th Cir. 2017). "The requirement is permissive, such that 'representative claims are typical if they are reasonably coextensive with those of absent class members; they need not be substantially identical.'" Id. (quoting Parsons v. Ryan, 754 F.3d 657, 685 (9th Cir. 2014)). "Measures of typicality include whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." Id. (internal quotations and citations omitted). The applicability of different defenses to the class representative will preclude typicality if "there is a danger that absent class members will suffer if their representative is preoccupied with defenses unique to it." Id. (quoting Hanon, 976 F.2d at 508).

The Court finds that the putative class representatives' claims are typical of those in the proposed class, because they have the same claims and face the same or similar harms arising from the same course of conduct. Hanon v. Dataproducts, 976 F.2d 497, 508 (9th Cir. 1992). Each Plaintiff has either a Risk Factor or Covered Disability included in the class definitions (hypertension, diabetes, or cardiovascular disease, or over fifty-five years old) and is or was

detained at one of several facilities, across three states, impacted by Defendants' alleged inaction. (Hernandez Decl. ¶ 2; Sanchez Decl. ¶¶ 2-3; Fraihat Decl. ¶¶ 2-5; Sudney Decl. ¶¶ 2-7; Munoz Decl. ¶¶ 1-2.) The common course of conduct alleged by Plaintiffs includes ICE's inadequate oversight of detention facilities' medical care, failure to identify individuals with disabilities or with COVID-19 vulnerabilities, and failure to implement adequate precautionary measures and protocols with respect to those individuals. The failures to act are thus the same across the class as a whole, as is the legal injury: exposure to an unreasonable risk of harm resulting from COVID-19 infection, punitive conditions of confinement, or deprivation of program benefits on the basis of disability.

Defendants again raise the fact that numerous detainees have petitioned for or obtained release, and comment that individualized habeas relief is a "better avenue" for relief. (Class Cert. Opp'n at 18-19.) However, that fact would not bar a finding of typicality or result in a cessation of the class interest in ensuring an appropriate systemwide response to COVID-19. Pitts v. Terrible Herbst, Inc., 653 F.3d 1081, 1092 (9th Cir. 2011) (finding an offer of judgment for the full amount of a plaintiff's claim before class certification does not moot the class action, that "if the district court certifies the class, certification relates back to the filing of the complaint," and that in this case, the action may continue, because the individual relief "fails to satisfy the demands of the class.") Moreover, the relief sought in a habeas petition is particularized, but here, Plaintiffs claim entitlement to a comprehensive response to the pandemic. The Court also observes that some habeas petitions and TROs for individual release will be denied, and those individuals also have a continued interest in a comprehensive response, short of release, that ensures adequate protections.

Nor is the difference in legal standards across circuits a bar to typicality, as Defendants assert. (Class Cert. Opp'n at 19.) First, the representatives and the putative class members assert a similar risk of physical harm and of detriment to their rights, despite some differences in the legal standards for claims across the circuits. Second, the Supreme Court has held that a federal agency is not necessarily entitled to confine any ruling of a court of appeals to its immediate jurisdiction. In Califano v. Yamasaki, 442 U.S. 682 (1979), the Court held that there are no legal limits on the geographical scope of a class action brought in federal district court. 442 U.S. at 702; Bresgal v. Brock, 843 F.2d 1163, 1170 (9th Cir. 1987). The primary concern should be that the relief granted does not impose greater burdens than necessary to redress the complaining parties. Id. As a result, the Court finds Plaintiffs have established the typicality of the representatives' claims.

4. Adequacy

In determining whether a proposed class representative will adequately protect the interests of the class, the Court asks whether the proposed class representatives and their counsel have any conflicts of interest with any class members and whether the proposed class representatives and their counsel will prosecute the action vigorously on behalf of the class. Hanlon, 150 F.3d at 1020.

The proposed class representatives and class counsel can adequately represent the class. The named Plaintiffs establish their willingness to work with class counsel to effectively represent the interests of the class as a whole. (Fraihat Decl., ¶¶ 12-14; Sudney Decl., ¶¶ 15-17; Sanchez Decl., ¶¶ 21-23; Hernandez Decl. ¶¶ 9-10; Munoz Decl. ¶¶ 13-14.) Plaintiffs' counsel, meanwhile, has extensive experience litigating immigrants' rights and class actions. (Fox Decl. ¶¶ 3-11; Seaborn Decl. ¶¶ 3-14; Alderman Decl. ¶¶ 1-6; Graybill Decl. ¶¶ 3-8; Johnson Decl. ¶¶ 2-6). The Court perceives no disqualifying conflict of interest or indication that Plaintiffs and their counsel will not "vigorously" pursue the action on behalf of the class. Hanlon, 150 F.3d at 1020 (9th Cir. 1998).

Defendants do not argue Plaintiffs will not adequately protect the interests of the class, except to the extent that they have been released pursuant to independent habeas petitions or have different levels of COVID-19 risk. (Class Cert. Opp'n at 20-21.) However, Defendants cite no authority for the proposition that release from detention prevents a finding of typicality or necessarily results in a conflict of interest.[22] Similarly without merit is the contention that an individual with diabetes will advocate more or less vigorously to be protected from COVID-19 than an individual with cardiovascular disease or with HIV/AIDS. The non-detained representatives may be in an even better position, of comparative liberty, to pursue claims on behalf of the class. In sum, the Court finds the adequacy requirement is satisfied

B. Rule 23(b) Requirements

Plaintiffs seeks to certify their proposed sub-classes under Rule 23(b)(2). (Certification Mot. at 14.) Rule 23(b)(2) permits certification of a class seeking declaratory or injunctive relief where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). In the Ninth Circuit, "[i]t is sufficient to meet the requirements of Rule 23(b)(2) [when] class members complain of a pattern or practice that is generally applicable to the class as a whole." Rodriguez I, 591 F.3d at 1125-26 (9th Cir. 2010) (internal citation and quotation marks omitted) (finding certification under Rule 23(b)(2) proper where "proposed members of the class each challenge Respondents' practice of prolonged detention of detainees without providing a bond hearing and seek as relief a bond hearing with the burden placed on the government"). Thus, the critical inquiry is "whether class

[22] Defendants also raise the possibility that detainees held under different statutory mandates will have different, conflicting, interests. (Class Cert. Opp'n at 21 (raising the specter of a conflict between class members who are "mandatorily" detained and those who are not).) The Court is not concerned about that potential conflict. The class's interest is not in release, but in not being subjected to unlawful conditions of confinement. Second, whatever the particular detention authority Defendants might invoke, the due process violations asserted arise from the same systematic failures, and could overcome a more generalized detention mandate. See Rodriguez v. Marin, 909 F.3d 252, 256 (9th Cir. 2018) ("We have grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional . . . .").

members seek uniform relief from a practice applicable to all of them." Rodriguez I, 591 F.3d at 1125.

Because Defendants' actions and inactions apply to the class generally, the Court determines that Rule 23(b)(2)'s requirements are satisfied. The putative class seeks declaratory and injunctive relief based on the asserted inadequacies of Defendants' COVID-19 protocols and response. For purposes of this inquiry, "[t]he fact that some class members may have suffered no injury or different injuries from the challenged practice does not prevent the class from meeting the requirements of Rule 23(b)(2)." Parsons v. Ryan, 754 F.3d 657, 689 (9th Cir. 2014) (finding Rule 23(b)(2) satisfied where the state department of corrections established policies and practices that placed "every inmate in custody in peril" and all class members sought essentially the same injunctive relief); Rodriguez I, 591 F.3d at 1125.

A related test for whether Rule 23(b)(2) certification is appropriate is "the indivisible nature of the injunctive or declaratory remedy" sought, or "the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." Dukes, 564 U.S. at 360. Defendants again remark that Plaintiffs suffer from different conditions and are detained at different facilities, and Defendants contend on this basis the Rule 23(b)(2) requirements are not met. (Class Cert. Opp'n at 14-15 (also noting potential individual differences with respect to flight risk, likelihood of removal, and danger to the community).) However, Plaintiffs do not seek any individualized determination by this Court of whether they are entitled to release, and do not request a different injunction for each class member. Rather, they ask the Court to determine whether ICE's systematic actions, or failures to act, in response to COVID-19 amount to violations of the class members' constitutional or statutory rights. As a result, the same injunction or declaratory judgment would provide relief to all class members, or to none of them, and the Court concludes Rule 23(b)(2)'s requirements are satisfied.

C. Preliminary Injunction

The Court finds that Plaintiffs are likely to succeed on the merits of one or more of their claims, will suffer irreparable harm as a result of the deprivation of their rights, and that the balance of equities and public interest heavily weigh in favor of granting preliminary relief.

1. Success on the Merits or Serious Questions

Plaintiffs claim Defendants' COVID-19 response gives rise to three claims for relief: (1) medical indifference in violation of the Fifth Amendment; (2) punitive conditions of confinement, in violation of the Fifth Amendment; and (3) denying persons with disabilities the benefits of Executive Agency programs and activities, in violation of Section 504 of the Rehab Act. (PI Mot. at 9, 15, 17.)

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a. Standing

Defendants argue that Plaintiffs lack Article III standing,[23] and cannot therefore succeed on any of their claims. (PI Opp'n at 14-15.) Defendants do not raise concerns about whether the harm alleged can be fairly traced to them. Instead they argue narrowly that the asserted harm is speculative and not redressable, because no COVID-19 cases have been identified in Plaintiffs' facilities. That is no longer true. Seven detainees at Stewart Detention Center in Lumpkin Georgia, where Martinez is held, have tested positive for COVID-19, and thirty more are suspected to have the disease.[24] Even if no detainee or staff member had tested positive, for reasons described in the irreparable harm section below (Part III.C.2), the Court rejects the contention that the risk of COVID-19 is overly speculative.[25]

b. Medical Indifference

The standard for medical indifference in violation of the Fifth Amendment was recently articulated in a case involving pretrial detainees, Gordon v. County of Orange, 888 F.3d 1118 (9th Cir. 2018). The elements of a medical indifference claim by pretrial detainees are:

> (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—

[23] "Constitutional standing concerns whether the plaintiff's personal stake in the lawsuit is sufficient to make out a concrete 'case' or 'controversy' to which the federal judicial power may extend under Article III, § 2." Pershing Park Villas Homeowners Ass'n v. United Pacific Ins. Co., 219 F.3d 895 (9th Cir. 2000). "[T]he irreducible constitutional minimum of standing" is comprised of three elements: (1) an injury-in-fact; (2) a causal connection between the injury and challenged conduct such that the injury is "fairly traceable" to the challenged action; and (3) it must be "likely," not merely "speculative" that the injury can be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992). The injury-in-fact must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." Id. at 560. "The party invoking federal jurisdiction bears the burden of establishing these elements." Id. at 561.

[24] (Bretz Decl. ¶ 14.) See also ICE Guidance on COVID-19, https://www.ice.gov/coronavirus.

[25] Defendants cite no authority for, and the Court rejects, the implication that it lacks authority to enter class-wide relief to require a constitutionally adequate response to COVID-19 from ICE. (PI Opp'n at 4-5 (arguing that "this Court lacks the authority to redress such injuries," and not disputing that Plaintiffs' proposed injunction would provide them with relief).) See also Padilla v. Immigration & Customs Enf't, 2020 WL 1482393, at *11 (9th Cir. Mar. 27, 2020) (discussing authority of district courts to enter class wide relief).

> making the consequences of the defendant's conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff's injuries.

888 F.3d at 1125. "With respect to the third element, the defendant's conduct must be objectively unreasonable, a test that will necessarily 'turn[ ] on the facts and circumstances of each particular case.'" Id. (quoting Castro v. Cty. of Los Angeles, 833 F.3d 1060, 1070-71 (9th Cir. 2016)). Objective unreasonableness is "more than negligence but less than subjective intent—something akin to reckless disregard." Id.

Plaintiffs are likely to succeed on the merits of their medical indifference claim. The Court analyzes each element below.

i. Intentional Decision

A failure to act with respect to a known condition of confinement may constitute an intentional decision. See Castro v. Cty. of Los Angeles, 833 F.3d 1060 (9th Cir. 2016) (permitting a failure-to-protect due process claim under 42 U.S.C. § 1983 where officers knew of the risk); Flentoil v. Santa Clara Cty. Dep't of Corr., 2020 WL 571025, at *7 (N.D. Cal. Feb. 5, 2020) (refusal to provide medication). Some courts have found that where the defendant did not have time to act, however, there is not an intentional decision. Pajas v. Cty. of Monterey, 2018 WL 5819674, at *8 (N.D. Cal. Nov. 5, 2018) (finding no jury could find the sheriff acted intentionally towards a condition of confinement by his "failure to revamp jail policies and procedures," because he had just taken office less than three weeks earlier).

Defendants made an intentional decision to promulgate only non-binding guidance for the first month of the pandemic, despite some knowledge of the risk posed by COVID-19. The March 6, March 27, and April 4, 2020 ICE guidance documents illustrate Defendants' awareness of a grave risk, but their failure to mandate a facility-wide response. Cf. Brown v. Trejo, 2018 U.S. Dist. LEXIS 193389, *28 (C.D. Cal. Sept. 24, 2018) (finding that failure to act with regard to a condition, without knowledge of that condition or the risk posed, is not intentional). From March 11, 2020, when the pandemic was declared by the World Health Organization, until April 10, 2020, Defendants' policy documents equivocated dangerously, and the IHSC guidance counseled both "follow me" and "defer to the CDC." (Action Plan; Docket Review Guidance.)

ICE's systemwide inaction specifically towards individuals with disabilities or certain risk factors also likely constitutes an "intentional decision." Defendants do not directly dispute that ICE itself does not track medically vulnerable and/or disabled detainees with specificity.[26] Nor

[26] Defendants' Declarations state that some facilities are tracking detainees with disabilities and COVID-19 vulnerabilities, but the declarations fail to address whether Defendants themselves track these individuals or required facilities to track them. The declarations do not explain whether the disabilities facilities screen for are coextensive with the CDC-defined risk factors, and do not explain if a procedure is available for obtaining that

does the Docket Review Guidance mandate action aimed at them. It asks Field Office Directors to "please" make individualized determinations of the necessity of ongoing detention, and only as to some detainees. (Docket Review Guidance.) Defendants have not made the Court aware of a requirement that FODs make individualized determinations as to eligible detainees. Under current policy, ineligible medically vulnerable individuals who are mandatorily detained will not be identified, or offered any accommodation beyond that available to the general population to protect from this deadly disease.

A final relevant decision is ICE's apparent failure to enforce compliance with its policy documents. To the extent COVID-19 risk was addressed by individual facilities from March 11, 2020 to April 10, 2020, it seems to have been voluntary. Now, there is a Pandemic Response Requirement document. This document also includes no mention of enforcement mechanisms. Plaintiffs incorporated by reference into their Complaint several OIG reports about ICE's medical care system, which the Court finds persuasive on this point. (Compl. ¶¶ 160 n.45, 186 n.97, 347 n.303.) The OIG reports discuss at greater length ICE's monitoring and oversight failures, with particular regard to inadequate medical care, limited hygiene, and long wait times for urgent medical procedures.

ii. Substantial Risk of Serious Harm

Whether "a substantial risk of serious harm" exists is a largely a question of fact. Lemire v. Cal. Dep't. of Corr. and Rehab., 726 F.3d 1062, 1074-75 (9th Cir. 2013). "[I]t does not matter whether the risk comes from a single source or multiple sources, any more than it matters whether a prisoner faces an excessive risk . . . for reasons personal to him or because all prisoners in his situation face such a risk." Farmer v. Brennan, 511 U.S. 825, 843 (1994).

Plaintiffs also demonstrate that ICE's policies and delayed response likely subject Subclass members to a substantial risk of serious harm. It is undisputed that COVID-19 finds its way into almost every workplace and communal setting, and the Defendants provide little explanation why immigration detention facilities will be different. Defendants also do not dispute that 15% of individuals in the Subclasses who ultimately contract COVID-19 will die, or that those who survive are likely to suffer life-altering complications. At the larger detention facilities, a COVID-19 outbreak could result in dozens of deaths. And as recent ICE COVID-19 case numbers indicate, once a facility has a few cases, the disease spreads rapidly, despite IHSC and CDC protocols.

