

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

MARIA ALEJANDRA CELIMEN SAVINO,
et al.,

Petitioners-Plaintiffs,

v.

THOMAS HODGSON, et al.,

Respondents-Defendants.

Case No. 1:20-cv-10617-WGY

NOTICE OF SUPPLEMENTAL AUTHORITY

Petitioners-Plaintiffs, through undersigned counsel, submit this notice to inform the Court of relevant supplemental authorities not available to them when they filed their Motion for Temporary Restraining Order and Memorandum in Support of Motion. ECF Nos. 11, 12:

1. The opinion and order of Judge Terry Hatter of the U.S. District Court for the Central District of California dated March 27, 2020, directing the immediate release of two petitioners from immigration detention. *Castillo v. Barr*, CV 20-00605 TJH (AFMx), ECF No. 32, (copy attached as Exhibit A). Judge Hatter relied on evidence of conditions similar to those at Bristol County, *id.* at 10 (individuals “are not kept at least 6 feet apart[,] . . . are forced to touch surfaces touched by other[s] . . . such as common sinks, toilets, and showers”), and concluded that “[a] civil detainee’s constitutional rights are violated if a condition of his confinement places him at substantial risk of suffering serious harm, such as the harm caused by a pandemic” and that detention centers “cannot be deliberately indifferent to the potential exposure of civil detainees to a serious, communicable disease.” *Id.* at 6, 9.

2. The opinion and order of Judge Judith Levy of the U.S. District Court for the Eastern District of Michigan, dated March 27, 2020, directing the release of a criminal defendant, subject to the requirement that he self-quarantine for 14 days. *U.S. v. Kennedy*, No. 5:18-cr-20315, ECF No. 77 (copy attached as Exhibit B), at 14. Judge Levy explained that “under the facts of this case, the danger posed to Defendant in the Saginaw County Jail by the COVID-19 pandemic constitutes an independent compelling reason to temporarily release him from custody.” *Id.* at 2.

3. The Declaration of Ben Haldeman dated March 29, 2020, and attached exhibits containing handwritten letters from immigration detainees at Bristol County Immigration Detention Facilities attesting to the dangerous and unsanitary conditions there, the ongoing admission of new ICE detainees, and the precarious health of many putative class members (copy attached as Exhibit C). Mr. Haldeman is an immigration attorney at New Haven Legal Assistance Association, Inc. who visited Bristol County on March 27 and 28 and provided these detainee statements to undersigned counsel the night of March 28, 2020.

4. The Declaration of Vanesa Suarez dated March 29, 2020 (copy attached as Exhibit D), attesting to phone conversations with Mr. Lloyd Wafula, a man detained by ICE at Bristol County Immigration Detention Facilities, who has helped organize the collective statements of putative class members pleading for assistance, *see* ECF Nos. 1-4, 1-5. Ms. Suarez is the Deportation Defense Organizer at the Connecticut Bail Fund. Shortly after Mr. Wafula’s organizing efforts, he was moved to solitary confinement, where his communication privileges became severely limited. As a result, he cannot provide his own statement and asked Ms. Suarez to provide his account to undersigned counsel.

Respectfully Submitted,

/s/ Michael J. Wishnie

Oren Nimni (BBO #691821)
Oren Sellstrom (BBO #569045)
Lauren Sampson (BBO #704319)
Ivan Espinoza-Madrigal[†]
Lawyers for Rights
61 Batterymarch Street, 5th Floor
Boston, MA 02110
(617) 988-0606
onimni@lawyersforcivilrights.org

Grace Choi, Law Student Intern*
Kayla Crowell, Law Student Intern*
Laura Kokotailo, Law Student Intern*
Aseem Mehta, Law Student Intern*
Alden Pinkham, Law Student Intern*
Bianca Rey, Law Student Intern*
Megan Yan, Law Student Intern*
Reena Parikh[†]
Michael Wishnie (BBO# 568654)
Jerome N. Frank Legal Services Org.
P.O. Box 209090
New Haven, CT 06520
Phone: (203) 432-4800
michael.wishnie@ylsclinics.org

[†] Motion for admission *pro hac vice* pending.

* Motion for law student appearance forthcoming.

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2020, the above-captioned document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

/s/ Michael J. Wishnie

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**United States District Court
Central District of California
Western Division**

**PEDRO BRAVO CASTILLO and
LUIS VASQUEZ RUEDA.,**

Petitioners,

v.

WILLIAM BARR, et al.,

Respondents.

CV 20-00605 TJH (AFMx)

**Temporary Restraining
Order**

and

Order to Show Cause

The Court has considered the application for a temporary restraining order filed by Petitioners Pedro Bravo Castillo and Luis Vasquez Rueda, together with the moving and opposing papers.

Castillo is a 58-year-old man who has, or had, suffered from kidney stones, arthritis and a hernia. Vasquez is a 23-year-old man who is recovering from a work-related facial fracture. Castillo and Vasquez are, currently, being detained at the Adelanto Detention Center [“Adelanto”], in San Bernardino County. San Bernardino County is within the Central District of California.

Castillo and Vasquez filed this case as a petition for a writ of *habeas corpus* and complaint for declaratory and injunctive relief. Castillo and Vasquez are civil

1 detainees, having been arrested by officers from the United States Department of
2 Homeland Security's ["DHS"] Bureau of Immigration and Customs Enforcement
3 ["BICE"] on March 16, 2020, and March 17, 2020, respectively, and then placed into
4 removal proceedings, with the service of a Notice to Appear at the time of their arrest.
5 Castillo's removal proceedings are pursuant to the Immigration and Nationality Act
6 ["INA"] § 212(a)(6)(A)(i)(I), for being an alien present in the United States without
7 being admitted or paroled, while Vasquez's removal proceedings are pursuant to INA
8 § 237(a)(1)(B), for being an alien who after admission as a nonimmigrant under INA
9 § 101(a)(15) remained in the United States for a time longer than permitted.

10 Adelanto is a private, for-profit immigration detention facility operated by Geo
11 Group, Inc. Adelanto has the capacity to hold, under normal situations, well over
12 1,000 detainees through a contract with BICE. Over the years, and as recently as 2018,
13 DHS's Office of the Inspector General had, repeatedly, found that significant and
14 various health and safety risks existed at Adelanto.

15 On March 4, 2020, the State of California declared a state of emergency in
16 response to the coronavirus and the resulting COVID-19 disease. On March 10, 2020,
17 San Bernardino County followed suit and declared a state of emergency. On March 11,
18 2020, the World Health Organization ["WHO"] declared COVID-19 to be a global
19 pandemic. On March 13, 2020, President Donald J. Trump, formally acknowledged
20 and declared a national emergency in response to WHO's pandemic declaration.

