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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANGEL DE JESUS ZEPEDA RIVAS, BRENDA RUBI RUIZ TOVAR, LAWRENCE KURIA MWAURA, LUCIANO GONZALO MENDOZA JERONIMO, CORAIMA YARITZA SANCHEZ NUÑEZ, JAVIER ALFARO, DUNG TUAN DANG,

Petitioners-Plaintiffs,

v.

DAVID JENNINGS, Acting Director of the San Francisco Field Office of U.S. Immigration and Customs Enforcement; MATTHEW T. ALBENCE, Deputy Director and Senior Official Performing the Duties of the Director of the U.S. Immigration and Customs Enforcement; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; GEO GROUP, INC.; NATHAN ALLEN, Warden of Mesa Verde Detention Facility,

Respondents-Defendants.

CASE NO. 3:20-CV-02731-VC

PETITIONERS-PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND OPPOSITION TO MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

DATE: JUNE 2, 2020
TIME: 10:00 A.M.

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I. INTRODUCTION

Weeks after the rest of society made drastic changes in response to the COVID-19 pandemic, ICE failed to take meaningful measures to fulfill its constitutional duty to those in its custody. Following the Court's grant of a TRO, ICE finally began to take some limited steps to address social distancing. These measures were not taken out of genuine concern for the detainees' health and well-being. Defendants have always denied they were violating Plaintiffs' constitutional rights (Opp. to TRO, ECF 37 at 1), and—as the Court noted—"the safety of the people at these facilities" was low on "ICE's list of priorities." (TRO, ECF 53 at 3.) Rather, they were reluctant steps taken in hopes of convincing the Court that judicial attention would no longer be required. Meanwhile, Defendants continued to uniformly oppose Class Members' bail applications, transfer detainees in and out of Mesa Verde and Yuba with regularity, and resist the very notion that a federal court has the authority to address the constitutional violation caused by their conduct. Defendants now ask the Court to "trust us," but their conduct does not warrant such trust. Preliminary injunctive relief is necessary to finish the job the TRO started and ensure the agency does not backslide into its irresponsible practices.

Defendants' Opposition reveals that their doctrinal defenses to injunctive relief are unavailing, and the remedial steps they have taken to date are far from sufficient. Defendants have no answers to many of Plaintiffs' facts, and no response to Plaintiffs' experts. But even if the Court were convinced that Defendants had done enough to cure the identified constitutional violation, the fact that these steps were only taken in response to litigation is powerful proof that an injunction remains necessary to protect Class members.

II. REPLY TO DEFENDANTS' STATEMENT OF FACTS

A. Defendants Make No Attempt to Meet Plaintiffs' Expert Testimony

Plaintiffs have presented detailed testimony from four highly qualified experts—two of whom supplemented testimony submitted in support of the TRO—who have concluded that current conditions at the facilities remain extremely dangerous, and that a COVID-19 outbreak is only a matter of time. In more than five weeks since Plaintiffs moved for a TRO, Defendants have been unable to present *a single medical or scientific witness* who can affirm that class

members' conditions of confinement are acceptable, or that Defendants' steps to alleviate the threat caused by their conduct are sufficient. Defendants' sole response is to claim ignorance of any cases of COVID-19 at the facilities, and to fault Plaintiffs for failing to "address[ ] or explain [ ]" why a mass outbreak has not been detected. (Opp. at 11 n.9.)

To the contrary, Plaintiffs *have* explained that the absence of known cases is largely the result of Defendants' refusal to test. (Greifinger, ECF 5-2, ⁋ 52; Iwasaki, ECF 229-16, ⁋ 44; Hernandez, ECF 229-17, ⁋ 6.) As the Court has noted, ICE's failure to discover cases of COVID-19 when it is not doing any testing "is not especially comforting" (TRO at 4), and ICE offers no evidence that it has tested even a single individual in addition to the two who had been tested as of a month ago. Even if there were currently no cases of COVID-19, injunctive relief would still be required by the overwhelming likelihood of a future outbreak. (Allen, ECF 229-18, ⁋ 47; Iwasaki, ECF 229-16, ⁋ 29; Hernandez, ECF 229-17, ⁋ 21; Greifinger, ECF 5-2, ⁋⁋ 17, 21, 23.)