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information. The declarations are also extremely vague as to the level of oversight and monitoring conducted by FMCs, whether FMCs can obtain medical information on particular detainees, and many other pertinent questions. Only as of April 10, 2020, did ICE mandate all facilities to report to ICE FODs or FMCs the A-number, location, and medical condition of any detainee with the CDC-defined risk criteria. (Pandemic Response Requirements at 6.)

iii. Objective Unreasonableness or Reckless Disregard

Substantive due process imposes a standard of deliberate indifference or reckless disregard. See Gantt v. City of L.A., 717 F.3d 702, 708 (9th Cir. 2013); Tennison v. City and Cnty. of S.F., 570 F.3d 1078, 1089 (9th Cir. 2009). In Gantt, the Ninth Circuit explained: "Deliberate indifference is the conscious or reckless disregard of the consequences of one's acts or omissions. It entails something more than negligence but is satisfied by something less than acts or omission for the very purpose of causing harm or with knowledge that harm will result." 717 F.3d 702, 708 (9th Cir. 2013).

Defendants' failures to act are likely "akin to reckless disregard." Gordon, 888 F.3d at 1125. As of the drafting of this Order, Defendants have not provided even nonbinding guidance to detention facilities specifically regarding medically vulnerable detainees, pending individualized determinations of release or denial of release. Second, Defendants delayed mandating adoption of the CDC guidelines, and unreasonably delayed taking steps that would allow higher levels of social distancing in detention.[27] Although Defendants state three of their facilities are within population limits, they do not explain whether the population has been reduced so that quarantined or medically isolated cohorts can comply with CDC recommendations, which are now mandated. (CDC Interim Guidance at 16, 20; Pandemic Response Requirements, Attach. E.) As a result, any medically vulnerable individual in an ICE facility likely confronts an unreasonable risk of infection, severe illness, and death.

While Defendants took some available measures to mitigate the threat of COVID-19, (see generally, Holt Decl.; Action Plan; Docket Review Guidance; Pandemic Response Requirements), there is a serious question whether the issuance of non-binding recommendations is an objectively "reasonable" response to a pandemic, given the high degree of risk and obvious consequences of inaction. The Court has noted at least two probable serious failures to act: first, the month-long failure to quickly identify individuals most at risk of COVID-19 complications and to require specific protection for those individuals; and second, the failure to take measures within ICE's power to increase the distance between detainees and prevent the spread of infectious disease, for example by promptly releasing individuals from detention to achieve greater spacing between medically vulnerable individuals and the general population.

[27] On April 6, 2020, ICE's website stated that ERO decided to "reduce the population of all detention facilities to 70 percent or less" to increase social distancing. ICE Guidance on COVID-19, https://www.ice.gov/coronavirus. The Pandemic Response Requirements state that all facilities "should . . . to the extent practicable . . . [make efforts] to reduce the population to approximately 75% of capacity." (Pandemic Response Requirements at 13.) However, it is not clear how facilities could achieve this objective without ICE assistance, nor is it clear that ICE is close to meeting this objective. Defendants provide evidence that the population of single adult detainees has decreased only slightly in the past month. (Holt Decl. ¶ 13 (from 35,980 on March 13, 2020 to 31,709 on April 13, 2020).).

Plaintiffs point to several additional global failures they deem objectively unreasonable, which bolster their chances of success on this claim. Plaintiffs raise serious questions about the reasonableness of the IHSC guidance at the time it was promulgated and updated. (Reply at 5.) The IHSC guidance omits aspects of the CDC recommendations and is incommensurable with others (Venters Decl. II ¶ 3.) Again, the Court is particularly disturbed that IHSC guidance did not more strongly recommend social distancing[28] or even PPE for the most at risk detainees stuck in cohorts, even assuming social distancing and PPE for the whole detained population is impracticable.

Plaintiffs also provide several reasons the Docket Review Guidance is objectively unreasonable. (Reply at 7.) First, it omits a CDC-defined risk factor.[29] Second, it does not apply to medically vulnerable individuals held in "mandatory" detention, who remain in harm's way. Third, it does not protect individuals while release determinations are being made. Fourth, it gives ICE FODs responsibility for identifying individuals at risk, not medical professionals. Fifth, it does not require action within a specific period of time. Sixth, it fails to provide clinical guidance. Seventh, it is, and remains, mere guidance and is not determinative. Eighth, it does not have a strong presumption of release. (Reply at 8.)

As a result of these deficiencies, many of which persist more than a month into the COVID-19 pandemic, the Court concludes Defendants have likely exhibited callous indifference to the safety and wellbeing of the Subclass members. The evidence suggests systemwide inaction that goes beyond a mere "difference of medical opinion or negligence." Bell v. Mahoney, 2019 WL 6792793 (C.D. Cal. Aug. 29, 2019). (Seaborn Decl., Ex. E, Letter from Dr. Scott Allen and Dr. Josiah Rich to Congressman Bennie Thompson et al. (Mar. 19, 2020); id., Ex. J, Open Letter to ICE from Medical Professionals to ICE Acting Director.) Plaintiffs are likely to satisfy the objective element[30] of their deliberate indifference claim.

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[28] Defendants state the CDC Interim Guidance does not require social distancing, (PI Opp'n at 21), but the Court disagrees. The policy only recognizes that social distancing is "challenging" and then goes on to emphasize, "it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19." CDC Interim Guidance at 4. The guidance also recommends making a list of possible social distancing strategies, id. at 6, which may be implemented at the individual, group, or operational levels.

[29] This flaw remains in place even after April 10, 2020. Although the Pandemic Response Requirements order facilities to report to ICE any detainee with a high body mass index (BMI), the Docket Review Guidance omits BMI from the categories of person who will receive individualized consideration. The reverse problem exists with regard to pregnant detainees. The Pandemic Response Requirements do not require facilities to report pregnant detainees, but the Docket Review Guidance purports to provide individualized consideration for these individuals.

[30] Defendants' Class Certification Opposition notes that some circuits require plaintiffs to satisfy both an objective and subjective component for a medical indifference claim. (Class Cert. Opp'n at 19.) The Court rejected that argument in the class certification analysis. The Court pauses to note, however, that in one recent habeas decision in the District of Maryland, the court

iv. Causation

Defendants' action, or inaction, has caused harm to the Subclasses. First, Defendants exercise control over the size of the detainee population as a whole, and thus determine one of the most important factors in the spread of disease: the density of the detained population.[31] Defendants also discretion to release individuals, including those who are "mandatorily detained" and to use alternatives to detention to achieve governmental objectives. (Jordan Decl., Ex. A.) Across facilities, it is ICE—not the facility—that decides whether an individual may be released.[32]

Next, as Defendants' own declarations attest, (Vicks Decl. Exs. 10-13), ICE purports to exercise oversight and monitoring powers at contract detention facilities, and to correct any observed deficiencies. Defendants do not dispute that they have the authority to mandate compliance, but a month into the pandemic merely "recommended" compliance. As the exhaustive list of facility conditions in the fact section above illustrates, most facilities had significant compliance gaps even in mid to late March 2020, despite the fact that ICE issued guidance on March 6, 2020. As a result, the dangerous conditions to which detainees are subjected can be laid at Defendants' doorstep. In sum, Plaintiffs are likely to succeed on their medical indifference claim.

c. Punitive Conditions of Confinement

Plaintiffs are also likely to succeed on their claim of punitive conditions of confinement. If a civil detainee is not afforded "more considerate" treatment than that available in a criminal pretrial facility, this creates a rebuttable presumption of punitiveness, which defendants may

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found the subjective component to be satisfied because "there is no dispute that Respondents were and are subjectively aware of the risk that COVID-19 poses to both healthy and high-risk individuals" and "evidence supports the conclusion that as of the time of the filing . . . Respondents were disregarding the risk." Coreas v. Bounds, Case No. 8:20-cv-00780 (D. Md. Apr. 4, 2020), ECF No. 56. A similar analysis could support a finding of the subjective prong in this case, were that necessary.

[31] Notably, ICE could reduce the detained population by about half, simply by releasing detainees with no prior convictions and no pending charges, (Seaborn Decl. Ex. F), but it has not elected to do so. This would not require individualized determinations, could be achieved quickly, and would provide significant protection to the Subclass members who remain in detention.

[32] Perhaps contract facilities could refuse to maintain dangerous population levels during the pandemic. However, the Court is unaware of a facility that has done so, and finds facilities are unlikely to take independent or decisive action given the economic imperative to maintaining full capacity and the contractual obligation to make a certain number of beds available for ICE detainees.

counter by offering legitimate, non-punitive justifications for the restrictions. Jones v. Blanas, 393 F.3d 918, 934 (9th Cir. 2004) (citing Youngberg v. Romeo, 457 U.S. 307, 321-22 (1982)). Restrictions are also presumptively punitive where they are "employed to achieve objectives that could be accomplished in so many alternative and less harsh methods." Id. (citing Hallstrom v. City of Garden City, 991 F.2d 1473, 1484 (9th Cir. 1993)).

During a pandemic such as this, it is likely punitive for a civil detention administrator to fail to mandate compliance with widely accepted hygiene, protective equipment, and distancing measures until the peak of the pandemic, and to fail to take similar systemwide actions as jails and prisons. Here, the protective actions taken by comparable prison and jail administrators have been as favorable or more favorable than Defendants'. For example, the federal Bureau of Prisons ("BOP") has issued a more decisive and urgent call to action. (Reply at 10-11; Jordan Declaration, Ex. D, Memorandum from Att'y Gen. William Bar to Director of BOP (April 3, 2020).) The Attorney General directed BOP to prioritize the use of home confinement, noting "[w]e have to move with dispatch . . . to move vulnerable inmates out of these institutions." Id. at 1. The Memorandum commands the Director of BOP to "IMMEDIATELY MAXIMIZE" appropriate transfers to home confinement, and goes so far as to authorize transfer to home confinement where electronic monitoring is not available. Id. at 1-2. In contrast, the Docket Review Guidelines ask FODs to "please" make individualized determinations as to release, and arguably fails to communicate the same sense of urgency or concern. To the Court's knowledge, there is still no requirement that FODs take such action.

Defendants only weakly argue a legitimate, non-punitive justification for their month-long failure to meaningfully track medical vulnerabilities and to issue more than proposals. The legitimate purpose advanced by immigration detention is to secure attendance at hearings and to ensure the safety of the community. See Zadvydas v. Davis, 533 U.S. 678, 699 (2001). However, attendance at hearings cannot be secured reliably when the detainee has, is at risk of having, or is at risk of infecting court staff with a deadly infectious disease with no known cure. Participation in immigration proceedings is not possible for those who are sick or dying, and is impossible for those who are dead. Another purpose of detention, public safety, is not advanced by delay. Plaintiffs establish that public safety as a whole is seriously diminished by facility outbreaks, which further tax community health resources. (Meyers Decl.; Venters Decl.) As a result, Defendants' inactions are likely "arbitrary or purposeless," and are excessive given the nature and purpose civil detention. Bell v. Wolfish, 441 U.S. 520, 539 (1979).

d. Section 504 of the Rehab Act

Plaintiffs are also likely to succeed on their Section 504 claim. To bring a Section 504 claim, a plaintiff must show that "(1) he is an individual with a disability; (2) he is otherwise qualified to receive the benefit; (3) he was denied the benefits of the program solely by reason of his disability; and (4) the program receives federal financial assistance." Updike v. Multnomah Cty., 870 F.3d 939, 949 (9th Cir. 2017) (quoting Duvall v. Cty. of Kitsap, 260 F.3d 1124, 1135

(9th Cir. 2001)). Section 504 includes an "affirmative obligation" to make benefits, services, and programs accessible to people with disabilities.[33] Id. (citations omitted).

Plaintiffs contend that persons with health conditions putting them at risk of severe illness or death if exposed to COVID-19 qualify as persons with disabilities under Section 504. (PI Mot. at 17.) The Defendants do not argue otherwise. (PI Opp'n at 28-29.) As a result, the Court finds that the medical conditions defined in the Subclass Two likely qualify under the Rehab Act. See 29 U.S.C. § 705(2)(B); 42 U.S.C. § 12102.

The programmatic "benefit" in this context is shared by all class members and is best understood as participation in the removal process. The "accommodation" Plaintiffs seek is also the same across the class: effective systemwide practices, such as disability tracking, and related life-preserving directives from ICE. (PI Mot. at 19.) Although Defendants assert that three facilities screen for disability at intake, they do not specify: (1) what those disabilities are, (2) to what extent they overlap with COVID-19 vulnerabilities, or (3) whether ICE required the facility to share that information with ICE before April 10, 2020. (Vick Decl., Exs. 10-12 (discussing screening in the same paragraphs, 7 and 11); Valdez Decl. ¶ 12; Reply at 14 n.31 (remarking that Stewart Detention facility purports to track disability yet "identified no detainees who would be at greater risk for contracting COVID-19").) The only reasonable accommodation, which was likely denied here, was for ICE to mandate identification of all detainees with CDC-defined COVID-19 vulnerabilities, and to provide them with minimally adequate protection, whether that be detention with social distancing or protective equipment, an alternative to detention, or some other epidemiologically sound intervention.

The Court is not persuaded by Defendants' argument that each detainee must individually request a reasonable accommodation and provide notice to the facility. (PI Opp'n at 29 (citing Mark H. v. Hamamoto, 620 F.3d 1090, 1097 (9th Cir. 2010)).) It is not reasonable to expect each detainee to utilize facility grievance mechanisms and ICE request boxes to obtain this kind of systemwide response to a pandemic. The argument also ignores the systematic nature of the relief sought here. Subclass members face the prospect of quick successions of transfers among ICE's network of facilities, and cannot be expected to provide separate notice to each.

In addition, Defendants do not respond to Plaintiffs' claim that ICE has an affirmative duty to track disabilities and provide accommodations, because the population is detained. See, e.g., Armstrong v. Brown, 732 F.3d 955, 962 (9th Cir. 2013) (affirming district court's order to track and accommodate class member's disabilities, and noting jails had an obligation to prevent future violations); Updike v. Multnomah Cty., 870 F.3d 939, 949 (9th Cir. 2017) (noting Title II and § 504 include an affirmative obligation for public entities to make benefits, services, and programs accessible to people with disabilities). One month into the crisis, Defendants tacitly

[33] Section 504's implementing regulations also prohibit entities receiving federal financial assistance from utilizing "criteria or methods of administration" that "have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons." 34 C.F.R. § 104.4(b).

acknowledged the importance of tracking medical vulnerabilities and the inadequacy of their existing detainee tracking tools when they ordered facilities to provide that information to them. (Pandemic Response Requirements at 5-7.) As a result of these systemwide failures, Plaintiffs are likely to succeed on their Rehab Act claims, and have met the first requirement for a preliminary injunction.

2. Likelihood of Irreparable Harm

A plaintiff must demonstrate she is likely to suffer irreparable harm in the absence of a preliminary injunction. See Winter, 555 U.S. at 20. The Ninth Circuit cautions that "[s]peculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction." Caribbean Marine Servs. v. Baldridge, 844 F.2d 668, 674 (9th Cir. 1988). A plaintiff seeking injunctive relief must demonstrate that "remedies available at law, such as monetary damages, are inadequate to compensate" for the injury. Herb Reed Enters., LLC v. Fla. Entm't Mgmt., 736 F.3d 1239, 1249 (9th Cir. 2013). "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)).

Plaintiffs have established they will suffer the irreparable harm of increased likelihood of severe illness and death if a preliminary injunction is not entered. The Constitution protects those in detention against "a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year." Helling v. McKinney, 509 U.S. 25, 33 (1993) ("It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them."); see also Unknown Parties v. Johnson, 2016 WL 8188563, at *15 (D. Ariz. No. 18, 2016), aff'd sub nom Doe v. Kelly, 878 F.3d 710 (9th Cir. 2017) (finding evidence of "medical risks associated with . . . being exposed to communicable diseases" adequate to establish irreparable harm).