21 On March 18, 2020, BICE announced that "[t]o ensure the welfare and safety of
22 the general public as well as officers and agents in light of the ongoing COVID-19
23 pandemic response, [it] will temporarily adjust its enforcement posture beginning today
24 ... [and that its] highest priorities are to promote life-saving and public safety
25 activities." Further, BICE stated that it would focus enforcement "on public safety risks
26 and individuals subject to mandatory detention based on criminal grounds [, and for
27 those people who do not fall into those categories, agents] will exercise discretion to
28 delay enforcement actions until after the crisis or utilize alternatives to detention, as

1 appropriate."

2 According to the United States Centers for Disease Control and Prevention, the
3 coronavirus is spread mainly through person-to-person contact. More specifically, the
4 coronavirus is spread between people who are in close contact – within about 6 feet –
5 with one another through respiratory droplets produced when an infected person coughs
6 or sneezes. The droplets can land in the mouths or noses, or can be inhaled into the
7 lungs, of people who are within about 6 feet of the infected person. Moreover, studies
8 have established that the coronavirus can survive up to three days on various surfaces.

9 COVID-19 is highly contagious and has a mortality rate ten times greater than
10 influenza. Most troublesome is the fact that people infected with the coronavirus can
11 be asymptomatic during the two to fourteen day COVID-19 incubation period. During
12 that asymptomatic incubation period, infected people are, unknowingly, capable of
13 spreading the coronavirus. Despite early reports, no age group is safe from COVID-
14 19. While older people with pre-existing conditions are the most vulnerable to COVID-
15 19-related mortality, young people without preexisting conditions have, also,
16 succumbed to COVID-19. There is no specific treatment, vaccine or cure for COVID-
17 19.

18 Because of the highly contagious nature of the coronavirus and the, relatively
19 high, mortality rate of COVID-19, the disease can spread uncontrollably with
20 devastating results in a crowded, closed facility, such as an immigration detention
21 center. At Adelanto, a holding area can contain 60 to 70 detainees, with a large
22 common area and dormitory-type sleeping rooms housing four or six detainees with
23 shared sinks, toilets and showers. Guards regularly rotate through the various holding
24 areas several times a day. At meal times – three times a day – the 60 to 70 detainees
25 in each holding area line up together, sometimes only inches apart, in the cafeteria.
26 The guards, detainees and cafeteria workers do not regularly wear gloves or masks to
27 prevent the spread of the coronavirus. While detainees have access to gloves, there is
28 no requirement that they wear them. Detainees do not have access to masks or hand

1 sanitizer – though thorough hand washing could be more effective than hand sanitizers
2 at preventing the spread of the coronavirus.

3 Just days ago, the first BICE detainee was confirmed to have been infected with
4 COVID-19 in New Jersey at the Bergen County Jail, a BICE detention facility.
5 Moreover, last week, a correctional officer at the Bergen County Jail was, also,
6 confirmed to have been infected.

7 Yesterday, Judge Analisa Torres of the United States District Court for the
8 Southern District of New York issued an order releasing certain immigration detainees,
9 stating the following:

10 The nature of detention facilities makes exposure and spread of the
11 virus particularly harmful. Jaimie Meyer M.D., M.S., who has worked
12 extensively on infectious diseases treatment and prevention in the context
13 of jails and prisons, recently submitted a declaration in this district noting
14 that the risk of COVID-19 to people held in New York-area detention
15 centers, including the Hudson, Bergen County, and Essex County jails, “is
16 significantly higher than in the community, both in terms of risk of
17 transmission, exposure, and harm to individuals who become infected.”
18 Meyer Decl. ¶ 7, *Velesaca v. Wolf*, 20 Civ. 1803 (S.D.N.Y. Feb. 28,
19 2020), ECF No. 42.

20 Moreover, medical doctors, including two medical experts for the
21 Department of Homeland Security, have warned of a “tinderbox scenario”
22 as COVID-19 spreads to immigration detention centers and the resulting
23 “imminent risk to the health and safety of immigrant detainees” and the
24 public. Catherine E. Shoichet, *Doctors Warn of “Tinderbox scenario” if*
25 *Coronavirus Spreads in ICE Detention*, CNN (Mar. 20, 2020),
26 [https://www.cnn.com/2020/03/20/health/doctors-ice-detention-](https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html)
27 [coronavirus/index.html](https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html). “It will be nearly impossible to prevent
28 widespread infections inside the Hudson, Bergen, and Essex County jails

1 now that the virus is in the facilities because detainees live, sleep, and use
2 the bathroom in close proximity with others, and because ‘[b]ehind bars,
3 some of the most basic disease prevention measures are against the rules
4 or simply impossible.’” Petition ¶ 47 (internal quotation marks and citation
5 omitted).

6 *Basank, et al., v. Decker, et al.*, 20 Civ. 2518 (S.D.N.Y., Feb. 28, 2020), ECF No.
7 11.

8 On March 23, 2020, the Ninth Circuit ordered, *sua sponte* and without further
9 explanation, the release of an immigration petitioner “[i]n light of the rapidly escalating
10 public health crisis, which public health authorities predict will especially impact
11 immigration detention centers.” *Xochihua-Jaimes v. Barr*, 2020 WL 1429877, No. 18-
12 71460 (9th Cir. Mar. 23, 2020).

13 Here, Petitioners base their petition on three claims: (1) Violation of the Fifth
14 Amendment for a state-created danger; (2) Violation of the Fifth Amendment based on
15 the special relationship between the Government and the persons in its custody; and (3)
16 Violation of the Fifth Amendment based on punitive detention.

17 The theme underlying the Petitioners’ various Fifth Amendment claims is that
18 they are civil, not criminal, detainees. When the Government detains a person for the
19 violation of an immigration law, the person is a civil detainee, even if he has a prior
20 criminal conviction. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As civil
21 detainees, Petitioners are entitled to more considerate treatment than criminal detainees,
22 whose conditions of confinement are designed to punish. *See Youngberg v. Romeo*, 457
23 U.S. 307, 321-22 (1982). Moreover, under the Fifth Amendment’s Due Process
24 Clause, a civil detainee cannot be subjected to conditions that amount to punishment.
25 *See King v. Cty. of L.A.*, 885 F.3d 548, 556-557 (9th Cir. 2018).

26 When the Government takes a person into custody and detains him against the
27 person’s will, the Constitution imposes upon the Government a duty to assume
28 responsibility for that detainee’s safety and general well being. *See Helling v.*

1 *McKinney*, 509 U.S. 25, 32 (1993). Under the Eighth Amendment, the Government
2 must provide criminal detainees with basic human needs, including reasonable safety.
3 *Helling*, 509 U.S. at 32. The Government violates the Eighth Amendment if it confines
4 a criminal detainee in unsafe conditions. *See Helling*, 509 U.S. at 33. Moreover, the
5 Government may not “ignore a condition of confinement that is sure or very likely to
6 cause serious illness.” *See Helling*, 509 U.S. at 32.

