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18 **UNITED STATES DISTRICT COURT**  
19 **CENTRAL DISTRICT OF CALIFORNIA**  
20 **EASTERN DIVISION – RIVERSIDE**

21 FAOUR ABDALLAH FRAIHAT, *et al.*,  
22 Plaintiffs,  
23 v.  
24 U.S. IMMIGRATION AND CUSTOMS  
25 ENFORCEMENT, *et al.*,  
26 Defendants.

Case No.: 19-cv-01546-JGB(SHKx)

**PLAINTIFFS’ RESPONSE TO  
DEFENDANTS’ EVIDENTIARY  
OBJECTIONS TO THE  
DECLARATION OF FRANCIS L.  
CONLIN**

Date: April 8, 2020

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1 Plaintiffs hereby respond to Defendants' Evidentiary Objections to the  
2 Declaration of Francis L. Conlin, ECF No. 95-21, filed April 3, 2020. As a general  
3 response, Plaintiffs note that, in ruling on a motion for preliminary injunction, the  
4 Court may consider inadmissible evidence "when to do so serves the purpose of  
5 preventing irreparable harm before trial." *Flynt Distrib. Co. v. Harvey*, 734 F.2d  
6 1389, 1394 (9<sup>th</sup> Cir. 1984). In addition, Plaintiffs respond to Defendants' specific  
7 evidentiary objections as follows:

8 **1. MATERIAL OBJECTED TO:**

9 Based on FOMDD's knowledge and understanding, ICE and its contractors  
10 have not effectively disseminated vital information about COVID-19 to individuals  
11 in the following detention centers: Krome, BTC, and Glades. The lack of  
12 information has heightened fear and anxiety amongst the detained populations and  
13 led to a rampant spread of unverified information throughout all three facilities.  
14 FOMDD has heard from several detained individuals about their increased anxiety  
15 and fear that COVID-19 will spread throughout the facilities. The only education  
16 that detained individuals have received on COVID-19 has been informative flyers  
17 posted at Krome. Declaration of Francis L. Conlin ("Conlin Decl.") ¶ 5.

18 **OBJECTION(S):**

19 FRE 602: Lack of personal knowledge, failure to lay proper foundation,  
20 speculation.

21 **RESPONSE:**

22 Mr. Conlin has gained personal knowledge through his role as Chairperson  
23 for Friends of Miami-Dade Detainees ("FOMDD"). Conlin Decl. ¶ 1. He has  
24 personal knowledge of the conditions facing those in immigration detention centers  
25 based on his work with FOMDD, which operates visitation programs for those in  
26 detention. Additionally, FOMDD volunteers have been in continuous contact with  
27 detained individuals at the facilities they serve and have reported their findings to  
28 him. *Id.* at ¶¶ 2-3. Mr. Conlin's statement is not based on speculation but rather

1 personal knowledge of the conditions FOMDD's clients are subjected to while  
2 detained in Defendant's custody.

3  
4 **2. MATERIAL OBJECTED TO:**

5 Based on FOMDD's knowledge and understanding, there has been no  
6 material change in protocols or procedures in place in light of COVID-19 at  
7 Krome, BTC, or Glades. Conlin Decl. ¶ 6.

8 **OBJECTION(S):**

9 FRE 602: Lack of personal knowledge, failure to lay proper foundation,  
10 speculation.

11 **RESPONSE:**

12 Mr. Conlin has gained personal knowledge through his role as Chairperson  
13 for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions  
14 facing those in immigration detention centers based on his work with FOMDD,  
15 which operates visitation programs for those in detention. Additionally, FOMDD  
16 volunteers have been in continuous contact with detained individuals at the  
17 facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr.  
18 Conlin's statement is not based on speculation but rather personal knowledge of  
19 the conditions FOMDD's clients are subjected to while detained in Defendant's  
20 custody.

21 **3. MATERIAL OBJECTED TO:**

22 At all three facilities, we have heard that staff are wearing surgical masks,  
23 but surgical masks have not been provided to the detained population. Detained  
24 individuals at all three facilities report not being provided extra soap, extra  
25 cleaning supplies, or hand sanitizer. Conlin Decl. ¶ 7.