Even in the early days of the pandemic, and with few exceptions, courts did not hesitate to find irreparable harm as a result of potential COVID-19 exposure in prison and detention, including in facilities where there had not been a confirmed case. (See Jordan Decl., Appendix 1 (collecting cases).) At this stage of the pandemic, the threat is even clearer. The number of immigration detainees testing positive for COVID-19 continues to increase at an alarming rate. (Jordan Decl. II, Ex. A (charting the increase).) Defendants do not argue that the curve is likely to flatten in the near future. They do not deny that about 15% of individuals vulnerable to COVID-19 will die, if they are infected or that more will suffer lasting consequences. Defendants also fail to respond to Plaintiffs' evidence that detained populations tend to have worse health outcomes than the population as a whole. (Franco-Paredes Decl. at 1-2; Public Health Amicus at 18 (noting HIV among incarcerated population is ten times that of the general population, and tuberculosis is 2,500 times more prevalent); Venters Decl. at 7 (referencing study concluding that the uniform age definition of a geriatric or older prisoner should be fifty-five years).)

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3. Balance of the Equities and Public Interest

Where the government is the opposing party, balancing of the harm and the public interest merge. See Nken v. Holder, 556 U.S. 418, 435 (2009). Thus, the Court asks whether any significant "public consequences" would result from issuing the preliminary injunction. Winter, 555 U.S. at 24.

The balance of equities and public interest sharply incline in Plaintiffs' favor. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." Melendres, 695 F.3d at 1002 (quotation omitted). Moreover, there can be no public interest in exposing vulnerable persons to increased risks of severe illness and death. "Faced with . . . preventable human suffering, [the Ninth Circuit] ha[s] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor." Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017) (quoting Lopez v. Heckler, 713 F.2d 1432, 1437 (9th Cir. 1983)). Plaintiffs also attach evidence suggesting that a failure to protect the most vulnerable detainees could quickly overwhelm local hospitals with insufficient ICU beads or respirators, diminishing the available health resources for all. (Seaborn Decl., Ex. E at 4.) If a preliminary injunction is entered, however, survival is maximized. (Id.; see also Public Health Amicus at 19-23.)

4. Scope of Relief

The most serious systemic deficiencies noted, and which must be addressed to provide relief to the Subclasses, are as follows: (1) lack of any requirement, to the Court's knowledge, that Field Offices make individualized custody determinations for at risk detainees, as opposed to a mere request that they do so; (2) discrepancy between the risk factors identified in the Subclass definition and the risk factors triggering individualized custody determinations under the Docket Review Guidance; (3) lack of a performance standard for the safe detention of at risk detainees pending custody decisions, or in the event ICE deems detainees ineligible for release; (4) inconstant adherence to ICE detention standards pertinent to COVID-19. In the Conclusion below, the Court orders relief narrowly tailored to resolve these deficiencies.

Defendants ask that the Court limit the scope of injunctive relief by excluding detainees who have filed separate actions. However, the fact that some detainees have started down one avenue should not prevent ICE from exploring more expeditious paths to relief. See Pride v. Correa, 719 F.3d 1130, 1137 (9th Cir. 2013). In addition, some of those individuals have been or will be denied relief, and will still require safe conditions of confinement.

Until this point, the Order has tended to use a systems perspective, weighing public health or other structural factors. The Court therefore pauses to note the possibility of differences in detainee perspective. To proceed in the safest manner, it would also be in the public interest for FODs adhering to the Docket Review Guidance to consider the willingness of each vulnerable detainee to be released, if this is not considered already. Plaintiffs' expert declaration notes that "[f]rom 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." (Venters Decl. II ¶ 6.) While this may be true as a general proposition, given the many dangers and uncertainties of the pandemic, involuntary release of the most vulnerable detainees could be counterproductive.

Finally, it is possible that Defendants' actions since the hearing, or actions of which the Court is unaware, have addressed some of the Court's concerns. However, Defendants' halting start to pandemic response does not remove the need for preliminary relief, because Defendants have not argued or shown that delays or non-enforcement of ICE facility-wide policies will cease. McCormack v. Herzog, 788 F.3d 1017, 1025 (9th Cir. 2015) ("an executive action that is not governed by any clear or codified procedures cannot moot a claim").

IV. CONCLUSION

For the above reasons, the Court GRANTS the motions to file amicus briefs. The Court DENIES AS MOOT the ex parte application for leave to file a supplement. The Court GRANTS Plaintiffs' emergency motion to certify subclasses. A separate order defining the Subclasses and Risk Factors, and appointing representatives and class counsel will issue concurrently. The Court further GRANTS Plaintiffs' motion for preliminary injunction as follows:

- Defendants shall provide ICE Field Office Directors with the Risk Factors identified in the Subclass definition;
- Defendants shall identify and track all ICE detainees with Risk Factors. Most should be identified within ten days of this Order or within five days of their detention, whichever is later;
- Defendants shall make timely custody determinations for detainees with Risk Factors, per the latest Docket Review Guidance. In making their determinations, Defendants should consider the willingness of detainees with Risk Factors to be released, and offer information on post-release planning, which Plaintiffs may assist in providing;
- Defendants shall provide necessary training to any staff tasked with identifying detainees with Risk Factors, or delegate that task to trained medical personnel;
- The above relief shall extend to detainees with Risk Factors regardless of whether they have submitted requests for bond or parole, have petitioned for habeas relief, have requested other relief, or have had such requests denied;
- Defendants shall promptly issue a performance standard or a supplement to their Pandemic Response Requirements ("Performance Standard") defining the minimum acceptable detention conditions for detainees with the Risk Factors, regardless of the statutory authority for their detention, to reduce their risk of COVID-19 infection pending individualized determinations or the end of the pandemic;

- Defendants shall monitor and enforce facility-wide compliance with the Pandemic Response Requirements and the Performance Standard.

These measures shall remain in place as long as COVID-19 poses a substantial threat of harm to members of the Subclasses. The parties may apply to modify or terminate the injunction.

IT IS SO ORDERED.

Order granting class certification in *Fraihat v. ICE*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

Faour Abdallah Fraihat, et al.,

Plaintiffs,

v.

U.S. Immigration and Customs Enforcement, et al.,

Defendants.

Case No. EDCV 19-1546 JGB (SHKx)

ORDER ON PLAINTIFFS' EMERGENCY MOTION FOR PROVISIONAL CLASS CERTIFICATION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

This matter having come before the Court upon Plaintiffs' Emergency Motion for Provisional Class Certification, (Dkt. No. 83), and good cause being shown,

It is hereby ORDERED that the Motion is GRANTED. The Court hereby orders the following classes be certified, with Plaintiffs Faour Fraihat, Jimmy Sudney, Aristoteles Sanchez Martinez, Alex Hernandez, and Martin Munoz as class representatives pursuant to Federal Rule of Procedure 23(a):

1. **Subclass One:** All people who are detained in ICE custody who have one or more of the Risk Factors placing them at heightened risk of severe illness and death upon contracting the COVID-19 virus. The Risk Factors are defined as being over the age of 55; being pregnant; or having chronic health conditions, including:

cardiovascular disease (congestive heart failure, history of myocardial infarction, history of cardiac surgery); high blood pressure; chronic respiratory disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases); diabetes; cancer; liver disease; kidney disease; autoimmune diseases (psoriasis, rheumatoid arthritis, systemic lupus erythematosus); severe psychiatric illness; history of transplantation; and HIV/AIDS.

2. Subclass Two: All people who are detained in ICE custody whose disabilities place them at heightened risk of severe illness and death upon contacting the COVID-19 virus. Covered disabilities include: cardiovascular disease (congestive heart failure, history of myocardial infarction, history of cardiac surgery); high blood pressure; chronic respiratory disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases); diabetes; cancer; liver disease; kidney disease; autoimmune diseases (psoriasis, rheumatoid arthritis, systemic lupus erythematosus); severe psychiatric illness; history of transplantation; and HIV/AIDS.

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The Court designates Civil Rights Education and Enforcement Center, Disability Rights Advocates, Orrick Herrington & Sutcliffe LLP, Southern Poverty Law Center, and Willkie Farr & Gallagher LLP as counsel for the class pursuant to Federal Rule of Procedure 23(g).

IT IS SO ORDERED

Dated: April 20, 2019

THE HONORABLE JESUS G. BERNAL
United States District Judge

Relevant excerpts from Dr. Homer Venters's declaration, *Sanchez Martinez v. Donahue*

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 COID-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 case[18] – 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

Letter from Drs. Allen and Rich to Congress

Scott A. Allen, MD, FACP
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Medical Education Building
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Riverside, CA 92521

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Providence, RI 02906

March 19, 2020

The Honorable Bennie Thompson
Chairman
House Committee on Homeland Security
310 Cannon House Office Building
Washington, D.C. 20515

The Honorable Ron Johnson
Chairman
Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Mike Rogers
Ranking Member
House Committee on Homeland Security
310 Cannon House Office Building
Washington, D.C. 20515

The Honorable Gary Peters
Ranking Member
Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Carolyn Maloney
Chairwoman
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Jordan
Ranking Member
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Committee Chairpersons and Ranking Members:

We are physicians—an internist and an infectious disease specialist—with unique expertise in medical care in detention settings.[1] We currently serve as medical subject matter experts for the

[1] I, Dr. Scott Allen, MD, FACP, am a Professor Emeritus of Medicine, a former Associate Dean of Academic Affairs and former Chair of the Department of Internal Medicine at the University of California Riverside School of Medicine. From 1997 to 2004, I was a full-time correctional physician for the Rhode Island Department of Corrections; for the final three years, I served as the State Medical Program. I have published over 25 peer-reviewed papers in academic journals related to prison health care and am a former Associate Editor of the International Journal of Prisoner Health Care. I am the court appointed monitor for the consent decree in litigation involving

Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL). One of us (Dr. Allen) has conducted numerous investigations of immigration detention facilities on CRCL's behalf over the past five years. We both are clinicians and continue to see patients, with one of us (Dr. Rich) currently providing care to coronavirus infected patients in an ICU setting.

As experts in the field of detention health, infectious disease, and public health, we are gravely concerned about the need to implement immediate and effective mitigation strategies to slow the spread of the coronavirus and resulting infections of COVID-19. In recent weeks, attention has rightly turned to the public health response in congregate settings such as nursing homes, college campuses, jails, prisons and immigration detention facilities (clusters have already been identified in Chinese and Iranian prisons according to news reports[2] and an inmate and an officer have reportedly just tested positive at New York's Rikers Island).[3] Reporting in recent days reveals that immigrant detainees at ICE's Aurora facility are in isolation for possible exposure to coronavirus.[4] And a member of ICE's medical staff at a private detention center in New Jersey has now been reported to have tested positive for coronavirus.[5]

We have shared our concerns about the serious medical risks from specific public health and safety threats associated with immigration detention with CRCL's Officer Cameron Quinn in an initial letter dated February 25, 2020, and a subsequent letter of March 13, 2020. We offered to

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medical care at Riverside County Jails. I have consulted on detention health issues both domestically and internationally for the Open Society Institute and the International Committee of the Red Cross, among others. I have worked with the Institute of Medicine on several workshops related to detainee healthcare and serve as a medical advisor to Physicians for Human Rights. I am the co-founder and co-director of the Center for Prisoner Health and Human Rights at Brown University (www.prisonerhealth.org), and a former Co-Investigator of the University of California Criminal Justice and Health Consortium. I am also the founder and medical director of the Access Clinic, a primary care medical home to adults with developmental disabilities.

I, Dr. Josiah (Jody) Rich, MD, MPH, am a Professor of Medicine and Epidemiology at The Warren Alpert Medical School of Brown University, and a practicing Infectious Disease Specialist since 1994 at The Miriam Hospital Immunology Center providing clinical care for over 22 years, and at the Rhode Island Department of Corrections caring for prisoners with HIV infection and working in the correctional setting doing research. I have published close to 190 peer-reviewed publications, predominantly in the overlap between infectious diseases, addictions and incarceration. I am the Director and Co-founder of The Center for Prisoner Health and Human Rights at The Miriam Hospital (www.prisonerhealth.org), and a Co-Founder of the nationwide Centers for AIDS Research (CFAR) collaboration in HIV in corrections (CFAR/CHIC) initiative. I am Principal Investigator of three R01 grants and a K24 grant all focused on incarcerated populations. My primary field and area of specialization and expertise is in the overlap between infectious diseases and illicit substance use, the treatment and prevention of HIV infection, and the care and prevention of disease in addicted and incarcerated individuals. I have served as an expert for the National Academy of Sciences, the Institute of Medicine and others.

[2] Erin Mendel, "Coronavirus Outbreaks at China Prisons Spark Worries About Unknown Clusters," *Wall Street Journal*, February 21, 2020, available at: https://www.wsj.com/articles/coronavirus-outbreaks-at-china-prisons-spark-worries-about-unknown-clusters-11582286150; Center for Human Rights in Iran, "Grave Concerns for Prisoners in Iran Amid Coronavirus Outbreak," February 28, 2020, available at https://iranhumanrights.org/2020/02/grave-concerns-for-prisoners-in-iran-amid-coronavirus-outbreak/.

[3] Joseph Konig and Ben Feuerherd, "First Rikers Inmate Tests Positive for Coronavirus" New York Post. March 18, 2020, available at: https://nypost.com/2020/03/18/first-rikers-island-inmate-tests-positive-for-coronavirus/

[4] Sam Tabachnik, "Ten detainees at Aurora's ICE detention facility isolated for possible exposure to coronavirus," *The Denver Post*, March 17, 2020, available at https://www.denverpost.com/2020/03/17/coronavirus-ice-detention-geo-group-aurora-colorado/.

[5] Emily Kassie, "First ICE Employees Test Positive for Coronavirus," *The Marshall Project*, March 19, 2020, available at https://www.themarshallproject.org/2020/03/19/first-ice-employees-test-positive-for-coronavirus

work with DHS in light of our shared obligation to protect the health, safety, and civil rights of detainees under DHS's care. Additionally, on March 17, 2020 we published an opinion piece in the *Washington Post* warning of the need to act immediately to stem the spread of the coronavirus in jails and prisons in order to protect not only the health of prisoners and corrections workers, but the public at large.[6]

In the piece we noted the parallel risks in immigration detention. We are writing now to formally share our concerns about the imminent risk to the health and safety of immigrant detainees, as well as to the public at large, that is a direct consequence of detaining populations in congregate settings. We also offer to Congress, as we have to CRCL, our support and assistance in addressing the public health challenges that must be confronted as proactively as possible to mitigate the spread of the coronavirus both in, and through, immigration detention and congregate settings.

Nature of the Risk in Immigration Detention and Congregate Settings

One of the risks of detention of immigrants in congregant settings is the rapid spread of infectious diseases. Although much is still unknown, the case-fatality rate (number of infected patients who will die from the disease) and rate of spread for COVID-19 appears to be as high or higher than that for influenza or varicella (chicken pox).

In addition to spread within detention facilities, the **extensive transfer of individuals** (who are often without symptoms) throughout the detention system, which occurs with great frequency in the immigration context, could rapidly disseminate the virus throughout the entire system with devastating consequences to public health.[7]

Anyone can get a coronavirus infection. While healthy children appear to suffer mildly if they contract COVID-19, they still pose risk as carriers of infection, particularly so because they may not display symptoms of illness.[8] Family detention continues to struggle with managing outbreaks of influenza and varicella.[9] Notably, seven children who have died in and around

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[6] Josiah Rich, Scott Allen, and Mavis Nimoh, "We must release prisoners to lessen the spread of coronavirus," *Washington Post*, March 17, 2020, available at https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus/.