7 The law is clear – the Government cannot put a civil detainee into a dangerous
8 situation, especially where that dangerous situation was created by the Government.
9 *See Hernandez v. City of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018). The Due
10 Process Clause of the Fifth Amendment prohibits the Government from exposing an
11 individual to a danger which he would not have otherwise faced. *See Kennedy v. City*
12 *of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006) citing *DeShaney v. Winnebago*
13 *County Dep’t of Soc. Serv.*, 489 U.S. 189, 197, 201 (1989). A civil detainee’s
14 constitutional rights are violated if a condition of his confinement places him at
15 substantial risk of suffering serious harm, such as the harm caused by a pandemic. *See*
16 *Smith v. Wash.*, 781 F. App’x. 595, 588 (9th Cir. 2019).

17 Here, Petitioners argued that the conditions at Adelanto expose them to a
18 substantial risk of suffering serious harm – increasing their exposure to or contracting
19 COVID-19. When the Government detains a person, thereby taking custody of that
20 person, it creates a special relationship wherein the Government assumes responsibility
21 for that detainee’s safety and well-being. *See, e.g., Henry A. v. Willden*, 678 F.3d 991,
22 998 (9th Cir. 2012). If the Government fails to provide for a detainee’s basic human
23 needs, including medical care and reasonable safety, the Due Process Clause is violated.
24 *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989). Indeed,
25 the Due Process Clause mandates that civil immigration detainees are entitled to more
26 than minimal human necessities. *See Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir.
27 2004). At a minimum, here, the Government owes a duty to Petitioners, as civil
28 immigration detainees, to reasonably abate known risks. *See Castro v. Cty. of Los*

1 *Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016). Inadequate health and safety measures
2 at a detention center cause cognizable harm to every detainee at that center. *See*
3 *Parsons v. Ryan*, 754 F.3d 657, 679 (9th Cir. 2014).

4 Petitioners are entitled to a temporary restraining order if they show: (1) A
5 likelihood of success on the merits; (2) That they are likely to suffer irreparable harm
6 in the absence of relief; (3) The balance of equities tip in their favor; and (4) An
7 injunction is in the public’s interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555
8 U.S. 7, 20 (2008). Under the Ninth Circuit’s sliding scale approach, a stronger
9 showing of one element may offset a weaker showing of another. *See Pimentel v.*
10 *Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012). Accordingly, Petitioners are entitled
11 to a temporary restraining order if “serious questions going to the merits [are] raised
12 and the balance of hardships tips sharply in [their] favor.” *All. for the Wild Rockies v.*
13 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

14 In its opposition brief, the Government sets forth the United States Attorney
15 General’s discretionary right to detain an alien in removal proceedings prior to a final
16 order of removal. *See* 8 U.S.C. § 1226. Indeed, the Attorney General has the
17 discretion to either: (1) Detain the person without bond or (2) Release the person on a
18 bond of at least \$1,500.00 or on conditional parole. 8 U.S.C. § 1226(a). In making
19 the initial bond determination, a BICE officer must assesses whether the person has
20 “demonstrate[d]” that “release would not pose a danger to property or persons, and that
21 the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). If the
22 BICE officer determines that release, with or without bond, is not appropriate, then the
23 person may appeal to an Immigration Judge. 8 C.F.R. §§ 236.1(d)(1), 1003.19,
24 1236.1(d)(1). The Immigration Judge’s decision, then, would be appealable to the
25 Board of Immigration Appeals. 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38.

26 However, because the Petitioners, here, have asserted claims for violations of
27 their Fifth Amendment substantive due process rights, and those claims exceed the
28 jurisdictional limits of the Immigration Court and the Board of Immigration Appeals,

1 Petitioners need not first exhaust their administrative remedies. *Garcia-Ramirez v.*
2 *Gonzales*, 423 F.3d 935, 938 (9th Cir. 2005).

3 The Government argued that Petitioners lack standing because they cannot
4 establish that they would suffer a concrete, non-hypothetical injury absent a temporary
5 restraining order in that their likelihood of contracting COVID-19 is speculative. *See*
6 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

7 However, it is clear that “[a] remedy for unsafe conditions need not await a tragic
8 event.” *Helling*, 509 U.S. at 33. The Government cannot be “deliberately indifferent
9 to the exposure of [prisoners] to a serious, communicable disease on the ground that the
10 complaining [prisoner] shows no serious current symptoms.” *Helling*, 509 U.S. at 33.
11 “That the Eighth Amendment protects against future harm to inmates is not a novel
12 proposition.” *Helling*, 509 U.S. at 33. The Supreme Court clearly stated that “... the
13 Eighth Amendment protects [prisoners] against sufficiently imminent dangers as well
14 as current unnecessary and wanton infliction of pain and suffering... .” *Helling*, 509
15 U.S. at 33. Indeed, the Court concluded that where prisoners in punitive isolation were
16 crowded into cells and some of them had infectious maladies, “... the Eighth
17 Amendment required a remedy, even though it was not alleged that the likely harm
18 would occur immediately and even though the possible infection might not affect all of
19 those exposed.” *Helling*, 509 U.S. at 33. Civil detainees are entitled to greater liberty
20 protections than individuals detained under criminal processes. *See Jones*, 393 F.3d at
21 932.

22 In its *amicus* brief filed in *Helling*, the Government stated that it “... recognizes
23 that there may be situations in which exposure to toxic or similar substances would
24 present a risk of sufficient likelihood or magnitude – and in which there is a sufficiently
25 broad consensus that exposure of *anyone* to the substance should therefore be prevented
26 – that the [Eighth] [A]mendment’s protection would be available even though the effects
27 of exposure might not be manifested for some time.” *Helling*, 509 U.S. at 34. The
28 Government, here, cannot say, with any degree of certainty, that no one – staff or

1 detainee – at Adelanto has not been, or will not be, infected with the coronavirus. The
2 science is well established – infected, asymptomatic carriers of the coronavirus are
3 highly contagious. Moreover, the Petitioners presently before the Court are suffering
4 from a condition of confinement that takes away, *inter alia*, their ability to socially
5 distance. The Government cannot be deliberately indifferent to the Petitioners’ potential
6 exposure to a serious, communicable disease on the ground that they are not, now,
7 infected or showing current symptoms. *See Helling*, 509 U.S. at 32.

8 It is “cruel and unusual punishment to hold convicted criminals in unsafe
9 conditions.” *Helling*, 509 U.S. at 33. The Eighth Amendment is violated when a
10 condition of a criminal detainee’s confinement puts him at substantial risk of suffering
11 serious harm and that the condition causes suffering inconsistent with contemporary
12 standards of human decency. *See Smith v. Wash.*, 781 F. App’x. 595, 597-598 (9th
13 Cir. 2019). However, a civil detainee seeking to establish that the conditions of his
14 confinement are unconstitutional need only show that his conditions of confinement
15 “put [him] at substantial risk of suffering serious harm.” *See Smith*, 781 F. App’x.
16 597-598. Here, BICE cannot be deliberately indifferent to the potential exposure of
17 civil detainees to a serious, communicable disease on the ground that the complaining
18 detainee shows no serious current symptoms, or ignore a condition of confinement that
19 is more than very likely to cause a serious illness. *See Helling*, 509 U.S. at 32.