26 **OBJECTION(S):**

27 FRE 802: Hearsay.  
28

**RESPONSE:**

1  
2 A district court may consider hearsay in deciding whether to issue a  
3 preliminary injunction. *See, e.g., Johnson v. Couturier*, 572 F.3d 1067, 1083 (9<sup>th</sup>  
4 Cir. 2009); *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1363 (9<sup>th</sup> Cir.  
5 1988 (en banc)). Even assuming *arguendo* the Court was not permitted to consider  
6 hearsay in deciding Plaintiffs’ motions, Mr. Conlin’s statements are subject to a  
7 hearsay exception. In light of the unique circumstances presented by this case, the  
8 residual exception to the hearsay rule would apply. *See* FRE 807. Plaintiffs are  
9 detained with extremely limited access to counsel, and this matter is progressing  
10 rapidly in light of the COVID-19 pandemic. The ability of Plaintiffs’ counsel to  
11 obtain declarations from the individuals with whom Mr. Conlin spoke is hindered  
12 by the fact that the declarants are detained in the custody of Defendants. Requiring  
13 Plaintiffs’ counsel to obtain declarations from all of the individuals with whom Mr.  
14 Conlin spoke would be impractical and unreasonable. Mr. Conlin has sworn under  
15 oath that the details in his declaration are “true and correct.” Conlin Decl. p.

16 1. His statements are therefore sufficiently reliable and trustworthy under  
17 FRE 807.

**4. MATERIAL OBJECTED TO:**

18 FOMDD has heard reports from people detained at Krome that guards are  
19 reluctant to report to work for fear they will not be allowed to leave, and for their  
20 own well-being and safety. We heard there had been a decrease in contracted staff  
21 to a “skeleton crew” that would potentially stay on-site 24/7. Conlin. Decl. ¶ 8.

**OBJECTION(S):**

23 FRE 802: Hearsay.

**RESPONSE:**

25 A district court may consider hearsay in deciding whether to issue a  
26 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*  
27 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not  
28

1 permitted to consider hearsay in deciding Plaintiffs' motions, Mr. Conlin's  
2 statements are subject to a hearsay exception. In light of the unique circumstances  
3 presented by this case, the residual exception to the hearsay rule would apply. *See*  
4 FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this  
5 matter is progressing rapidly in light of the COVID-19 pandemic. The ability of  
6 Plaintiffs' counsel to obtain declarations from the individuals with whom Mr.  
7 Conlin spoke is hindered by the fact that the declarants are detained in the custody  
8 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the  
9 individuals with whom Mr. Conlin spoke would be impractical and  
10 unreasonable. Mr. Conlin has sworn under oath that the details in his declaration  
11 are "true and correct." Conlin Decl. p. 1. His statements are therefore sufficiently  
12 reliable and trustworthy under FRE 807.

13 **5. MATERIAL OBJECTED TO:**

14 Detained individuals from all three detention centers report being sick or  
15 witnessing other people with coughs, chills, fevers, and other symptoms and report  
16 that they were receiving minimal to no medical treatment. Conlin. Decl. ¶ 10.

17 **OBJECTION(S):**

18 FRE 602: Lack of personal knowledge, failure to lay proper foundation,  
19 speculation.

20 **RESPONSE:**

21 Mr. Conlin has gained personal knowledge through his role as Chairperson  
22 for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions  
23 facing those in immigration detention centers based on his work with FOMDD,  
24 which operates visitation programs for those in detention. Additionally, FOMDD  
25 volunteers have been in continuous contact with detained individuals at the  
26 facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr.  
27 Conlin's statement is not based on speculation but rather personal knowledge of  
28

1 the conditions FOMDD's clients are subjected to while detained in Defendant's  
2 custody.

3  
4 **6. MATERIAL OBJECTED TO:**

5 One individual with a work assignment that requires being in contact with  
6 the food trays reported feeling ill. He went to the medical unit to report his illness  
7 and was not provided with adequate medical care. He ultimately decided not to  
8 continue his work assignment because he was afraid to expose other detained  
9 individuals to his illness, and he was not being provided with extra sanitizing  
10 materials. Conlin. Decl. ¶ 11.

11 **OBJECTION(S):**

12 FRE 602: Lack of personal knowledge, failure to lay proper foundation,  
13 speculation.

14 **RESPONSE:**

15 Mr. Conlin has gained personal knowledge through his role as Chairperson  
16 for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions  
17 facing those in immigration detention centers based on his work with FOMDD,  
18 which operates visitation programs for those in detention. Additionally, FOMDD  
19 volunteers have been in continuous contact with detained individuals at the  
20 facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr.  
21 Conlin's statement is not based on speculation but rather personal knowledge of  
22 the conditions FOMDD's clients are subjected to while detained in Defendant's  
23 custody.