[7] See Hamed Aleaziz, "A Local Sheriff Said No To More Immigrant Detainees Because of Coronavirus Fears. So ICE Transferred Them All To New Facilities," *BuzzFeed News*, March 18, 2020 (ICE recently transferred170 immigrant detainees from Wisconsin to facilities in Texas and Illinois. "'In order to accommodate various operational demands, ICE routinely transfers detainees within its detention network based on available resources and the needs of the agency…' an ICE official said in a statement."), available at https://www.buzzfeednews.com/article/hamedaleaziz/wisconsin-sheriff-ice-detainees-coronavirus

[8] Interview with Jay C. Butler, MD, Deputy Director for Infectious Diseases, Centers for Disease Control and Prevention, "Coronovirus (COVID-19) Testing," *JAMA Network*, March 16, 2020, available at https://youtu.be/oGiOi7eV05g (min 19:00).

[9] Indeed, I (Dr. Allen) raised concerns to CRCL, the DHS Office of Inspector General, and to Congress in July 2018, along with my colleague Dr. Pamela McPherson, about the risks if harm to immigrant children in family detention centers because of specific systemic weaknesses at those facilities in their ability to provide for the medical and mental health needs of children in detention. *See*, e.g., July 17, 2018 Letter to Senate Whistleblower Caucus Chairs from Drs. Scott Allen and Pamela McPherson, available at https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf. Those concerns, including but not limited to inadequate medical staffing, a lack of translation services, and the risk of

immigration detention, according to press reports, six died of infectious disease, including three deaths from influenza.[10] Containing the spread of an infection in a congregate facility housing families creates the conditions where many of those infected children who do not manifest symptoms will unavoidably spread the virus to older family members who may be a higher risk of serious illness.

Finally, as you well know, social distancing is essential to slow the spread of the coronavirus to minimize the risk of infection and to try to reduce the number of those needing medical treatment from the already-overwhelmed and inadequately prepared health care providers and facilities. However, social distancing is an oxymoron in congregate settings, which because of the concentration of people in a close area with limited options for creating distance between detainees, are at very high risk for an outbreak of infectious disease. This then creates an enormous public health risk, not only because disease can spread so quickly, but because those who contract COVID-19 with symptoms that require medical intervention will need to be treated at local hospitals, thus increasing the risk of infection to the public at large and overwhelming treatment facilities.

As local hospital systems become overwhelmed by the patient flow from detention center outbreaks, precious health resources will be less available for people in the community.To be more explicit, a detention center with a rapid outbreak could result in multiple detainees—five, ten or more—being sent to the local community hospital where there may only be six or eight ventilators over a very short period. As they fill up and overwhelm the ventilator resources, those ventilators are unavailable when the infection inevitably is carried by staff to the community and are also unavailable for all the usual critical illnesses (heart attacks, trauma, etc). In the alternate scenario where detainees are released from high risk congregate settings, the tinderbox scenario of a large cohort of people getting sick all at once is less likely to occur, and the peak volume of patients hitting the community hospital would level out. In the first scenario, many people from the detention center *and the community* die unnecessarily for want of a ventilator. In the latter, survival is maximized as the local mass outbreak scenario is averted.

It is additionally concerning that dozens of immigration detention centers are in remote areas with limited access to health care facilities. Many facilities, because of the rural locations, have only one on-site medical provider. If that provider gets sick and requires being quarantined for at least fourteen days, the entire facility could be without any medical providers at all during a foreseeable outbreak of a rapidly infectious disease. We simply can't afford a drain on resources/medical personnel from any preventable cases.

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communication breakdowns and confusion that results from different lines of authority needing to coordinate between various agencies and partners from different government programs and departments responsible for detention programs with rapid turnover, all continue to contribute to heightened risks to meeting the medical challenges posed by the spread of the coronavirus.

[10] Nicole Acevedo, "Why are children dying in U.S. custody?," *NBC News*, May 29, 2019, available at https://www.nbcnews.com/news/latino/why-are-migrant-children-dying-u-s-custody-n1010316

Proactive Approaches Required

Before coronavirus spreads through immigration detention, proactivity is required in three primary areas: 1) Processes for screening, testing, isolation and quarantine; 2) Limiting transport and transfer of immigrant detainees; and 3) Implementing alternatives to detention to facilitate as much social distancing as possible.

Protocols for early screening, testing, isolation and quarantine exist in detention settings to address infectious diseases such as influenza, chicken pox and measles. However, the track record of ICE facilities implementing these protocols historically has been inconsistent. In the current scenario, with widespread reporting about the lack of available tests for COVID-19 and challenges for screening given the late-onset display of symptoms for what is now a community-spread illness, detention facilities, like the rest of country, are already behind the curve for this stage of mitigation.

Detention facilities will need to rapidly identify cases and develop plans to isolate exposed cohorts to limit the spread, as well as transfer ill patients to appropriate facilities. Screening should occur as early as possible after apprehension (including at border holding facilities) to prevent introduction of the virus into detention centers. We strongly recommend ongoing consultation with CDC and public health officials to forge optimal infection prevention and control strategies to mitigate the health risks to detained patient populations and correctional workers. Any outbreak in a facility could rapidly overwhelm the capacity of healthcare programs. Partnerships with local public health agencies, hospitals and clinics, including joint planning exercises and preparedness drills, will be necessary.

Transferring detainees between facilities should be kept to an absolute minimum. The transfer process puts the immigrants being transferred, populations in the new facilities, and personnel all at increased risk of exposure. The nationwide network of detention centers, where frequent and routine inter-facility transfers occur, represents a frighteningly efficient mechanism for rapid spread of the virus to otherwise remote areas of the country where many detention centers are housed.

Finally, regarding the need to implement immediate social distancing to reduce the likelihood of exposure to detainees, facility personnel, and the general public, ***it is essential to consider releasing all detainees who do not pose an immediate risk to public safety.***

Congregant settings have a high risk of rapid spread of infectious diseases, and wherever possible, public health mitigation efforts involve moving people out of congregate settings (as we are seeing with colleges and universities and K-12 schools).[11] Minimally, DHS should consider releasing all detainees in high risk medical groups such as older people and those with

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[11] Madeline Holcombe, "Some schools closed for coronavirus in US are not going back for the rest of the academic year," *CNN,* March 18, 2020, available at https://www.cnn.com/2020/03/18/us/coronavirus-schools-not-going-back-year/index.html; Eric Levenson, Chris Boyette and Janine Mack, "Colleges and universities across the US are canceling in-person classes due to coronavirus," *CNN*, March 12, 2020, available at https://www.cnn.com/2020/03/09/us/coronavirus-university-college-classes/index.html.

chronic diseases. COVID-19 infection among these groups will require many to be transferred to local hospitals for intensive medical and ventilator care—highly expensive interventions that may soon be in short supply.

Given the already established risks of adverse health consequences associated with the detention of children and their families,[12] the policy of detention of children and their families in should be reconsidered in light of these new infectious disease threats so that children would only be placed in congregate detention settings when lower risk community settings are not available and then for as brief a time as possible.

In addition, given the low risk of releasing detainees who do not pose a threat to public safety—i.e., those only charged with immigration violations—releasing *all* immigration detainees who do not pose a security risk should be seriously considered in the national effort to stop the spread of the coronavirus.

Similarly, the practice of forcing asylum seekers to remain in Mexico has created a *de facto* congregate setting for immigrants, since large groups of people are concentrated on the US southern border as a result of the MPP program in the worst of hygienic conditions without any basic public health infrastructure or access to medical facilities or the ability to engage in social distancing as they await asylum hearings, which are currently on hold as a consequence of the government's response to stop the spread of the coronavirus.[13] This is a tinderbox that cannot be ignored in the national strategy to slow the spread of infection.

ICE recently announced that in response to the coronavirus pandemic, it will delay arresting immigrants who do not pose public safety threats, and will also stop detaining immigrants who fall outside of mandatory detention guidelines.[14] But with reporting that immigrant detainees at ICE facilities are already being isolated for possible exposure to coronavirus, it is not enough to simply stop adding to the existing population of immigrant detainees. Social distancing through release is necessary to slow transmission of infection.[15]

Reassessing the security and public health risks, and acting immediately, will save lives of not only those detained, but also detention staff and their families, and the community-at-large.

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[12] Report of the DHS Advisory Committee on Family Residential Centers, September 30, 2016, available at https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc16093.pdf

[13] *See* Rick Jervis, "Migrants waiting at US-Mexico border at risk of coronavirus, health experts warn," *USA Today*, March 17, 2020, available at https://www.usatoday.com/story/news/nation/2020/03/17/us-border-could-hit-hard-coronavirus-migrants-wait-mexico/5062446002/.

[14] ICE website, Guidance on COVID-19, Immigration and Enforcement Check-Ins, Updated March 18, 2020, 7:45 pm, available at https://www.ice.gov/covid19.

[15] Release of immigrants from detention to control the coronavirus outbreak has been recommended by John Sandweg, former acting head of ICE during the Obama administration, who further noted, "'The overwhelming majority of people in ICE detention don't pose a threat to public safety and are not an unmanageable flight risk.'…'Unlike the Federal Bureau of Prisons, ICE has complete control over the release of individuals. ICE is not carrying out the sentence imposed by a federal judge….It has 100% discretion.'" *See* Camilo Montoya-Galvez, "'Powder kegs': Calls grow for ICE to release immigrants to avoid coronavirus outbreak, *CBS News*, March 19, 2020, available at https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/.

Our legal counsel, Dana Gold of the Government Accountability Project, is supporting and coordinating our efforts to share our concerns with Congress and other oversight entities about the substantial and specific threats to public health and safety the coronavirus poses by congregate settings for immigrants. As we similarly offered to DHS, we stand ready to aid you in any way to mitigate this crisis and prevent its escalation in light of our unique expertise in detention health and experience with ICE detention specifically. Please contact our attorney, Dana Gold, at danag@whistleblower.org, or her colleague, Irvin McCullough, at irvinm@whistleblower.org, with any questions.

Sincerely,

/s/

Scott A. Allen, MD, FACP
Professor Emeritus, University of California, School of Medicine
Medical Subject Matter Expert, CRCL, DHS

/s/

Josiah D. Rich, MD, MPH
Professor of Medicine and Epidemiology
The Warren Alpert Medical School of Brown University
Medical Subject Matter Expert, CRCL, DHS

Cc: Dana Gold, Esq. and Irvin McCullough, Government Accountability Project
Senate Committee on the Judiciary
House Committee on the Judiciary
White House Coronavirus Task Force

APPENDIX C

Pro Se COVID-19 Parole Checklist

1. Pro Se COVID-19 Parole Request

2. Reports on COVID-19

3. Medical records that can describe the medical needs of the detained individual

4. Documents that May Prove Identity of the Detained Individual

- ☐ Passport
- ☐ National ID Card
- ☐ Birth Certificate
- ☐ Affidavit (Letter) from a Person Who Can Confirm Your Identity
  - ☐ Must include the detained individual's full name, date of birth, nine-digit A-number, and country of origin
  - ☐ Must include the writer's full name and her/his address and phone number(s)
  - ☐ Must state how and for how long they have known the detained individual

5. Documents that May Prove that the Detained Individual is Not a Flight Risk

- ☐ Affidavit (Letter) of Sponsorship:
  - ☐ Must include the detained individual's full name, date of birth, and nine-digit A-number
  - ☐ Must include the Sponsor's full name and their address and phone number(s)
  - ☐ Strongly recommended that it be signed by a lawful permanent resident (green card holder) or US citizen and include a copy of the person's passport or green card
  - ☐ Must state that the detained individual will reside at the address listed and that the sponsor is willing to support the detained individual – for example, provide them with housing and food – while they are in immigration proceedings
  - ☐ Must include a copy of a utility or telephone bill, with the sponsor's name and current address matching the address of residence included in the affidavit
  - ☐ Can include details of any other ties that the detained individual will have to where they will live (such as other family members, friends, community support, etc.)
- ☐ In addition to the Affidavit of Sponsorship, you may also submit:
  - ☐ Letters from others in the community where the detained individual will live, showing their support. Must include the writer's name, address, and contact information.

Note: If they do not have lawful immigration status, they may wish to consult with an immigration attorney before submitting a letter of support to consult on any associated risks.

  - ☐ Documentation of any legal, medical or social services the detained individual will receive upon release

6. Documents that May Prove that the Detained Individual is Not a Danger to the Community

Note: if the detained individual has any type of criminal history (arrest, charges, convictions, etc.), it is always recommended that they speak with an immigration attorney before submitting any documentation relating to their criminal history.

- ☐ Evidence of acquittal or dismissal of any criminal charges
- ☐ Certificates for rehabilitation classes or evidence of other positive accomplishments (completion of a degree or training, long-term employment, volunteer activities, activities with their place of worship)
- ☐ Affidavit attesting to the detained individual's rehabilitation

☐ Must include the detained individual's full name, date of birth, nine-digit A-number, and country of origin

☐ Must state how and for how long they have known the detained individual

☐ Must explain why they believe that the detained individual has been rehabilitated

☐ Must include the writer's name, address, and contact information

Note: If they do not have lawful immigration status, they may wish to consult with an immigration attorney before submitting a letter of support to consult on any associated risks.

TIPS

1. If the detained individual's identification was confiscated by immigration officials, consider mentioning which documents are in the possession of the government in the letter of support.
2. If any letters of support can be notarized, it is best to do so. Consider asking at your local bank or post office or paying a notary.
3. Make sure to translate any documents that are not in English, and provide both the original and translated versions.
4. You can be creative! If you have other documents, letters, or certificates that you feel help prove your identity and that you do not post a flight risk or public safety risk, you can include them.
5. It is important that you and the person(s) supporting you understand the contents of your parole request. The detained individual might be called for an interview with an ICE agent, and the person supporting you may be called to confirm information from the Affidavit of Support.
7. The enclosed samples of evidence to be included in Appendix D are samples only. These documents should not be submitted to ICE in the parole request, and you should not copy any of the letters word-for-word. This is a personal process and each case is unique.

APPENDIX D

Sample documents for parole request

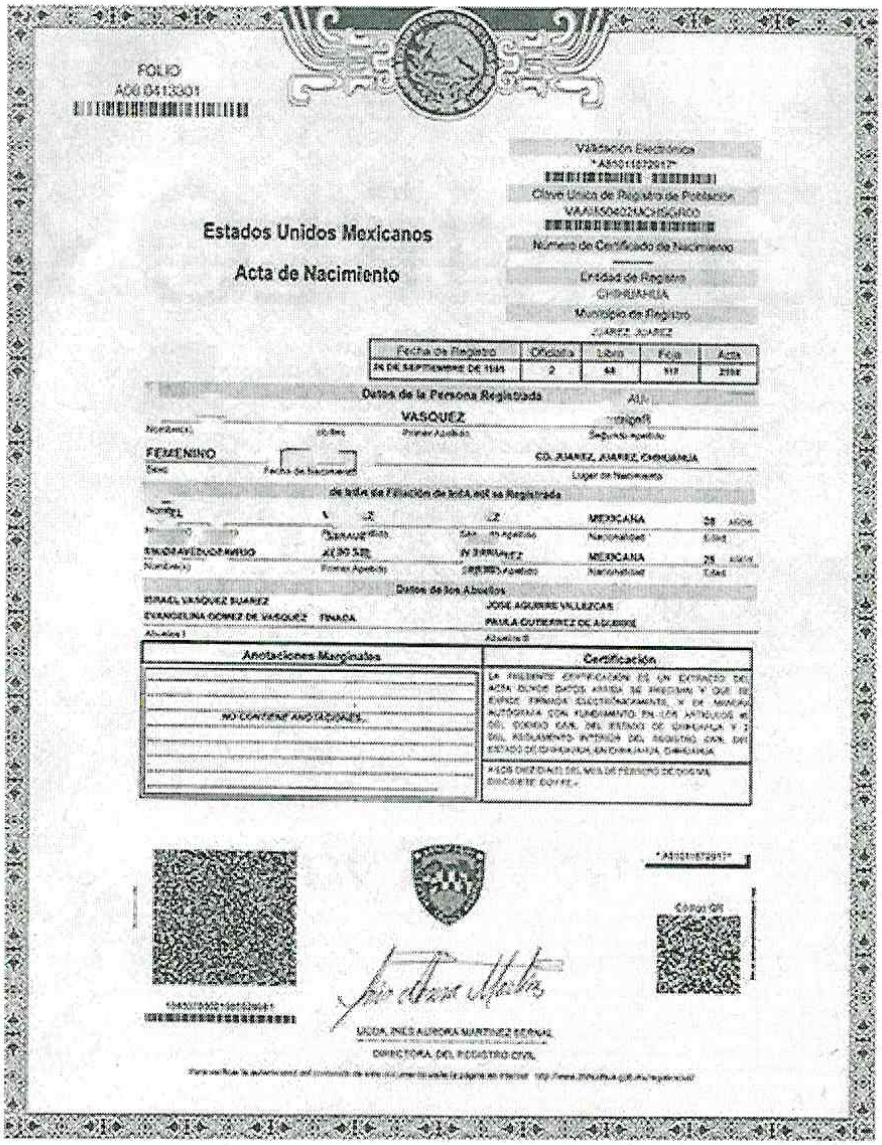
Please do not submit the following documents to ICE. They are meant as examples only to help you envision your own parole request.