20 Under the Due Process Clause, a civil detainee cannot be subject to the current
21 conditions of confinement at Adelanto. The Supreme Court has acknowledged that it
22 has “... great difficulty agreeing that prison authorities may not be deliberately
23 indifferent to an inmate’s current health problems but may ignore a condition of
24 confinement that is sure or very likely to cause serious illness and needless suffering the
25 next week or month or year.” *Helling*, 509 U.S. at 33

26 As the Court writes this order, the number of confirmed COVID-19 cases in the
27 United States has already exceeded the number of confirmed cases in every other
28 country on this planet. Indeed, all of the experts and political leaders agree that the

1 number of confirmed cases in the United States will only increase in the days and weeks
2 ahead. The number of cases in the United States has yet to peak. In San Bernardino
3 County, the number of confirmed cases, there, has tripled over the past five days.

4 The risk that Petitioners, here, will flee, given the current global pandemic, is
5 very low, and reasonable conditions can be fashioned to ensure their future appearance
6 at deportation proceedings. While both Petitioners have committed prior criminal
7 offenses in this country related to driving under the influence, both Castillo and
8 Vasquez have completed their sentences of five days and three days incarceration,
9 respectively. Petitioners are not criminal detainees, they are civil detainees entitled to
10 more considerate treatment than criminal detainees. *See Youngberg*.

11 Civil detainees must be protected by the Government. Petitioners have not been
12 protected. They are not kept at least 6 feet apart from others at all times. They have
13 been put into a situation where they are forced to touch surfaces touched by other
14 detainees, such as with common sinks, toilets and showers. Moreover, the Government
15 cannot deny the fact that the risk of infection in immigration detention facilities – and
16 jails – is particularly high if an asymptomatic guard, or other employee, enters a
17 facility. While social visits have been discontinued at Adelanto, the rotation of guards
18 and other staff continues.

19 The Petitioners have established that there is more than a mere likelihood of their
20 success on the merits. *See Winter*, 555 U.S. at 20.

21 The Petitioners have established that they are likely to suffer irreparable harm in
22 the absence of relief. *See Winter*, 555 U.S. at 20. It is well established that the
23 deprivation of constitutional rights unquestionably constitutes irreparable injury. *See*
24 *Hernandez v. Session*, 872 F.3d 976, 994 (9th Cir. 2017).

25 The balance of the equities tip sharply in favor of the Petitioners. The Petitioners
26 faces irreparable harm to their constitutional rights and health. Indeed, there is no harm
27 to the Government when a court prevents the Government from engaging in unlawful
28 practices. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

1 Finally, the emergency injunctive relief sought, here, is absolutely in the public’s
2 best interest. The public has a critical interest in preventing the further spread of the
3 coronavirus. An outbreak at Adelanto would, further, endanger all of us – Adelanto
4 detainees, Adelanto employees, residents of San Bernardino County, residents of the
5 State of California, and our nation as a whole.

6 This is an unprecedented time in our nation’s history, filled with uncertainty,
7 fear, and anxiety. But in the time of a crisis, our response to those at particularly high
8 risk must be with compassion and not apathy. The Government cannot act with a
9 callous disregard for the safety of our fellow human beings.

10 Accordingly,

11 **It is Ordered** that the motion for a temporary restraining order be, and hereby
12 is, **Granted**.

13 **It is further Ordered** that the Respondents shall, forthwith and without delay,
14 release Petitioners Pedro Bravo Castillo and Luis Vasquez Rueda from custody pending
15 further order of this Court.

16 **It is further Ordered** the Respondents shall show cause, if they have any, as
17 to why the Court should not issue a preliminary injunction in this case. The
18 Respondents’ response, if any, to this order to show cause shall be filed by Noon on
19 April 6, 2020. Petitioners’ reply, if any, to Respondents’ response shall be filed by
20 Noon on April 9, 2020. The matter will then stand submitted.

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22 Date: March 27, 2020

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24 **Terry J. Hatter, Jr.**
25 **Senior United States District Judge**
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

United States of America,

Plaintiff,

Case No. 18-20315

v.

Judith E. Levy
United States District Judge
Elizabeth A. Stafford
Magistrate Judge

Keith Kennedy (D-3),

Defendant.

_____ /

ORDER TEMPORARILY REVOKING DETENTION

On March 11, 2020 Magistrate Judge David Grand detained Defendant Keith Kennedy subject to a bond review hearing before Judge Judith Levy. (*See* ECF No. 71.) Judge Grand detained Defendant due to several violations of his pretrial release conditions, including the following: failing several drug screens, failing to report to pretrial services, failing to report to inpatient substance abuse treatment, and failing to report for a bond review hearing. (*See id.*; ECF No. 58.) On March 26, 2020, the Court conducted a bond reviewing hearing of Defendant's confinement at the Saginaw County Jail. The hearing took

place telephonically due to federal, state, and court stay-at-home directives in response to the COVID-19 pandemic.

The Court is authorized to revisit the Magistrate Judge's order pursuant to 18 U.S.C. § 3145(b). As set forth below, the Court finds that it is necessary to temporarily release Defendant, pursuant to 18 U.S.C. § 3142(i)(4), *see infra* pg. 8, for two reasons. First, under the facts of this case, the danger posed to Defendant in the Saginaw County Jail by the COVID-19 pandemic constitutes an independent compelling reason to temporarily release him from custody. Second, temporary release is necessary for Defendant to prepare his pre-sentencing defense.

BACKGROUND

On March 22, 2020, the Governor of Michigan issued the following statement: "The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease." Executive Order, No. 2020-20 (Mar. 22, 2020).

Since March 11, 2020, the date of Defendant's hearing before Magistrate Judge Grand, the exceptionally dangerous nature of the COVID-19 pandemic has become apparent. On March 10, 2020, the Governor of Michigan announced the state's first two cases of COVID-19 and simultaneously declared a State of Emergency. Executive Order, No. 2020-4 (Mar. 10, 2020). The number of new cases is growing exponentially. As of March 27, 2020, that number is now at 3,657 confirmed cases and 92 known related deaths. *See Coronavirus, Michigan.Gov*, <https://www.michigan.gov/coronavirus/0,9753,7-406-98163-520743--,00.html>. COVID-19 has a high risk of transmission, and the number and rate of confirmed cases indicate broad community spread. Executive Order, No. 2020-20 (Mar. 22, 2020). Indeed, as of March 27, 2020, Michigan jails are attempting to lower their detained populations "as officials scramble to remove people thought to be at high risk of contracting the coronavirus, but little risk to the general public if they were not behind bars." James David Dickson, *Jail populations plunge in Metro Detroit as coronavirus spreads*, Detroit News (March 27, 2020), <https://www.detroitnews.com/story/news/local/macomb->

county/2020/03/27/jail-populations-plunge-metro-detroit-coronavirus-spreads/2914358001/. Defendant's case fits this description.