24 **7. MATERIAL OBJECTED TO:**

25 The quarantines in place result in a large number of individuals being placed  
26 together in a crowded and cramped area without space necessary for social  
27 distancing. The quarantines combined with the lack of information that ICE and its  
28 contractors at both Glades and Krome have failed to provide resulted in detained



1 individuals contacting FOMDD to tell us that there are several cases of COVID-19  
2 at the two facilities. Conlin. Decl. ¶ 12.

3 **OBJECTION(S):**

4 FRE 602: Lack of personal knowledge, failure to lay proper foundation,  
5 speculation.

6 **RESPONSE:**

7 Mr. Conlin has gained personal knowledge through his role as Chairperson  
8 for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions  
9 facing those in immigration detention centers based on his work with FOMDD,  
10 which operates visitation programs for those in detention. Additionally, FOMDD  
11 volunteers have been in continuous contact with detained individuals at the  
12 facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr.  
13 Conlin's statement is not based on speculation but rather personal knowledge of  
14 the conditions FOMDD's clients are subjected to while detained in Defendant's  
15 custody.

16 **8. MATERIAL OBJECTED TO:**

17 Individuals are not being screened or getting their temperature checked  
18 before being transferred. Conlin Decl. ¶ 13.

19 **OBJECTION(S):**

20 FRE 602: Lack of personal knowledge, failure to lay proper foundation,  
21 speculation.

22 **RESPONSE:**

23 Mr. Conlin has gained personal knowledge through his role as Chairperson  
24 for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions  
25 facing those in immigration detention centers based on his work with FOMDD,  
26 which operates visitation programs for those in detention. Additionally, FOMDD  
27 volunteers have been in continuous contact with detained individuals at the  
28 facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr.



1 Conlin's statement is not based on speculation but rather personal knowledge of  
2 the conditions FOMDD's clients are subjected to while detained in Defendant's  
3 custody.

4 **9. MATERIAL OBJECTED TO:**

5 FOMDD has heard from detained individuals that Krome, BTC, and Glades  
6 continue to accept dozens of new transfers into the facilities' custody with only  
7 cursory screening. Conlin. Decl. ¶ 14.

8 **OBJECTION(S):**

9 FRE 802: Hearsay.

10 **RESPONSE:**

11 A district court may consider hearsay in deciding whether to issue a  
12 preliminary injunction. *See, e.g., Johnson, 572 F.3d at 1083; Republic of the*  
13 *Philippines, 862 F.2d at 1363.* Even assuming *arguendo* the Court was not  
14 permitted to consider hearsay in deciding Plaintiffs' motions, Mr. Conlin's  
15 statements are subject to a hearsay exception. In light of the unique circumstances  
16 presented by this case, the residual exception to the hearsay rule would apply. *See*  
17 *FRE 807.* Plaintiffs are detained with extremely limited access to counsel, and this  
18 matter is progressing rapidly in light of the COVID-19 pandemic. The ability of  
19 Plaintiffs' counsel to obtain declarations from the individuals with whom Mr.  
20 Conlin spoke is hindered by the fact that the declarants are detained in the custody  
21 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the  
22 individuals with whom Mr. Conlin spoke would be impractical and  
23 unreasonable. Mr. Conlin has sworn under oath that the details in his declaration  
24 are "true and correct." Conlin Decl. p. 1. His statements are therefore sufficiently  
25 reliable and trustworthy under FRE 807.

26 **10. MATERIAL OBJECTED TO:**

27 FOMDD is aware of dozens of people detained at Krome, Glades, and BTC  
28 who are elderly or immunocompromised due to diabetes, high blood pressure, and

1 other underlying medical conditions that put them at high risk of contracting and  
2 suffering deadly consequences from COVID-19. Conlin. Decl. ¶ 15.

3 **OBJECTION(S):**

4 FRE 602: Lack of personal knowledge, failure to lay proper foundation,  
5 speculation.

6 **RESPONSE:**

7 Mr. Conlin has gained personal knowledge through his role as Chairperson  
8 for FOMDD. Conlin Decl. ¶ 1. He has personal knowledge of the conditions  
9 facing those in immigration detention centers based on his work with FOMDD,  
10 which operates visitation programs for those in detention. Additionally, FOMDD  
11 volunteers have been in continuous contact with detained individuals at the  
12 facilities they serve and have reported their findings to him. *Id.* at ¶¶ 2-3. Mr.  
13 Conlin's statement is not based on speculation but rather personal knowledge of  
14 the conditions FOMDD's clients are subjected to while detained in Defendant's  
15 custody.  
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1 DATED: April 8, 2020

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3 Respectfully Submitted,

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