Ejemplos de documentos para una solicitud del parole

Por favor no entregue o copie los siguientes documentos al ICE. Son solo ejemplos para ayudarle imaginar su propia solicitud del parole.

SECTION 1. Identity documents/Documentos de identidad

Cliente – identificación



Estados Unidos Mexicanos

Acta de Nacimiento

FOLIO

DIRECTORA DEL REGISTRO CIVIL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Estados Unidos Mexicanos
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MEXICO, D.F.
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SECTION 2. Letter of Support & Sponsor documents/Carta de apoyo y documentos del patrocinador

Not a flight risk/No es riesgo de fuga

ADVERTENCIA: Estas cartas son ejemplos y de propósito informativo. NO ENVÍE ESTOS FORMULARIOS.

Ejemplo 1

[DIRECCIÓN DEL REMITENTE]

Estimado Oficial del ICE:

Yo, [NOMBRE DEL REMITENTE], respetuosamente solicito que [NOMBRE Y APELLIDO DEL DETENIDO] con A#[xxx-xxx-xxx-xxx] sea liberado de su detención mientras asiste a sus audiencias ante la Corte de Inmigración de Florida.

Soy ciudadana de los Estados Unidos. He vivido en los Estados Unidos toda mi vida y tengo viviendo en mi ciudad y en mi comunidad actual más de 13 años.

Conozco a [NOMBRE Y APELLIDO DEL DETENIDO] desde hace [x] años. Mi novio actual es primo de [DETENIDO] y él nos presentó. He llegado a conocer a [DETENIDO] y siempre lo he visto como una persona amable. Mientras [DETENIDO] ha estado detenido, he hablado con él más de dos o tres veces a la semana.

Si es liberado de su detención, [DETENIDO] vivirá con nosotros en mi casa ubicada en [DIRECCIÓN DEL REMITENTE] y yo apoyaré financieramente a [DETENIDO] con ropa, alimentos y todas sus necesidades, y me aseguraré de proporcionar transporte para todas las audiencias futuras de la corte de inmigración de [DETENIDO].

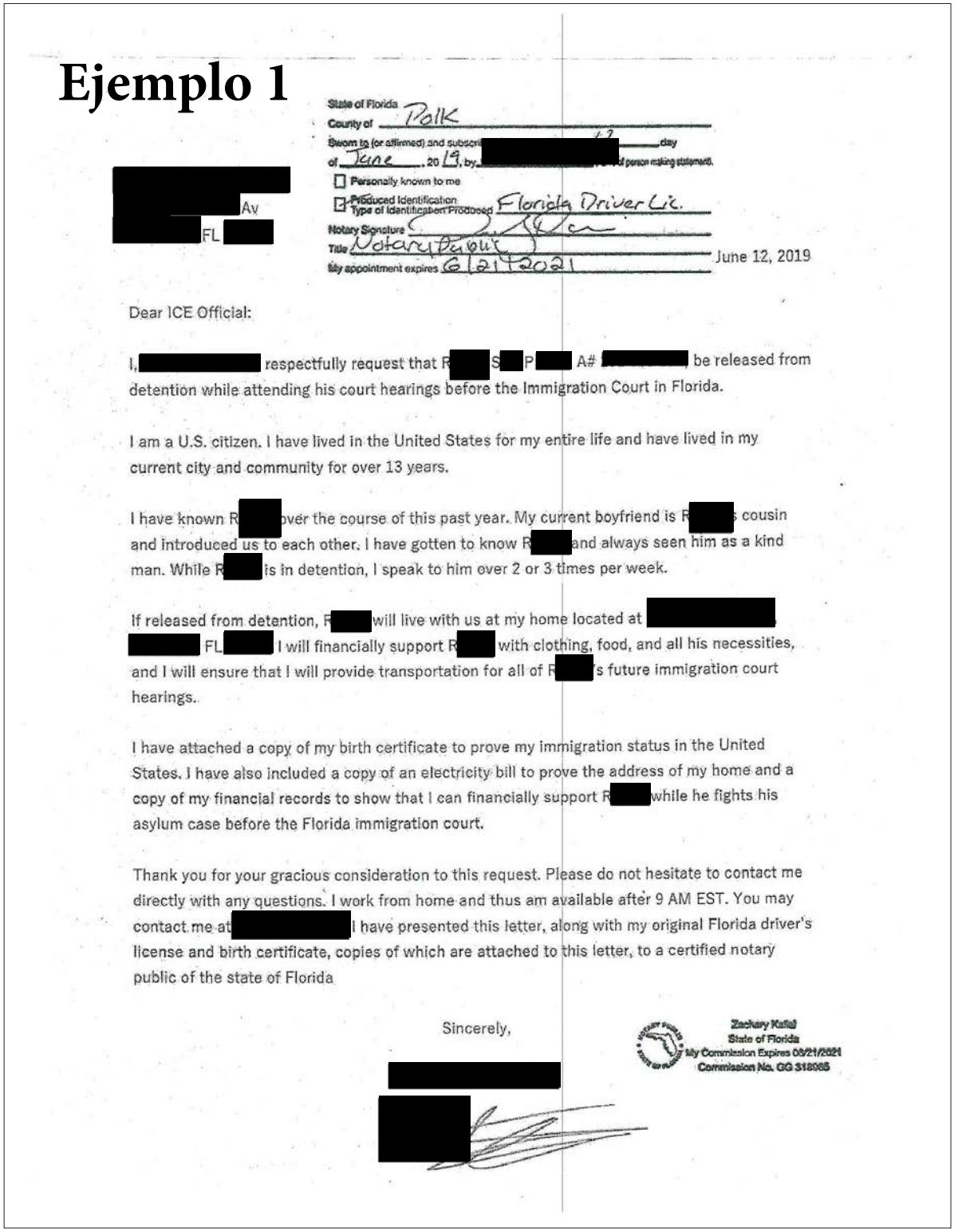
Le adjunto una copia de mi acta de nacimiento para probar mi estatus migratorio en los Estados Unidos. También le incluyo copia de una factura de electricidad para comprobar la dirección de mi casa y una copia de mis registros financieros para demostrar que puedo apoyar financieramente a [DETENIDO] mientras él lleve su caso de asilo ante la Corte de Inmigración de Florida.

Gracias por su amable consideración a esta solicitud. Por favor, no dude en contactarme directamente si tiene alguna pregunta. Trabajo desde casa y por lo tanto estoy disponible después de las 9 AM EST. Puede comunicarse conmigo al [PHONE NUMBER] NÚMERO DE TELÉFONO. He presentado esta carta, junto con mi licencia de conducir original y el acta de nacimiento que se adjuntan, a un notario público certificado del estado de Florida.

Atentamente,
[NOMBRE COMPLETO DEL REMITENTE]
[FIRMA DEL REMITENTE]

[SELLO DEL NOTARIO]

Ejemplo 1



[redacted]
Av
FL [redacted]

State of Florida
County of Polk
Sworn to (or affirmed) and subscri[redacted]day
of June, 20 19, by [redacted] person making statement.
☐ Personally known to me
☑ Produced Identification
Type of Identification Produced Florida Driver Lic.
Notary Signature
Title Notary Public
My appointment expires 6/21/2021

June 12, 2019

Dear ICE Official:

I, [redacted] respectfully request that R[redacted] S[redacted] P[redacted] A# [redacted] be released from detention while attending his court hearings before the Immigration Court in Florida.

I am a U.S. citizen. I have lived in the United States for my entire life and have lived in my current city and community for over 13 years.

I have known R[redacted] over the course of this past year. My current boyfriend is R[redacted]s cousin and introduced us to each other. I have gotten to know R[redacted] and always seen him as a kind man. While R[redacted] is in detention, I speak to him over 2 or 3 times per week.

If released from detention, R[redacted] will live with us at my home located at [redacted] FL[redacted] I will financially support R[redacted] with clothing, food, and all his necessities, and I will ensure that I will provide transportation for all of R[redacted]'s future immigration court hearings.

I have attached a copy of my birth certificate to prove my immigration status in the United States. I have also included a copy of an electricity bill to prove the address of my home and a copy of my financial records to show that I can financially support R[redacted] while he fights his asylum case before the Florida immigration court.

Thank you for your gracious consideration to this request. Please do not hesitate to contact me directly with any questions. I work from home and thus am available after 9 AM EST. You may contact me at [redacted] I have presented this letter, along with my original Florida driver's license and birth certificate, copies of which are attached to this letter, to a certified notary public of the state of Florida

Sincerely,

[redacted]

[redacted]

Zachary Kafal
State of Florida
My Commission Expires 06/21/2021
Commission No. GG 318965

ADVERTENCIA: Estas cartas son ejemplos y de propósito informativo. NO ENVÍE ESTOS FORMULARIOS.

Ejemplo 2, CORREGIDO

[FECHA DE LA CARTA]

Immigrations and Customs Enforcement
P.O. Box 248
Lumpkin, GA 31815

Estimado Oficial del ICE:

Yo, [NOMBRE DEL REMITENTE], ciudadano estadounidense identificado con la licencia de conducir del Estado de Nueva Jersey # [##########], certifico que mi cuñado, [NOMBRE Y APELLIDO DEL DETENIDO], es bienvenido a quedarse con mi familia en nuestra casa en Nueva Jersey si se le otorga la libertad condicional. Le aseguro que no se convertirá en un cargo público. Trabajo en [LUGAR DE TRABAJO] desde [FECHA DE INICIO DEL TRABAJO], y estoy dispuesto a proporcionar apoyo financiero, alojamiento, comida y todos los gastos de mantenimiento relacionados con [DETENIDO] mientras él continúa con su caso de asilo.

He estado en una relación con la hermana de [DETENIDO], [NOMBRE DE LA PAREJA], durante tres años. Nos volvimos a reunir el 14 de mayo de 2019, y ahora ella vive con mi familia y conmigo en Nueva Jersey. Nuestra dirección es [DIRECCIÓN DEL REMITENTE].

Junto con mi familia, doy todo mi apoyo a [NOMBRE DE LA PAREJA] y a su hermano en sus casos de asilo. Nos aseguraremos de que [DETENIDO] asista a todos los controles y audiencias del ICE ante la corte.

Adjunto a esta carta mi licencia de conducir y prueba de ciudadanía de los Estados Unidos y me encantaría proporcionarle cualquier otra cosa que pueda necesitar para proceder con esta solicitud.

Gracias por su atención y espero recibir a [DETENIDO] en nuestra casa lo antes posible.
Atentamente,
[NOMBRE DEL REMITENTE]

Ejemplo 2, corregido

August 30, 2019

Immigrations and Customs Enforcement
P.O. Box 248
Lumpkin, GA 31815

Dear ICE official:

I, [redacted], American citizen, identified with New Jersey Driver's License #I[redacted], certify that my brother-in-law, [redacted], is welcome to stay with my family at our home in New Jersey if released on parole. I assure that he will not become a public charge. I have worked at [redacted] since August 13, 2018, and I am willing to provide financial support, room, board, and all related living expenses for [redacted] while he proceeds with his asylum case.

I have been in a relationship with [redacted]'s sister, [redacted], for three years. We were reunited on May 14, 2019, and now she lives with my family and me in New Jersey. Our address is [redacted], [redacted].

Together with my family, I give my full support to [redacted] and her brother in their asylum case. We will assure that [redacted] attends all his ICE check-ins and hearings before the court.

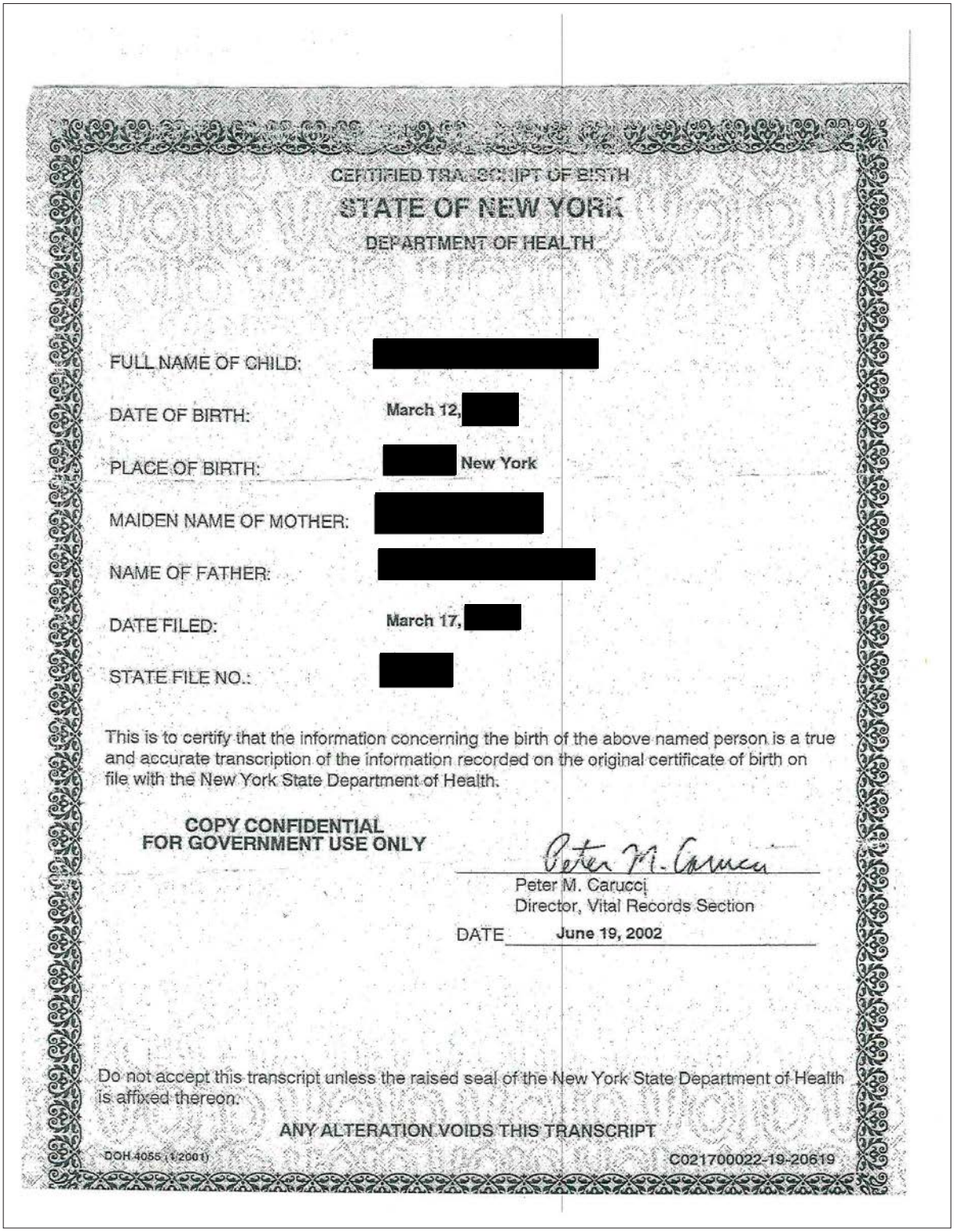
I have attached my driver license and proof of U.S. citizenship to this letter and I am happy to provide anything else you may need to proceed with this request.