On March 23, 2020, the Centers for Disease Control and Prevention (CDC) acknowledged that correctional and detention facilities “present[] unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.” *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Centers for Disease Control (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> [Hereinafter “CDC Guidance 3/23/2020”]. Specifically, the CDC noted that many detention conditions create a heightened risk of danger to detainees. These include: low capacity for patient volume, insufficient quarantine space, insufficient on-site medical staff, highly congregational environments, inability of most patients to leave the facility, and limited ability of incarcerated/detained persons to exercise effective disease prevention measures (e.g., social distancing and frequent handwashing). *Id.*

The CDC recommended that all correctional facilities take preventative measures, including: ensuring an adequate supply of

hygiene and medical supplies, allowing for alcohol-based sanitizer throughout facilities, providing no-cost soap to all inmates for frequent handwashing, cleaning and disinfecting frequently touched surfaces several times per day, performing pre-intake screening and temperature checks for all new entrants, increasing space between all detained persons to at least six feet, staggering meals, and having healthcare staff perform regular rounds. *Id.* Even if all of the CDC’s interim recommendations are followed, and this record suggests that they are not, the Court is concerned that such measures will prove insufficient to stem deadly outbreaks. *See, e.g., New York City Board of Correction Calls for City to Begin Releasing People From Jail as Part of Public Health Response to COVID-19*, N.Y.C. Bd. of Corr. (Mar. 17, 2020), <https://www1.nyc.gov/assets/boc/downloads/pdf/News/2020.03.17%20-%20Board%20of%20Correction%20Statement%20re%20Release.pdf> (arguing that, despite the “heroic work” of Department of Correction and Correctional Health Services staff “to prevent the transmission of COVID-19 in the jails and maintain safe and humane operations, the City must drastically reduce the number of people in jail right now and limit new admissions to exceptional circumstances”). Indeed, on March

26, 2020, Attorney General Barr issued a separate directive ordering the Director of the Bureau of Prisons to “prioritiz[e] home confinement as appropriate in response to the COVID-19 pandemic . . . to protect the health and safety of BOP personnel and the people in our custody.” *Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic*, Att’y Gen. (Mar. 26, 2020).

Research shows that prisoners and jail inmates are more likely than the general population to report experiencing infectious diseases, indicating that these individuals face a heightened risk during this pandemic.¹ Laura M. Maruschak et al., *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, U.S. Department of Justice, Bureau of Justice Statistics, (2016), <https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf>.

By way of example, Michigan prisons are beginning to prepare “contingency plans” for extreme outbreaks, but the evidence suggests that it is only a matter of time before a deadly outbreak occurs for which

¹ As of March 26, 2020, there have been fourteen confirmed cases of a Michigan prisoner testing positive for COVID-19, up from one case on March 24, 2020. Gus Burns, *Michigan prisons prep for possibility of coronavirus outbreak among inmate population*, M-Live (Mar. 26, 2020), <https://www.mlive.com/public-interest/2020/03/michigan-prisons-prep-for-possibility-of-coronavirus-spread-among-inmate-population.html>.

the prison system is woefully unprepared. *See id.* ([The Michigan Department of Corrections spokesperson] “said administrators haven’t projected how many inmates might eventually contract the highly contagious virus, and he didn’t immediately know how much quarantine space is available throughout the prison network.”) Because many individuals infected with COVID-19 do not display symptoms, the virus will almost certainly be present in jails and prisons before cases are formally identified.

During the March 26 hearing, Defendant credibly testified that he has conditions which render him particularly vulnerable to COVID-19. Defendant, who was audibly ill with congestion and who coughed intermittently throughout the call, testified that he is exhibiting flu-like symptoms. Defendant also credibly testified that Saginaw County Jail has not been treating his underlying conditions or his flu-like symptoms. He testified that, prior to detainment, he was on high blood pressure medication, thyroid medication, and blood sugar medication. Despite these conditions and symptoms, Defendant testified that he was not being provided with these medications, not having his blood pressure taken regularly, not having his thyroid tested, not having his

temperature taken regularly, and unable to access to tissues into which he could sneeze or cough.² Defendant also testified that the detainees had no access to hand sanitizer and were instead provided with a small bar of soap once a week.

LAW AND ANALYSIS

Where a detention order has been issued, the Court is permitted to issue a “subsequent order” temporarily releasing an individual in custody “to the extent that the judicial officer determines such release to be necessary for the preparation of the person’s defense or for another compelling reason.” 18 U.S.C. § 3142(i)(4). While the language of § 3142(i)(4) appears under the heading “Release or detention of a defendant pending trial,” this provision applies to Defendant even though he has pled guilty and is thus pending sentencing rather than trial. The language specifies that the Court may permit temporary release “by subsequent order.” *Id.* The Court’s current directive is a “subsequent order,” issued subsequent to a prior detainment order under 18 U.S.C. § 3142.³ *United States v. Thornton*, 787 F.2d 594, 594 (6th Cir. 1986) (Table

² Defendant did testify that the detainees had access to toilet paper.

³ The Court notes that typical post-plea releases involve a finding “by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety

decision) (suggesting that a district court could temporarily release a detainee pursuant to § 3142(i)(4) by subsequent order even after a prior order holding that the detainee was a flight risk or a risk to public safety); *United States v. Dante Stephens*, No. 15-cr-0095, 2020 WL 1295155, *3 (S.D.N.Y. Mar. 19, 2020) (holding that 18 U.S.C. § 3142(i)(4) constitutes a “separate statutory ground” for post-conviction release).

of any other person or the community.” 18 U.S.C. § 3143(a)(1). However, it is unnecessary for the Court to make a finding under 18 U.S.C. § 3143, because the Court is releasing Defendant pursuant to the independent statutory ground 18 U.S.C. § 3142(i)(4). Nevertheless, the Court finds, by clear and convincing evidence based on Defendant’s actions and testimony, that Defendant would not pose a danger to the safety of any other person or to the community. The Court notes that Defendant testified under oath about his concern for his aging parents and his desire to remain at home, in quarantine, to support them. Defendant was solemn, thoughtful, and responsive to the Court’s questions and concerns. Defendant does not have a violent history. The Court found Defendant to be a credible witness when discussing his health and treatment at Saginaw County Jail, his willingness to cooperate with Probation, and his motivation for staying at home once released.

The Court also notes that any § 3143(a)(1) considerations would need to account for the restricted flight possibilities presented by the current COVID-19 pandemic, as well as “balance the public health safety risk posed by the continued incarceration of [] defendants in crowded correctional facilities with any community safety risk posed by a defendant’s release.” *See Karr v. State*, No. A-13630, 2020 WL 1456469, *3 (Alaska Ct. App. Mar. 24, 2020); *see also Matter of Extradition of Toledo Manrique*, No. 19-71055, 2020 WL 1307109, *1 (N.D. Cal. Mar. 19, 2020) (“This [flight risk] problem has to a certain extent been mitigated by the existing pandemic. The Court’s concern was that Toledo would flee the country, but international travel is hard now. Travel bans are in place . . .”)