B. Defendants' Factual Submissions Show, At Most, That Judicial Intervention Remains Essential to Protecting the Class

In the absence of any expert testimony, Defendants rely exclusively on "guidance" by the CDC and ICE for managing COVID-19 (Opp. at 3-4), but in doing so, fail to address the testimony of Plaintiffs' expert that ICE's guidance "falls short of what is needed to address the threats posed to high-risk immigrant detainees by COVID-19." (Greifinger, ECF 5-2, ⁋ 46.) In addition, Defendants bury the key qualifying phrase recited by their own declarants: that ICE "*endeavors*" to follow the CDC guidance "*where possible*," but "*makes adaptations according to each facility's spacing, population and resources*." (Pham, ECF 264-1, ⁋ 18; Fishburn, ECF 264-2, ⁋ 17 (emphasis added).) "Endeavors" are not enough if they do not ensure detainees' safety.

For the most part, Declarants Pham and Fishburn recycle claims made in opposition to the TRO regarding screening of new detainees, medical care at the facilities, education, sanitation, masks, outside contacts, and "continued monitoring." (*Compare* Pham, ECF 264-1, ⁋⁋ 20-37, 65-72 *with* Bonnar, ECF 37-1, ⁋⁋ 9-15; *compare* Fishburn, ECF, 264-2 ⁋⁋ 19-36, 56-62 *with* Kaiser, ECF, 37-3 ⁋⁋ 9-13.) The Court found these "modest measures" unconvincing as Defendants "[had] not come close to achieving social distancing for most detainees." (TRO at 3.)

Once again, Defendants' declarants admit lack of personal knowledge (*see* Pham, ECF, 264-1 ⁋ 2; Fishburn, ECF, 264-2, ⁋ 2), and many of their claims are easily disproved.

For example, while Defendants claim that "detainees who present symptoms consistent with COVID-19 . . . will be tested . . ." (Pham, ECF 264-1, ⁋⁋ 23, 25; Fishburn, ECF 264-2, ⁋ 24), a review of just a few of the medical records produced by Defendants shows that Class members seeking medical attention for CDC-recognized symptoms of COVID-19 are not tested. (MacLean Dec. ⁋⁋ 2-8; *see also, e.g.,* Arias, ECF 229-1, ⁋ 19; Singh, ECF 229-15, ⁋ 17.) Defendants' claim to screen all new detainees at Mesa Verde for potential segregation or isolation "due to their travel history or exposure to COVID-19 patients" (Opp. at 5) misrepresents their own declarants' statements.[1] It is also belied by the shocking experience of Class member Arnulfo Ramirez Ramos, who just three days ago was transferred to Mesa Verde from the La Palma Correctional Facility in Eloy, AZ—where ICE reports that 75 detainees have confirmed cases of COVID-19—and was placed directly in Dorm D after being asked a few perfunctory questions. (Ramirez ⁋⁋ 4, 6-9; McLean ⁋ 10.) Defendants' other third-hand claims about practices at Mesa Verde and Yuba are similarly contradicted by first-hand testimony from Class Members, to which Defendants have not responded. (*See* Pls.' Opening Br. at 3-8.)

Defendants' recent measures to increase social distancing at the facilities have been shown to be insufficient. First, they claim detainee populations have been reduced to "below 50 percent capacity." (Pham, ECF 264-1, ⁋ 39; Fishburn, ECF 264-2, ⁋ 39.) As Plaintiffs have explained, without contradiction, this statistic is meaningless because it does not explain whether the reduction actually creates sufficient space to maintain social distancing. (Greifinger, ECF 229-19, ⁋⁋ 19-20, 30.) Dr. Greifinger and Dr. Iwasaki address the specific measures taken with respect to sleeping arrangements—such as "staggering" detainees in alternating top and bottom bunks at Mesa Verde—and conclude they are insufficient to protect detainees from severe risk of transmission of the virus. (Greifinger, ECF 229-19, ⁋⁋ 21-25; Iwasaki, ECF 229-16, ⁋ 31.) Dr. Greifinger states that at Mesa Verde, where beds are affixed to the floor and cannot be moved,

[1] Detainees are only asked about "*close contact* with a person with *laboratory-confirmed* COVID-19." (Pham, ECF 264-1, ⁋ 21 (emphasis added); McLean ⁋ 9.) Of course, Defendants do little testing, and have failed to define what they mean by "close contact."

every other bunk should be left vacant to attain the necessary ten feet of lateral distance between beds.[2] (ECF 229-19, ¶ 26.) *Defendants present no witness to contradict this testimony.*

In Yuba, it appears Defendants moved all ICE detainees out of units G-T just last week. While Ms. Fishburn claims this was done "[i]n response to COVID-19" (ECF 264-2, ¶¶ 37, 40), it was clearly in response to this litigation since as recently as May 18, more than two months after the WHO's declaration of a pandemic, ICE detainees were still housed in many other units throughout the facility. (Schenker Dec., Ex. A (Email from S. Choe to M. Schenker, 5/19/20).) Even in Defendants' belated arrangement, the beds remain inadequately spaced at barely 6 feet apart. (Fishburn, ECF 264-2, ¶ 46.)