Thank you for your consideration and I look forward to receiving [redacted] into our home as soon as possible.

Sincerely,

[redacted]

[redacted]



CERTIFIED TRANSCRIPT OF BIRTH

STATE OF NEW YORK

DEPARTMENT OF HEALTH

FULL NAME OF CHILD: [redacted]

DATE OF BIRTH: March 12, [redacted]

PLACE OF BIRTH: [redacted] New York

MAIDEN NAME OF MOTHER: [redacted]

NAME OF FATHER: [redacted]

DATE FILED: March 17, [redacted]

STATE FILE NO.: [redacted]

This is to certify that the information concerning the birth of the above named person is a true and accurate transcription of the information recorded on the original certificate of birth on file with the New York State Department of Health.

COPY CONFIDENTIAL
FOR GOVERNMENT USE ONLY

Peter M. Carucci

Peter M. Carucci
Director, Vital Records Section

DATE June 19, 2002

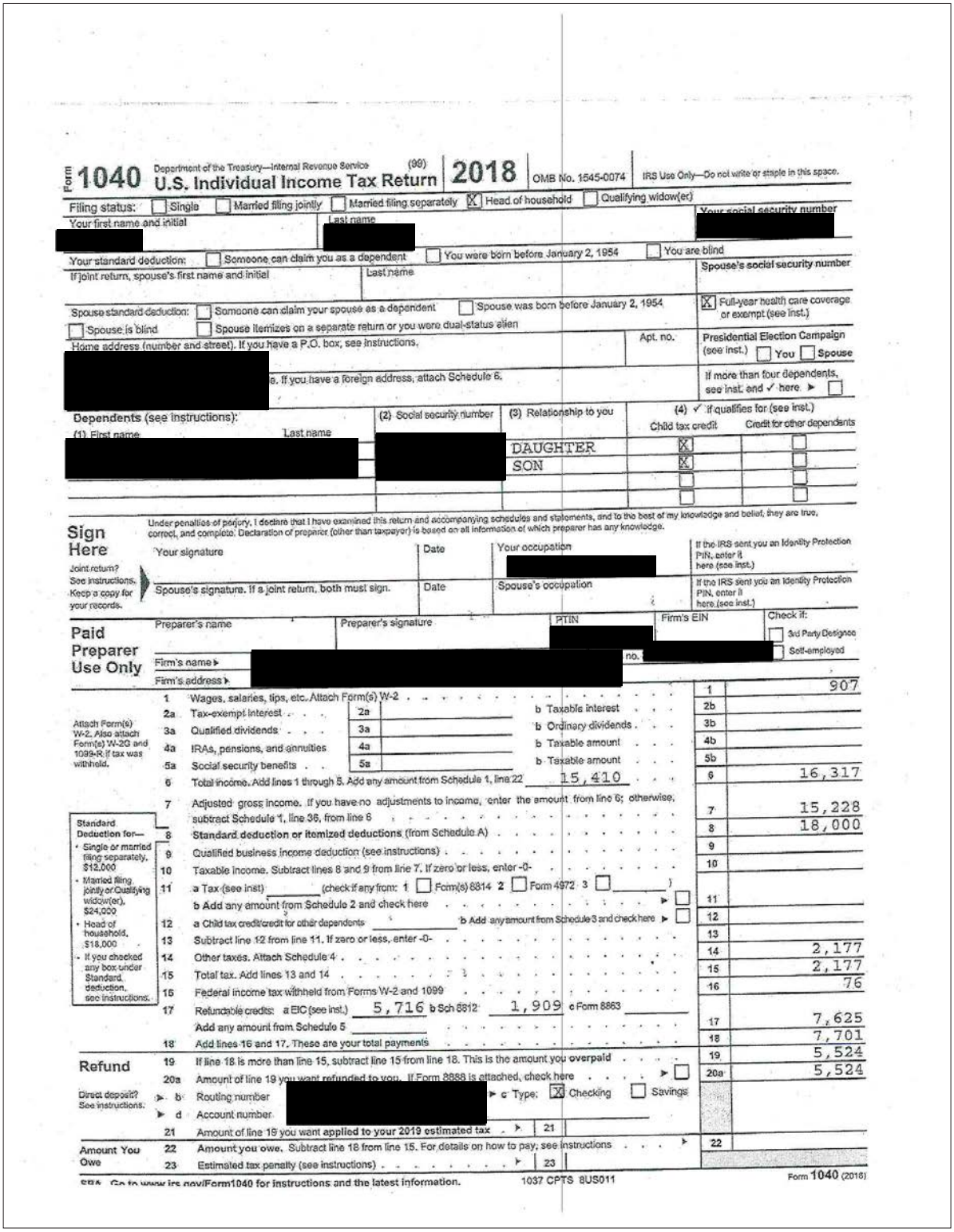
Do not accept this transcript unless the raised seal of the New York State Department of Health is affixed thereon.

ANY ALTERATION VOIDS THIS TRANSCRIPT

DOH 4055 (1/2001)

C021700022-19-20619


Florida
DRIVER LICENSE
[redacted]
03/08/2019
[redacted]
DONOR



Form **1040** Department of the Treasury—Internal Revenue Service (99) **U.S. Individual Income Tax Return** **2018** OMB No. 1545-0074 IRS Use Only—Do not write or staple in this space.

Filing status: ☐ Single ☐ Married filing jointly ☐ Married filing separately ☒ Head of household ☐ Qualifying widow(er)

Your first name and initial [redacted] Last name [redacted] Your social security number [redacted]

Your standard deduction: ☐ Someone can claim you as a dependent ☐ You were born before January 2, 1954 ☐ You are blind

If joint return, spouse's first name and initial | Last name | Spouse's social security number

Spouse standard deduction: ☐ Someone can claim your spouse as a dependent ☐ Spouse was born before January 2, 1954 ☒ Full-year health care coverage or exempt (see inst.)

☐ Spouse is blind ☐ Spouse itemizes on a separate return or you were dual-status alien

Home address (number and street). If you have a P.O. box, see instructions. [redacted] Apt. no. | Presidential Election Campaign (see inst.) ☐ You ☐ Spouse

City, town or post office, state, and ZIP code. If you have a foreign address, attach Schedule 6. | If more than four dependents, see inst. and ✓ here ▶ ☐

Dependents (see instructions):

(1) First name Last name	(2) Social security number	(3) Relationship to you	(4) ✓ if qualifies for (see inst.) Child tax credit	Credit for other dependents
[redacted]	[redacted]	DAUGHTER	☒	☐
		SON	☒	☐
			☐	☐
			☐	☐

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See instructions. Keep a copy for your records.

Your signature | Date | Your occupation [redacted] | If the IRS sent you an Identity Protection PIN, enter it here (see inst.)

Spouse's signature. If a joint return, both must sign. | Date | Spouse's occupation | If the IRS sent you an Identity Protection PIN, enter it here (see inst.)

Paid Preparer Use Only Preparer's name | Preparer's signature | PTIN [redacted] | Firm's EIN | Check if: ☐ 3rd Party Designee ☐ Self-employed

Firm's name ▶ [redacted] Phone no. [redacted]

Firm's address ▶

Attach Form(s) W-2. Also attach Form(s) W-2G and 1099-R if tax was withheld.

1	Wages, salaries, tips, etc. Attach Form(s) W-2			1	907
2a	Tax-exempt interest	2a	b Taxable interest	2b	
3a	Qualified dividends	3a	b Ordinary dividends	3b	
4a	IRAs, pensions, and annuities	4a	b Taxable amount	4b	
5a	Social security benefits	5a	b Taxable amount	5b	
6	Total income. Add lines 1 through 5. Add any amount from Schedule 1, line 22	15,410		6	16,317
7	Adjusted gross income. If you have no adjustments to income, enter the amount from line 6; otherwise, subtract Schedule 1, line 36, from line 6			7	15,228
8	**Standard deduction or itemized deductions** (from Schedule A)			8	18,000
9	Qualified business income deduction (see instructions)			9	
10	Taxable income. Subtract lines 8 and 9 from line 7. If zero or less, enter -0-			10	
11	a Tax (see inst) _____ (check if any from: 1 ☐ Form(s) 8814 2 ☐ Form 4972 3 ☐ _____) b Add any amount from Schedule 2 and check here ▶ ☐			11	
12	a Child tax credit/credit for other dependents _____ b Add any amount from Schedule 3 and check here ▶ ☐			12	
13	Subtract line 12 from line 11. If zero or less, enter -0-			13	
14	Other taxes. Attach Schedule 4			14	2,177
15	Total tax. Add lines 13 and 14			15	2,177
16	Federal income tax withheld from Forms W-2 and 1099			16	76
17	Refundable credits: a EIC (see inst.) 5,716 b Sch 8812 1,909 c Form 8863 _____ Add any amount from Schedule 5 _____			17	7,625
18	Add lines 16 and 17. These are your total payments			18	7,701
19	If line 18 is more than line 15, subtract line 15 from line 18. This is the amount you **overpaid**			19	5,524
20a	Amount of line 19 you want **refunded to you.** If Form 8888 is attached, check here ▶ ☐			20a	5,524
b	Routing number [redacted]		▶ c Type: ☒ Checking ☐ Savings		
d	Account number [redacted]				
21	Amount of line 19 you want **applied to your 2019 estimated tax** ▶ 21				
22	**Amount you owe.** Subtract line 18 from line 15. For details on how to pay, see instructions ▶			22	
23	Estimated tax penalty (see instructions) ▶ 23				

Standard Deduction for—
- Single or married filing separately, $12,000
- Married filing jointly or Qualifying widow(er), $24,000
- Head of household, $18,000
- If you checked any box under Standard deduction, see instructions.

Refund Direct deposit? See instructions.

Amount You Owe

SEA Go to www.irs.gov/Form1040 for instructions and the latest information. 1037 CPTS 8US011 Form **1040** (2018)

SUNTRUST BANK
PO BOX 305183
NASHVILLE TN 37230-5183

Page 1 of 2

[redacted]

SUNTRUST

Account Statement

[redacted]

Questions? Please call
1-800-786-8787

SunTrust Debit Card Controls are now available!
Enjoy enhanced card security by controlling how and where your card is used. Lock/unlock your card by transaction type or manage your spending limits right from SunTrust Online or Mobile Banking.
Learn more at suntrust.com/cardcontrols.

Account Summary

Account Type	Account Number	Statement Period
EVERYDAY CHECKING	[redacted]	[redacted]

Description	Amount	Description	Amount
Beginning Balance	$545.26	Average Balance	$344.68
Deposits/Credits	$645.00	Average Collected Balance	$344.68
Checks	$.00	Number of Days in Statement Period	32
Withdrawals/Debits	$842.38		
Ending Balance	$347.88		

Overdraft Protection

Account Number [redacted]

Protected By
Not enrolled

For more information about SunTrust's Overdraft Services, visit www.suntrust.com/overdraft.

Transaction History

Date	Check #	Transaction Description Details	Deposits/ Credits	Withdrawals/ Debits	Current Balance
04/20		Beginning Balance			545.26
04/22		Recurring Check Card Purchase TR DATE 04/22 Netflix Com Los Gatos [redacted]		17.25	
04/22		Point of Sale Debit TR DATE 04/22 Lakeland Electric Lakeland [redacted]		219.75	308.26
04/23		Check Card Purchase TR DATE 04/22 Charlie's Family Resta Lakeland Fl		30.10	278.16
04/29		Point of Sale Debit TR DATE 04/26 Family Fun Cente Lakeland [redacted]		10.00	
04/29		Check Card Purchase TR DATE 04/26 Sosa Family Cigars COR Lake Buena Vifl		27.16	
04/29		Point of Sale Debit TR DATE 04/27 7-Eleven Lakeland [redacted]		30.00	
04/29		Check Card Purchase TR DATE 04/27 Crabbys Dockside Clearwater Befl		50.90	160.10
04/30		Check Card Purchase TR DATE 04/30 Travelocity [redacted] Www.Tvly.Com Wa		137.89	22.21
05/08		Electronic/ACH Credit SSA Treas 310 Xxsoc Sec [redacted]	645.00		667.21
05/13		Recurring Check Card Purchase TR DATE 05/12 Cricket Wireles[redacted]		80.00	587.21
05/17		Point of Sale Debit TR DATE 05/17 Rent-A-Center [redacted]		167.98	

SUNTRUST BANK
PO BOX 305183
NASHVILLE TN 37230-5183

[redacted]

SUNTRUST

Account Statement

Transaction History

Date	Check #	Transaction Description Details	Deposits/ Credits	Withdrawals/ Debits	Current Balance
05/17		Electronic/ACH Debit Planet Fit Club Fees [redacted]		21.35	397.88
05/21		Over-The-Counter Withdrawal		40.00	
05/21		Over-The-Counter Withdrawal		10.00	347.88
05/21		Ending Balance			347.88
		Credit and Debit Totals	$645.00	$842.38	

The Ending Daily Balances provided do not reflect pending transactions or holds that may have been outstanding when your transactions posted that day. If your available balance wasn't sufficient when transactions posted, fees may have been assessed.
For more information, including details related to fees and balances, please sign on to Online Banking.

Balance Activity History

Date	Balance	Collected Balance	Date	Balance	Collected Balance
04/20	545.26	545.26	05/08	567.21	567.21
04/22	308.26	308.26	05/13	587.21	587.21
04/23	278.16	278.16	05/17	397.88	397.88
04/29	160.10	160.10	05/21	347.88	347.88
04/30	22.21	22.21			

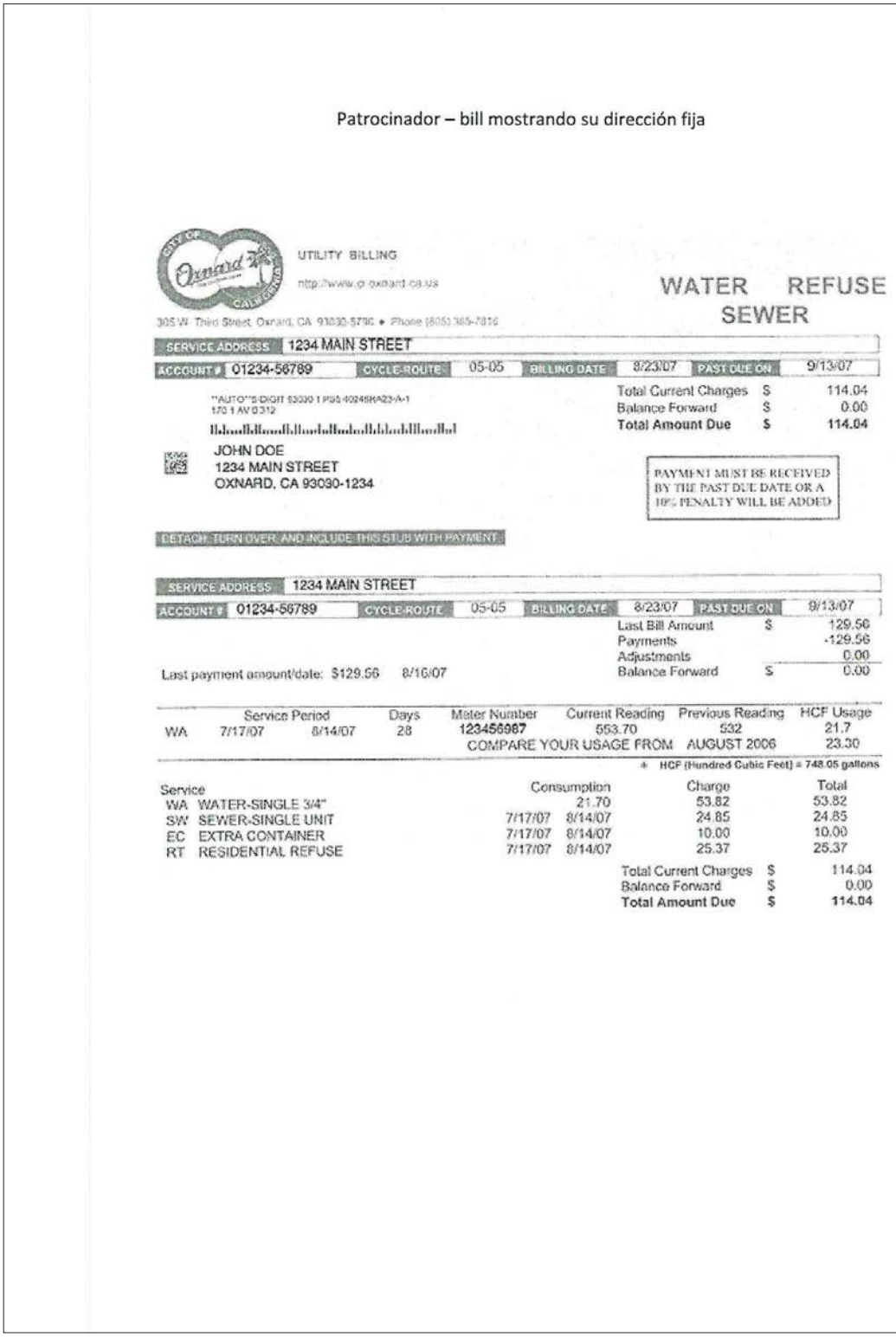
SunTrust is helping you take control of your personal data with credit and identity monitoring through IDnotify (T) by Experian (R). This premium experience is provided at no cost for SunTrust clients - just visit suntrust.com/IDnotify to enroll for free.