For the reasons below, the Court finds that temporary pretrial release is necessary for the compelling reason that it will protect Defendant, the prison population, and the wider community during the COVID-19 pandemic, and also that pretrial release is necessary for the preparation of Defendant's pre-sentencing defense.

Section 3142(i) does not define "compelling reason," and the Sixth Circuit has yet to interpret this statutory language. However, as courts across the country have begun to recognize, the global health crisis posed by COVID-19 necessitates informed, speedy, and preemptive action to reduce the risk of infection, illness, and death to prisoners and prison officials alike. *See Xochihua-Jaimes v. Barr*, No. 18-71460, ECF No. 53 (9th Cir. Mar. 23, 2020) (*sua sponte* ordering release of non-citizen from immigration detention center "[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers."); *United States v. Perez*, No. 19-cr-00297, ECF No. 62 (S.D.N.Y. Mar. 19, 2020) (finding that the defendant's heightened risk to COVID-19 complications constitutes a compelling reason for release under § 3142(i)); *United States v. Barkman*, No. 19-cr-0052, 2020 U.S. Dist. LEXIS 45628, at *11 (D. Nev. Mar. 17,

2020) (granting emergency relief amending probation order to delay confinement for thirty days because of risk of infection to both Defendant and others in jail). Under any possible interpretation of Section 3142(i)'s language, current events and Defendant's particular vulnerability to the disease constitute a compelling reason for release under § 3142(i).

Even if Defendant did not have a heightened susceptibility to COVID-19, the public health crisis—and its impact on Defendant's ability to present a defense—nonetheless satisfies § 3142(i). Saginaw County Jail has suspended on-site visitation “due to coronavirus concerns.” Brianna Owczarzak, *MDOC halts visits to MI prisons due to coronavirus concerns* (March 13, 2020), https://www.wnem.com/news/mdoc-halts-visits-to-mi-prisons-due-to-coronavirus-concerns/article_cbb094ea-6530-11ea-8dcc-6f67de338459.html. The Federal Bureau of Prisons and Michigan Department of Corrections have also broadly suspended on-site visits in light of coronavirus concerns. See Federal Bureau of Prisons, *Federal Bureau of Prisons COVID-19 Action Plan*, https://www.bop.gov/resources/news/20200313_covid-19.jsp (explaining the nationwide suspension and noting that “case-by-case accommodation

will be accomplished at the local level”); Michigan Department of Corrections, *MDOC Halts All Visits at State Prisons* (Mar. 13, 2020), <https://www.michigan.gov/coronavirus/0,9753,7-406-98163-521571--,00.html>.

Defendant and his attorney, Mr. Kinney, testified specifically to their difficulty in conducting attorney-client communications under current conditions. Defendant testified that his attorney was able to call him, but unable to visit him to prepare for this hearing. Mr. Kinney additionally testified that, though he was able to speak by phone with his client, he was unable to receive assurances from the facility that the calls were private. Mr. Kinney noted that he was “not comfortable that [he and Defendant] could actually talk about anything over the phone,” because “there’s certain things that I don’t want him to say” without a guarantee of attorney-client privacy.

These communication difficulties are endemic to confinement during the current pandemic and, under the facts of this case, further support Defendant’s release under § 3142(i). Defendant has an upcoming bond review hearing on June 4, 2020 and an upcoming sentencing hearing on July 28, 2020. (ECF Nos. 75, 76.) Release is necessary in order

to allow Defendant to adequately prepare and consult with defense counsel for these proceedings. *See Stephens*, 2020 WL 1295155 at *5 (holding that Defendant’s inability to communicate regularly and effectively with counsel in light of BOP’s visitation policies satisfied requirements for release under § 3142(i)).

The United States argues that release is improper here because it was unaware of any known COVID-19 cases at Saginaw County Jail. However, this argument fails to address the facts of the current global public health crisis—particularly as Michigan prisons are beginning to see exponential spread of the disease. *See Burns, supra*. The seemingly preemptive nature of Defendant’s release renders it no less necessary or compelling. To the contrary—as the above background makes clear—waiting for either Defendant to have a confirmed case of COVID-19, or for there to be a major outbreak in Defendant’s facility, would render meaningless this request for release. Such a failure to act could have devastating consequences for Defendant and would create serious medical and security challenges to the existing prison population and the wider community.

CONCLUSION

Defendant has set forth compelling reasons for his temporary release amidst this growing public health emergency. Accordingly, Defendant is immediately released pursuant to the conditions set forth in the bond documents, with the additional modification that Defendant is to self-quarantine for 14 days as discussed during the hearing.

The Court will revisit this Order in four months.

IT IS SO ORDERED.

Dated: March 27, 2020
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on March 27, 2020.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

MARIA ALEJANDRA CELIMEN SAVINO,
et al.,

Petitioners-Plaintiffs,

v.

THOMAS HODGSON, *et al.*,

Respondents-Defendants.

Case No. 1:20-cv-10617-WGY

DECLARATION OF BENJAMIN M. HALDEMAN

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

1. My name is Benjamin M. Haldeman. I am an immigration attorney at New Haven Legal Assistance Association, Inc. in New Haven, Connecticut. My office has represented many persons confined at Bristol County in their removal proceedings, and I have a number of clients detained there now.
2. I went to Bristol County House of Correction on March 27 and March 28, 2020 and met with a number of detained individuals. Several individuals provided me with me statements about their circumstances. I could not gather these and share them with Plaintiffs' counsel until the night of Saturday, March 28, 2020.
3. Attached hereto as Exhibit A is a true and correct copy of a list of individuals detained in Bristol County House of Correction Unit B by organized bunk number and indicating the occupant's medical conditions as prepared by individuals detained inside of Unit B on March 27, 2020. This list was given to me by Abdulaye Fall when I visited on March 28, 2020.
4. Attached hereto as Exhibit B is a true and correct copy of a letter from Pamlar Ferreira, an individual detained at Bristol County House of Correction, dated March 27, 2020.
5. Attached hereto as Exhibit C is a true and correct copy of a letter from Angela de Jesus Concepcion, an individual detained at Bristol County House of Correction, dated March 27, 2020.
6. Attached hereto as Exhibit D is a true and correct copy of a statement by Miguel Lucas Ixcuna, an individual detained at Bristol County House of Correction, which I received on March 28, 2020.

7. Attached hereto as Exhibit E is a true and correct copy of a statement by Abdulaye Fall, an individual detained at Bristol County House of Correction, which I received on March 28, 2020.
8. Attached hereto as Exhibit F is a true and correct copy of a statement by Julio Figueroa Morales, which I received on March 28, 2020.

Executed on this 29th day of March 2020
New Haven, Connecticut



Benjamin M. Haldeman

EXHIBIT A

as of 3/27/2020

BED #	ID #	NAME:
1	VACANT	-
2	196586	VICTOR PEGUERO VASQUEZ Two herniated disk Anemia falciforme sickles cell disease High blood pressure Fear and anxiety Depression
3	VACANT	-
4	198225	SEGUNDO ARMIJOS
5	198213	GUALLAN TIXI DIEGO
6	198744	MARCO BATTISTOTTI Complex tear of the upper meniscus (right knee) Healing fracture (right foot) Atsma Internal bleeding since detained Stress PTSD due to 9-1-1 work at ground zero and then domestic violence Fear and anxiety Cancer survivor (9-1-1 related) Deformed left foot
7	198710	EDUARDO TEJADA Stress Fear and anxiety Urinal track infection
8	194843	<u>DEPORTED ON 3/27/2020</u>
9	168302	MIGUEL LUCAS IX Heart problem Mental health issues
10	198234	<u>DEPORTED ON 3/23/2020</u>
11	198722	JOSE CAIDAC
12	197021	DIEGO ISRAEL AMADO GALINDO
13	VACANT	-
14	198218	<u>DEPORTED ON 3/23/2020</u>
15	197934	MARIO IVAN PILLCO MOROCHO
16	196566	SANCHEZ LOPEZ VICTOR MANUEL High blood pressure Stress Fear and anxiety Allergies

		Respiratory issues
17	N.A.	-
18	193435	PASCQUAL MONTES SANTOS Diabete
19	198718	GERMAN MIRANDA T
20	195877	ABDOULO ABDOULAYE FALL Low white blood cell count Tested positive for TB Recovering from broken shoulder - no treatment for the past 12 months.
21	198810	JOSE BELTRAN ARAUJO
22	198647	JUIO C. FIGUEROA MORALES Diabetic (sometimes cannot feel my feet) High cholesterol High blood pressure Headaches
23	198627	ALARCON MERCEDES
24	197919	KEVIN CORLETO Kidney stones (twice in hospital in the past two weeks) Depression Fear and anxiety Stress Headaches
25	NO BED	-
26	NO BED	-
27	198316	GARAN LUAL Astma PTSD Stress Fear and anxiety
28	198315	OSVALDO MOTA
29	198636	<u>DEPORTED ON 3/27/2020</u>
30	N.A.	-
31	198681	JULIO JUNDO
32	N.A.	-
33	191620	ERNESTO LOPEZ
34	196784	LLOYD WAFULA Heart condition PTSD
35	198657	SANDRO VERA

36	197273	<u>DEPORTED ON 3/23/2020</u>
37	198299	JUAN CARLOS ILLICACHI Headaches Back pain
38	196670	ARREAGA E. MARVIN Dental Stress Fear and anxiety
39	198280	<u>DEPORTED ON 3/27/2020</u>
40	196644	CARLOS MENJIVAR-ROJOS Atsma Fear and anxiety Stress
41	198654	<u>DEPORTED ON 3/23/2020</u>
42	198634	DONOVAN SMITH
43	196815	CONROY LEWIS Schizophrenia hearing voices in my head
44	198233	HUSSIEN HUSSEIN High blood pressure
45	VACANT	-
46	N.A.	-
47	198656	<u>DEPORTED ON 3/27/2020</u>
48	197694	BONILLA GARCIA DARWIN Bypolar depression - medical failed to provide Obilify medication as needed
49	198734	JUCINEI LIMA
50	198409	<u>DEPORTED ON 3/23/2020</u>
51	197695	<u>DEPORTED ON 3/23/2020</u>
52	154243	CESAR F. VARGAS VASQUEZ Astma Pain on left shoulder Broken toe (right foot)
53	VACANT	-
54	N.A.	<u>MEDICAL/HUMANITARIAN RELEASE ON 3/27/2020</u>
55	197826	AHMED HASSAN Stress Fear and anxiety

56	195606	HARLEN PEREZ Schizophrenia Double personality disorder Depression Fractured rib (4 weeks old)
57	197776	SSEKABAZI NATHANAEL PTSD Stress Fear and anxiety Ceasures
58	197434	AARON SOE Astma Anxiety
59	198811	ALVAREZ SILVA
60	197559	EDSON MARTINS Stress Fear and anxiety Severe back spinal injury
61	VACANT	-
62	197670	DARCY MCMENAMIN - HOSPITAL ON 3/26/2020 Severe COPD/Emphyzema 70% lung function Severe heart condition Double desection of main neck arteries Stroke (mid January 2020) Diagnosed with internal bleeding (hospitalized for 5 days - end of Feb. 2020)
63	VACANT	-
64	195838	FLAVIO ANDRADE PRADO Bronchite/Astma PTSD
65	198259	<u>DEPORTED ON 3/27/2020</u>
66	198195	ABEL PROMOTOR DOMINGUEZ
67	198586	<u>DEPORTED ON 3/27/2020</u>
68	N.A.	-

4

EXHIBIT B

To whom it may concern.

my name is Pamlar Ferreira, I am 57 year old I came to Bristol County Sheriff office on October 5, 2019 which I have been detained by I.C.E since then, I suffer from Type 2 Diabetes, High Blood pressure, High cholesterol, Acid reflux, P.T.S.D and has a Cough since November of 2019 and still has it, I also went to the DR on 3/25/2020 and was told I have a hole in my nose I have been to 4 different facility and have not see any place as inhumane as B.C.S.O

They are still taking ladies in, on 3/26/ they bought in a new lady who has a horrible cough and we don't have Bleach or Lysol to clean, we cannot be on a diet the food is very unhealthy too much salt and we get cake everyday, we are place with state Ladies who are detoxing and has different diseases, we share 2 bathroom with the state ladies who don't clean up after them self, and don't even wash their hands, we also don't get refill on hand soap often, we also only have 2 showers which we also share with the state ladies a total of 23 which is very unhealthy.

We have C.O. who don't even wear mask and it is very unsafe for us, when we are sick we have to put in a sick slip which take weeks to see a DR or NP I feel very unsafe and stressful.

P.L.O

Thank you. Please help me.

Pamela FERREIRA,

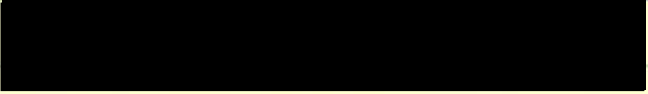


EXHIBIT C

Angela de Jesus-
Concepcion

I have been in ICE's custody for one year at the Bristol County Jail, we are kept in inhumane conditions locked in several hours a day in a small cell, we share the space with multiple state-inmates,

I suffer from gastroesophageal Reflux disease and I am not getting proper treatment. Because the conditions of confinement are so deplorable, I am very fearful to be infected with the new Coronavirus.

The facility does not provide masks, hand sanitizer and sometimes there is no soap. Also it is impossible to maintain social distance due to the small space.

Thank you for everything your organization is doing. Please Help us!