Paying for college? Know your options.
In addition to private student loans, SunTrust offers tools & resources to help you plan for college costs.
Visit suntrust.com/studentloans to learn more.

126869

Member FDIC

Patrocinador – bill mostrando su dirección fija



UTILITY BILLING
http://www.ci.oxnard.ca.us
305 W. Third Street, Oxnard, CA 93030-5736 • Phone (805) 385-7816

WATER REFUSE
SEWER

SERVICE ADDRESS 1234 MAIN STREET
ACCOUNT # 01234-56789 CYCLE-ROUTE 05-05 BILLING DATE 8/23/07 PAST DUE ON 9/13/07

"AUTO"5-DIGIT 93030 1 P54 40248A23-A-1
170 1 AV 0 312

Total Current Charges	$	114.04
Balance Forward	$	0.00
Total Amount Due	**$**	**114.04**

JOHN DOE
1234 MAIN STREET
OXNARD, CA 93030-1234

PAYMENT MUST BE RECEIVED BY THE PAST DUE DATE OR A 10% PENALTY WILL BE ADDED

DETACH, TURN OVER, AND INCLUDE THIS STUB WITH PAYMENT

SERVICE ADDRESS 1234 MAIN STREET
ACCOUNT # 01234-56789 CYCLE-ROUTE 05-05 BILLING DATE 8/23/07 PAST DUE ON 9/13/07

Last Bill Amount	$	129.56
Payments		-129.56
Adjustments		0.00
Balance Forward	$	0.00

Last payment amount/date: $129.56 8/16/07

	Service Period		Days	Meter Number	Current Reading	Previous Reading	HCF Usage
WA	7/17/07	8/14/07	28	123456987	553.70	532	21.7
				COMPARE YOUR USAGE FROM		AUGUST 2006	23.30

* HCF (Hundred Cubic Feet) = 748.05 gallons

Service		Consumption		Charge	Total
WA	WATER-SINGLE 3/4"	21.70		53.82	53.82
SW	SEWER-SINGLE UNIT	7/17/07	8/14/07	24.85	24.85
EC	EXTRA CONTAINER	7/17/07	8/14/07	10.00	10.00
RT	RESIDENTIAL REFUSE	7/17/07	8/14/07	25.37	25.37

Total Current Charges	$	114.04
Balance Forward	$	0.00
Total Amount Due	**$**	**114.04**

Patrocinador – talón de cheque mostrando su estabilidad financiera

Sample Company Name, Sample Company Address, 95220 — EARNINGS STATEMENT

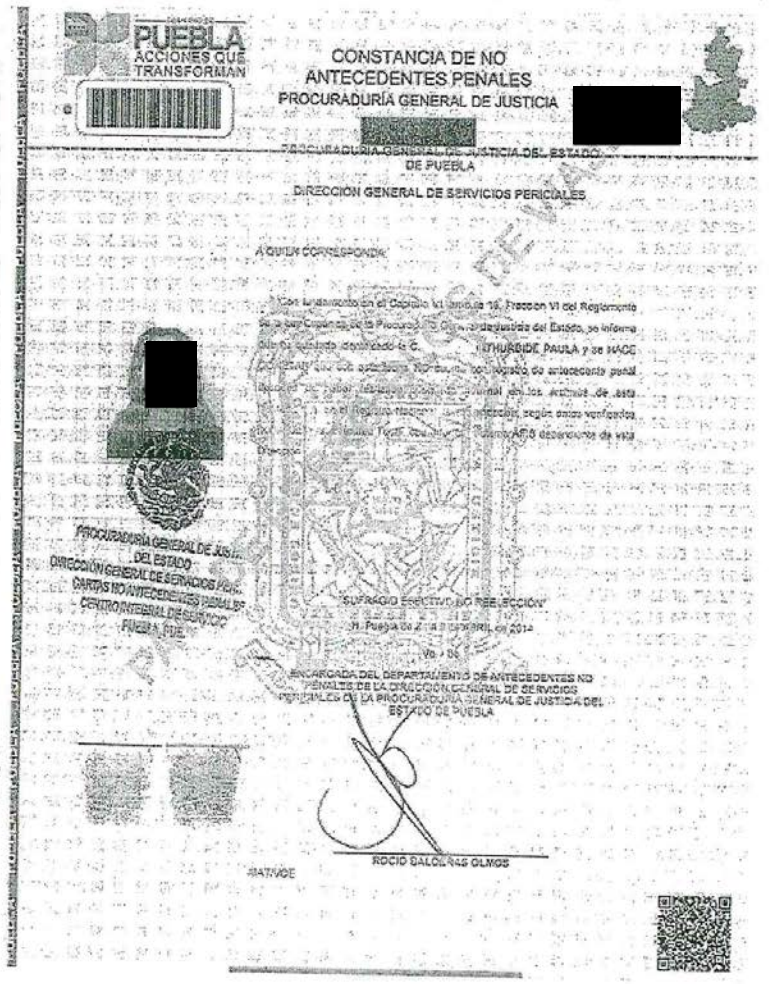
EMPLOYEE NAME	SOCIAL SEC. ID	EMPLOYEE ID	CHECK No.	PAY PERIOD	PAY DATE
James Robert	XXX-XX-6565	454545	259248	01/23/14-01/29/14	01/31/14

INCOME	RATE	HOURS	CURRENT TOTAL	DEDUCTIONS	CURRENT TOTAL	YEAR-TO-DATE
GROSS WAGES			1,000.00	FICA MED TAX	14.50	72.50
				FICA SS TAX	62.00	310.00
				FED TAX	159.50	797.48
				CA ST TAX	44.26	221.31
				SDI	10.00	50.00

YTD GROSS	YTD DEDCTIONS	YTD NET PAY	TOTAL	DEDUCTIONS	NET PAY
5,000.00	1,451.28	3,548.72	1,000.00	290.26	709.74

SECTION 3. Not a danger to the community/ No es un peligro a la sociedad

Cliente – certificación de no antecedentes penales del país de origen



PUEBLA
ACCIONES QUE TRANSFORMAN

CONSTANCIA DE NO ANTECEDENTES PENALES
PROCURADURÍA GENERAL DE JUSTICIA

[redacted]

PROCURADURÍA GENERAL DE JUSTICIA DEL ESTADO DE PUEBLA

DIRECCIÓN GENERAL DE SERVICIOS PERICIALES

A QUIEN CORRESPONDA:

Con fundamento en el Capítulo VI, artículo 19, Fracción VI del Reglamento [illegible] Procuraduría General de Justicia del Estado, se informa [illegible] solicitado a C. ITHURBIDE PAULA y se HACE [illegible] que no existe registro de antecedente penal [illegible] en los archivos de esta [illegible] según datos verificados [illegible] con fotografía de vista [illegible]

[redacted]

PROCURADURÍA GENERAL DE JUSTICIA DEL ESTADO
DIRECCIÓN GENERAL DE SERVICIOS PERICIALES
CARTAS NO ANTECEDENTES PENALES
CENTRO INTEGRAL DE SERVICIOS
PUEBLA, PUE.

"SUFRAGIO EFECTIVO. NO REELECCIÓN"
H. Puebla de Z., a 13 ABRIL de 2014

Vo. Bo.

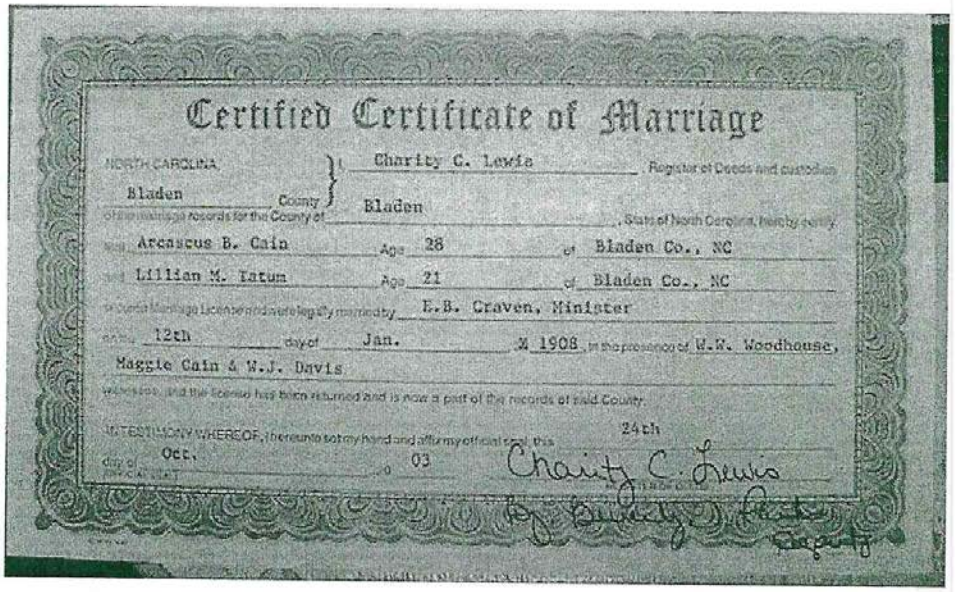
ENCARGADA DEL DEPARTAMENTO DE ANTECEDENTES NO PENALES DE LA DIRECCIÓN GENERAL DE SERVICIOS PERICIALES DE LA PROCURADURÍA GENERAL DE JUSTICIA DEL ESTADO DE PUEBLA

ROCIO SALDAÑAS OLMOS

RATIVOE

SECTION 4. Other documents/Otros documentos

Cliente – certificado de matrimonio



Certified Certificate of Marriage

NORTH CAROLINA } I Charity C. Lewis Register of Deeds and custodian
Bladen County } of the marriage records for the County of Bladen, State of North Carolina, hereby certify

that Arcascus B. Cain Age 28 of Bladen Co., NC
and Lillian M. Tatum Age 21 of Bladen Co., NC
a certain marriage License and were legally married by E.B. Craven, Minister
on the 12th day of Jan. A.D. 1908 in the presence of W.W. Woodhouse,
Maggie Cain & W.J. Davis
witnesses, and the license has been returned and is now a part of the records of said County.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my official seal, this 24th
day of Oct. A.D. 03

Charity C. Lewis
Register of Deeds

By Bulah Lewis Deputy

Teacher de la escuela – carta de apoyo

[Teacher's name]

[Teacher's address]

[Date]

To Whom it May Concern:

I have had the pleasure of having [name of student] in my class for [weeks/months/years]. S/he was a standout individual and a hard worker. S/he is extremely well mannered, kind, and respectful. S/he is a student who gets her/his work done and is appreciative of the school system. It breaks my heart to see her/him hurting and sad, due to something happening at home. I cannot imagine what s/he is going through and obviously it has affected her/his personality some at school. It would be hard to focus when your mind is on if you are going to get to see your [name of family member] again. I would hate for this to negatively affect her/his education and innocent personality.

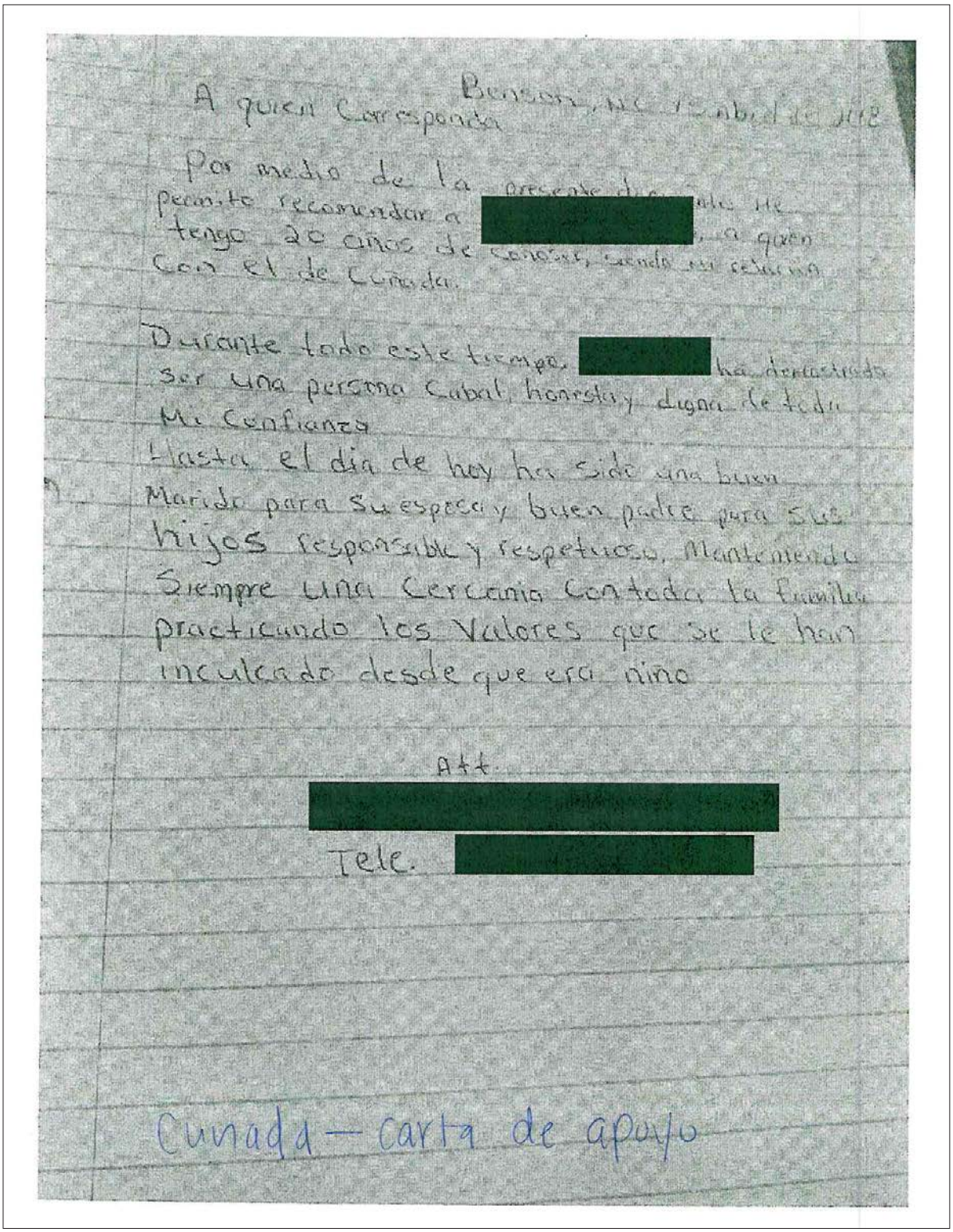
Having worked with children for over [weeks/months/years], I can tell how most children are raised. Being around [name of student] I can tell s/he has great, involved parents. S/he was taught to respect her/his teachers and peers and not to take her/his education for granted. S/he is always happy and smiling. S/he is a joy to be around. I have no doubt in my mind that [name of student] will be a contributing member of our workforce in the future.

In conclusion, [name of student] is being affected in all aspects of her/his life from her/his [name of family member] being detained by immigration. I love this kid and would hate for this tragedy to change who s/he is. It breaks my heart to see hear in her/his eyes. I hope in the future this family unit is reunited and is whole again.

Sincerely,

[Teacher's signature]

[Teacher's name]



A quien Corresponda

Por medio de la presente [redacted] me permito recomendar a [redacted], a quien tengo 20 años de conocer, siendo mi cuñada con el de Cuñada.

Durante todo este tiempo, [redacted] ha demostrado ser una persona Cabal, honesta y digna de toda Mi Confianza

Hasta el día de hoy ha sido una buen Marido para su esposo y buen padre para sus hijos responsable y respetuoso. Manteniendo Siempre una Cercania Contada la familia practicando los Valores que se le han inculcado desde que era niño

Att.

[redacted]

Tele. [redacted]

Cunada – carta de apoyo

Benson, NC. April 15, 2018

To Whom it May Concern

Through this document I would like to recommend [redacted], whom I have known for 20 years as he is my brother-in-law.

During all of this time, [redacted] has demonstrated himself to be an upright person, honestly deserving of all of my trust.

Up to this day he has been a good husband to his wife and a good father to his children; responsible and respectable. He has maintained a closeness to all of his family, practicing the values that were instilled in him since he was a child.

Attentively,

[redacted]

Telephone [redacted]

Cuñada – carta de apoyo traducida

I, Mary Flores, do hereby certify that I am qualified to translate between the Spanish and English languages, that I have read the attached document and that this is a true and correct translation of the original document from Spanish to English to the best of my abilities.

MFlores

Mary Flores

5/11/18

Date

certificado de traducción inglés – esp.

[redacted] *Catholic Church*

[redacted] NC [redacted]

[redacted]

Phone: [redacted]
Fax: [redacted]
Email: [redacted]

April 5, 2018

Re: [redacted]

To Whom it may concern:

I am writing this letter of confirmation for Mr. [redacted] Mr. [redacted] and his family are registered members of [redacted] Catholic Church in [redacted], North Carolina. The family has been registered at our Parish since April of 2010. The family regularly attends Sunday Mass and the children faithfully attend Religious Education Classes. We have never encountered any difficulties whatsoever with this family.

We are a part of the Diocese of [redacted], North Carolina.

Mr. [redacted] is the sole breadwinner for the family. In his absence the family has been struggling financially to pay bills and feed everyone.

I thank you for the support and acknowledgement that you can give this family for their immigration needs and I am grateful for your consideration.

Sincerely,

[redacted]

(Church Seal)

Carta de apoyo – Pastor de la iglesia

FHR **Behavioral Healthcare Services**
Fostering Hope and Recovery

North Carolina Region
Mary Ann Johnson, Regional Director
5509 Creedmoor Road
Raleigh, NC 27612
www.fhr.net
t: 919-573-6520 I f: 919-573-6555

June 5th, 2018
Monica Whatley
Legal Assistant
Southern Poverty Law Center

Dear Ms. Whatley:
Your client [redacted] is welcome to attend clinical counseling services for substance addiction at the Fellowship Health Resources (FHR) in Raleigh, NC. FHR offers intensive outpatient treatment services that require attendance 3 days per week, 3 hours per day. The location is 5509 Creedmoor Rd, Raleigh, NC 27612.

We look forward to meeting Mr. [redacted] and assisting him on along his recovery.

Sincerely,

[redacted]

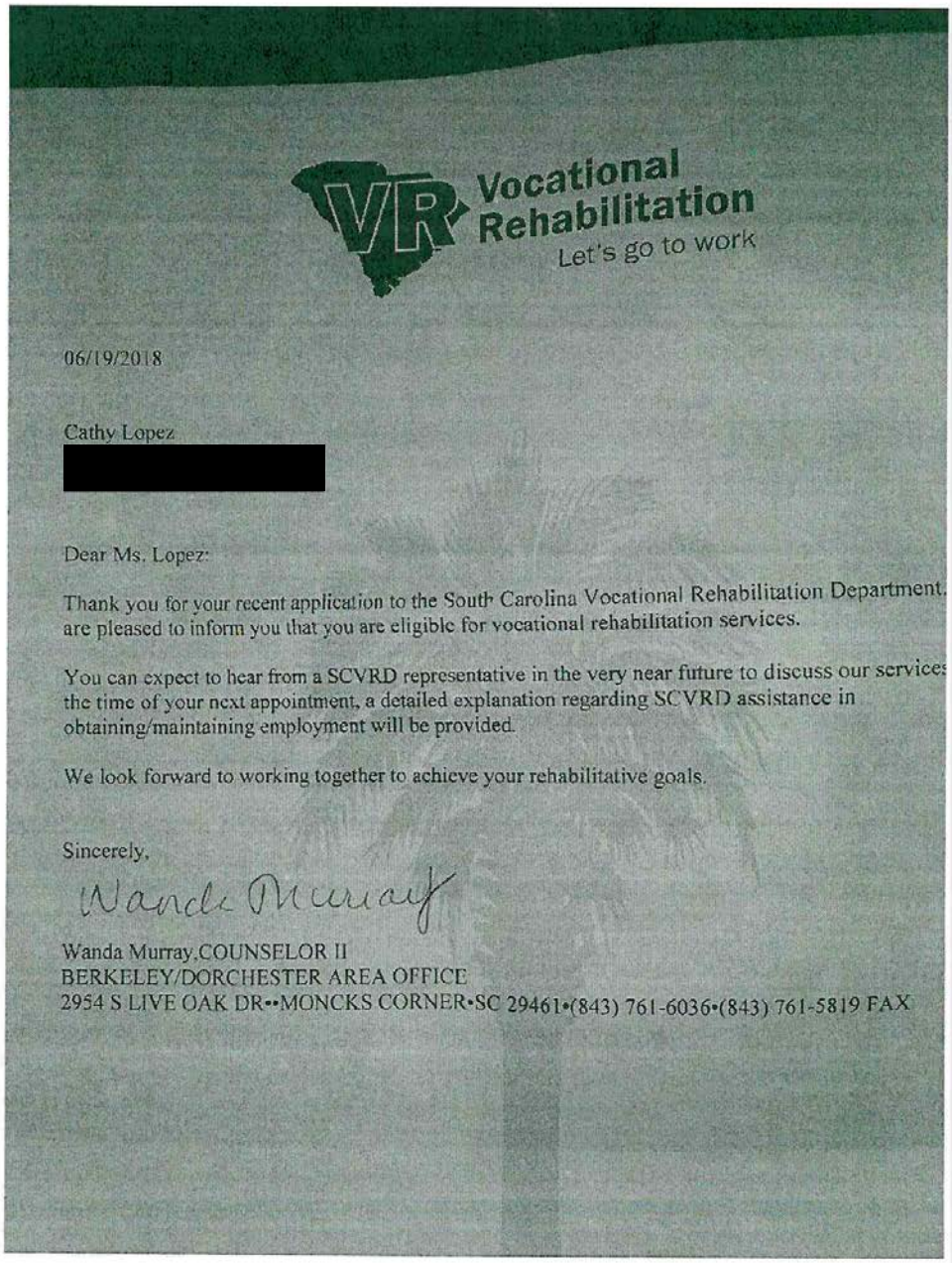
[redacted]

Director of Addiction Services

Fellowship Health Resources, Inc
5509 Creedmoor Rd
Raleigh, NC 27612
[redacted]
[redacted]

Carta de apoyo - terapeuta

Carta de referencia - rehab



VR Vocational Rehabilitation
Let's go to work

06/19/2018

Cathy Lopez
[redacted]

Dear Ms. Lopez:

Thank you for your recent application to the South Carolina Vocational Rehabilitation Department. are pleased to inform you that you are eligible for vocational rehabilitation services.

You can expect to hear from a SCVRD representative in the very near future to discuss our service the time of your next appointment, a detailed explanation regarding SCVRD assistance in obtaining/maintaining employment will be provided.

We look forward to working together to achieve your rehabilitative goals.

Sincerely,

Wanda Murray

Wanda Murray,COUNSELOR II
BERKELEY/DORCHESTER AREA OFFICE
2954 S LIVE OAK DR••MONCKS CORNER•SC 29461•(843) 761-6036•(843) 761-5819 FAX

Carta de apoyo- rehabilitación

El Zócalo Immigrant Resource Center
Mailing Address: P.O. Box 250953
Little Rock, AR, 72225
Physical Address (by appointment only):
5500 Geyer Springs Rd.
Little Rock, AR, 72209
Phone: (501) 301-4652 (301-HOLA)
Email: learn@zocalocenter.org
Website: http://www.zocalocenter.org

July 16, 2019

[redacted]
146 CCA Road
Lumpkin, GA 31815

Dear [redacted]:

El Zócalo Immigrant Resource Center is a 501(c)3 non-profit organization in Central Arkansas. Our mission is to promote a dignified life for immigrants in Arkansas by connecting individuals and families with services and fostering community-wide understanding through education. Poverty, language and cultural barriers often make it difficult for immigrants to navigate life in Arkansas. We take a culturally-informed approach, providing the support they need to help themselves.

We have been in contact with the Southern Poverty Law Center and are aware that Mr. [redacted] is seeking to move to the Little Rock area upon his release from Stewart Detention Center. Should he be released [redacted] from detention, we would be happy to help Mr. [redacted] with health and social support, English language instruction, and any basic needs that he may have. Our community is ready to assist him and we also provide case management services.

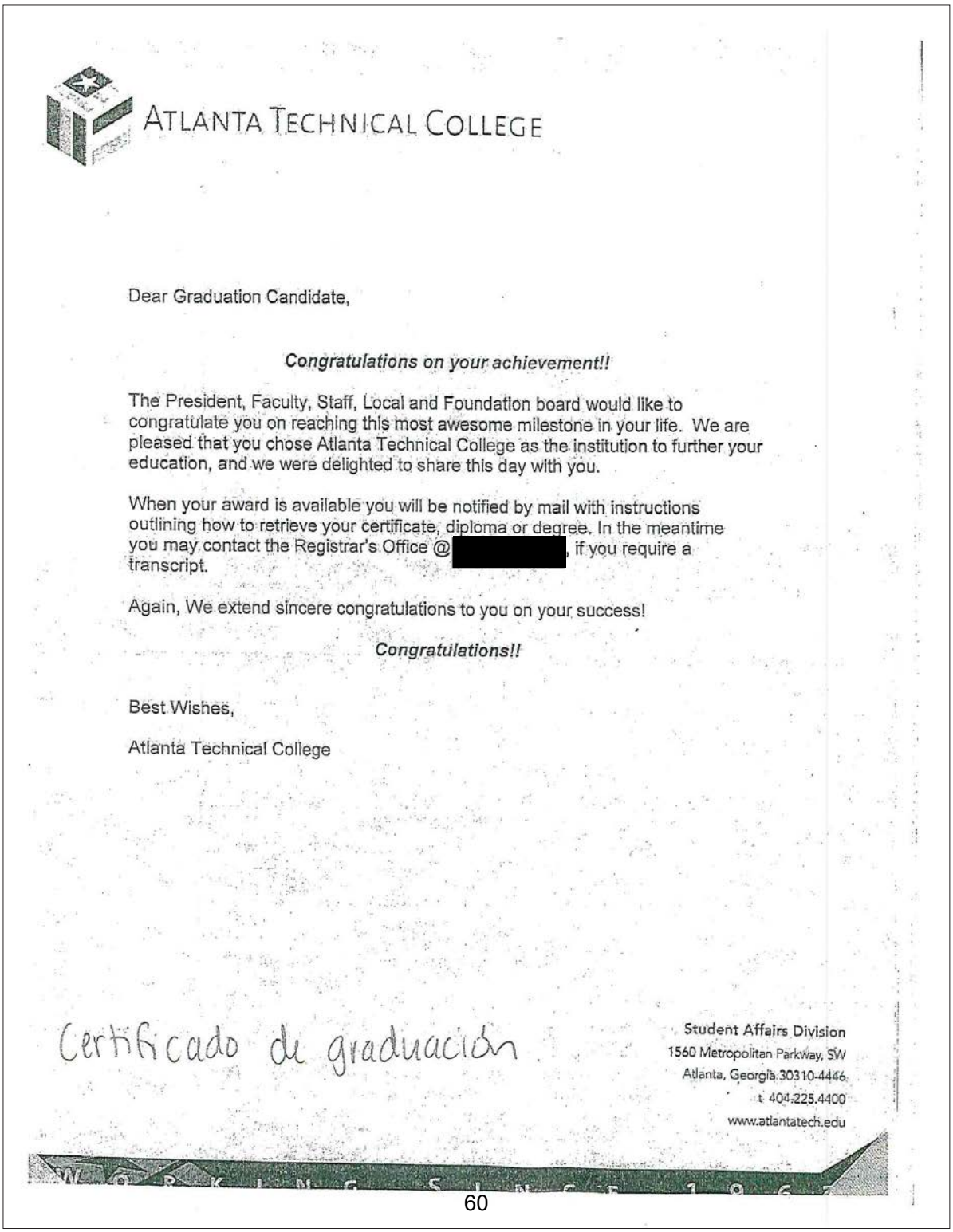
I look forward to hearing from and assisting Mr. [redacted]. If you have any questions, please feel free to contact me at [redacted]

Sincerely,

[redacted]

Carta de apoyo –
Centro de recursos para inmigrantes

65
55



ATLANTA TECHNICAL COLLEGE

Dear Graduation Candidate,

Congratulations on your achievement!!

The President, Faculty, Staff, Local and Foundation board would like to congratulate you on reaching this most awesome milestone in your life. We are pleased that you chose Atlanta Technical College as the institution to further your education, and we were delighted to share this day with you.

When your award is available you will be notified by mail with instructions outlining how to retrieve your certificate, diploma or degree. In the meantime you may contact the Registrar's Office @ [redacted], if you require a transcript.

Again, We extend sincere congratulations to you on your success!

Congratulations!!

Best Wishes,

Atlanta Technical College

Certificado de graduación

Student Affairs Division
1560 Metropolitan Parkway, SW
Atlanta, Georgia 30310-4446
t 404.225.4400
www.atlantatech.edu

60

Fuerte defensa a la deportacion

April 18, 2019

[redacted]

[redacted]

146 CCA Road
Lumpkin, GA 31815

Re: [redacted] A# [redacted]

Dear [redacted]

My name is Nicholas Katz, and I am the senior manager of legal services at CASA de Maryland, a 501(c)(3) nonprofit organization that provides services and advocates for the immigrant community in Maryland, Virginia and Pennsylvania.

I have been in contact with Matt Boles from the Southern Poverty Law Center's Southeast Immigrant Freedom Initiative (SIFI), who is working on Mr. [redacted] case. Should he be released from detention [redacted], our organization is willing to provide a consultation, and possible pro bono placement or referral on his merits case. While pro bono representation is never a guarantee, we feel confident we could help Mr. [redacted] connect with an attorney for either pro bono or low-bono legal services to assist with his merits claim.

I look forward to hearing from and assisting Mr. [redacted] If you have any questions, please feel free to contact me at [redacted]

Sincerely,

Nicholas Katz
Senior Manager of Legal Services
CASA de Maryland

CASA Legal Program P.O. Box 7277, MD 20787-7277 | www.wearecasa.org | 301.431.4185

Carta de apoyo/referencia — abogado/a