Dated: March 27, 2020



Angela de Jesus Concepcion

EXHIBIT D

My name is Miguel Lucas Ixcuna (9)

I have series condition I have ID 168302
heart problem and mental problem
and special my wife to outside
by her self and no ones taking care
her and shes sick and series mental
problem only one whos taking care
24-7 and special I have two boys
10 years and 5 years immigration
destroy are life



EXHIBIT E

Rjh

My name is Abdulaye Fall and I'm 35 yrs. old. I'm happily married ~~and~~ with two children (age 5 and 7mo.). I've been in ICE for a year and a month. Being in ICE have been the hardest thing I face in my life. The conditions in this facility are horrible. I have low white blood cell and I have ~~the~~ TB. Ever since I've been here they were aware of my TB and they are aware of my low white blood cell, also my broken rotator cuff on my left hand. So far I've put in 8 medical slips including a grievance, nothing have been done. I'm a worker and they don't pay for the job. I clean bathrooms, clean showers with no ~~given~~ mask even though we play with chemicals that have no label on the bottles. Ones I slipped and fell which ended up with a back injury. They dragged me off the floor, put me in the hallway and left me there for atleast ~~the~~ 45 mins. They then handcuffed me while I was screaming about how much pain I was in then they put me in the car and took me to the facility's hospital. I was kept ~~there~~ there for about another 45 ~~mins~~ ^{mins} ~~or~~ ^{of} ~~some~~ with no medical attention even though I was in pain and screaming. Then I was taken to an outside hospital, which I waited another 2-3 hrs. I was given an MRI and was told that I had no broken bones. I've never seen the MRI result and til this day I've never gotten physical therapy and I still feel the lower back pain from waist down. The trauma and anxiety I've been through in here I can't imagine. ~~how they handle them~~ These situation were handle with hostility and no care. The living situations are horrible, food are repetitive with no sauce. ~~It seem like~~ They treat ~~in~~ detainees like animals, because many people never use to speak about it and just endure the stress and pain. Many guys have sicknesses in here such as TB, many have toothaches for long periods of time with no dental evaluations. We are being blocked from reaching out to the outside world many times, even our grievances are being tossed aside with no action taken by the facility's higher ups.



EXHIBIT F

TRANSLATION OF A LETTER

3/27/20

Julio C. Figueroa Morales

ID #19847 Bed #22

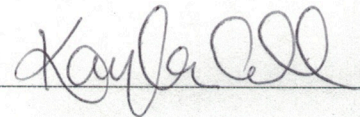
I am a person 45 years of age and I am diabetic and they are not giving me the medicine they need to give me. Outside I took 3 types of insulin and I am on a high quantity and here they do not give me enough and my blood sugar is very high in the 350s, 430s and in the 500s, it does not go lower than that and I am afraid that it will give me a heart attack and they only give me rice and potatoes to eat and they treat them like delinquents and what's more, outside I take care of my mom and dad. I help my dad change clothes and bathe and feed him and the same for my mom and I have a lot of stress and they do not give me attention.

/signature: illegible/

CERTIFICATE OF TRANSLATOR'S COMPETENCE

I, Kayla Crowell, a law student intern in the Worker & Immigrant Rights Advocacy Clinic at Yale Law School, hereby certify that this is an accurate translation of the attached **letter** in **Spanish** and that I am competent in both **English** and **Spanish** to render such a translation.

Date: March 28, 2020

Translator's Signature: 

3/27/20

Julio C. Figueroa Morales
ID # 198647 cama # 22

Yo soy una persona de 45 años de edad y soy Diabético y no me están dando la medicina que me tienen que dar yo allá afuera Tomo de 3 clases de Insulina ~~y~~ estoy en una cantidad alta y aquí no me dan lo suficiente y mis azúcares son bien altas en los 350, 430 y en los 500 no me bajan de allí y tengo miedo que me de un paro de corazón y solo me dan de comer arroz y papa y los tratan como delincuentes y además no afuera cuido a mi mamá y papá a mi papá le aludo a cambiarse y a bañarse y a darle la comida y go al a mi mamá y tenga mucho de estrés y no me dan atención



**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

MARIA ALEJANDRA CELIMEN SAVINO,
et al.,

Petitioners-Plaintiffs,

v.

THOMAS HODGSON, *et al.*,

Respondents-Defendants.____

Case No. 1:20-cv-10617-WGY

DECLARATION OF VANESA SUAREZ

I, Vanesa Suarez, declare under penalty of perjury that the following is true and correct:

1. I am the Deportation Defense Organizer at the Connecticut Bail Fund (“CBF”), an organization that supports incarcerated individuals through coordinating with their attorneys, posting bond, and initiatives that help those incarcerated stay in touch with those on the outside.

Through my work, I communicate regularly with individuals detained at Bristol County Immigration Detention Facilities.

2. I first spoke with Lloyd Wafula, who is detained by Immigration and Customs Enforcement (“ICE”) at Bristol County, in January 2020 regarding another individual incarcerated at Bristol. Shortly thereafter, he called CBF to inquire about services we provide.

3. Since then, I have spoken with Mr. Wafula, whom ICE still detains at Bristol County, on many occasions. Over the past month, I have spoken with him approximately 5-7 times a week. These calls last anywhere from 30 to 90 minutes. Based on these conversations, I have come to the understanding that Mr. Wafula is concerned about an imminent COVID-19 outbreak while in detention.

4. I understand that he is presently in solitary confinement with extremely limited ability to make any telephone calls. As a result, he cannot provide his own statement and on March 25, 2020 he asked me to provide his account.

5. The following is a true and accurate account of my contemporaneously recorded notes of my conversations with Mr. Wafula.

6. On March 17, 2020, Mr. Wafula shared with me that he was organizing other individuals in detention with the hope of attaining public attention to address the unsafe conditions inside. He organized 51 of 57 individuals detained in Unit B at Bristol County.

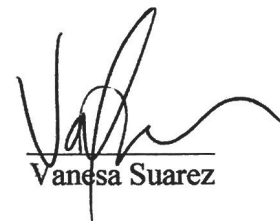
7. The March 18, 2020 letter signed by 51 of 57 individuals detained in Unit B at Bristol County, which is attached as Exhibit A to the Complaint in this matter is consistent with what I learned from Mr. Wafula in the weeks I have spoken with him. Connecticut Bail Fund and other organizations helped distribute the letter publicly, and I understand it has already been submitted in this case as ECF No. 1-4.

8. In a call on March 25, 2020, Mr. Wafula reported that he was abruptly handcuffed the night before and sent to solitary confinement. Mr. Wafula reported that no one has informed him as to why he was sent to solitary confinement, but he believed it was retaliation for organizing others inside Bristol County to disseminate a letter regarding their conditions inside. Mr. Wafula also requested that CBF deposit money into the commissary since COs took away his hygiene products when moving him into solitary.

9. In a call on March 28, 2020, Mr. Wafula reported that he was still in solitary and no one has informed him of the reason why. Mr. Wafula stated that he had chest pains and plans to seek medical attention.

I, Vanesa Suarez, declare under penalty of perjury, under 28 U.S.C. § 1746, and the laws of the United States of America, that the foregoing Declaration is true and correct.

Dated: March 29, 2020
New Haven, Connecticut



Vanesa Suarez