Defendants' statements regarding social distancing at mealtimes similarly fail to rebut Plaintiffs' factual showing. While Defendants describe measures taken to permit social distancing while detainees at Mesa Verde are eating, they do not even try to deny the problem identified by Plaintiffs, which is that detainees wait in crowded lines to receive food. Defendants state only that, "At Mesa Verde, no detainee is required to attend meal time" and that they "may walk to the dining hall at their leisure" (Pham, ECF 264-1, ¶ 60). At Yuba, Defendants' response, as of May 22, is further confinement: detainees are now required to eat at their bunks, where they still cannot maintain sufficient distance from others. (Fishburn, ECF 264-2, ¶ 50.)

Defendants' protestation that "six-foot social distancing" is not "a constitutional requirement" (Opp. at 13) ignores the actual constitutional requirement established by case law: that conditions of civil detention not create a risk that is excessive in relation to the government's interest. (Motion for TRO, ECF 5 at 13-18.) Plaintiffs need not also demonstrate "deliberate indifference," but have done so by showing Defendants' failure to take the primary measures necessary to mitigate serious risk of harm. (*Id.* at 18-21.)

[2] Defendants erroneously claim that the necessity of maintaining 10 feet between beds is a "new demand" (Opp. 16 n.13), but it is not; it was clearly set forth in Dr. Greifinger's first declaration. (ECF 5-2, ¶ 35.)

III. ARGUMENT[3]

A. Plaintiffs Satisfy the Requirements for a Preliminary Injunction[4]

1. Defendants' Remedial Measures to Date are Insufficient

Defendants present no new arguments concerning the standards for obtaining injunctive relief. The Court thoroughly considered Defendants' arguments at the TRO stage and decided them in Plaintiffs' favor. (TRO at 3-5). The same standards apply equally to a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Plaintiffs are entitled to a preliminary injunction because, despite the measures described in Defendants' opposition, the facts before the Court continue to support each of the Court's findings underpinning the TRO.

Specifically, Plaintiffs continue to have "an exceedingly strong likelihood" of prevailing on their claim that current conditions of confinement "violate class members' due process rights by unreasonably exposing them to a significant risk of harm." (TRO at 3; footnote omitted.) While Defendants have taken some steps to "increase" social distancing, the unrebutted testimony of Plaintiffs' experts demonstrates that those steps are insufficient. Moreover, the lack of testing renders Defendants' claim of "no suspected or confirmed cases" meaningless.

The remaining factors— "a strong likelihood of irreparable harm" (TRO at 4) and the "public interest and balance of hardships" (*id.* at 5)—have not changed. While it is true that the

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[3] Plaintiffs will not re-argue standing, venue, and class certification, which Defendants reference only in passing and without new arguments. (Opp. at 9.) As this Court properly found, venue is proper in this District. (TRO at 3 & n.4.) The Court's holding that Plaintiffs have standing is in accord with every other court to have considered the issue to Plaintiffs' knowledge. (TRO at 3 & n.5 (collecting cases).) Defendants' arguments on commonality and typicality mirror their TRO Opposition (ECF 37 at 23-24), and were properly rejected by the Court. (TRO at 2 & n.1.)

[4] Defendants previously stated they would move to "dissolve" the TRO, but now claim to seek "an order confirming that the TRO has expired." (Opp. at 1.) They submit no argument in support of this supposed motion, and their only assertion about the duration of the TRO—that under Fed.R.Civ.P. 65(b)(2), a TRO expires after 14 days (or 28 days upon a showing of good cause) (Opp. at 1 n.1)—is incorrect. Rule 65(b)(2) expressly applies only to a "temporary restraining order issued without notice." In any event, a TRO ordinarily dissolves if a motion for preliminary injunction is denied, or if the party fails to proceed with such a motion at the noticed time. Fed.R.Civ.P. 65(b)(3); *Granny Goose Foods, Inc. v. B'hood of Teamsters, etc.*, 415 U.S. 423, 443 (1974). If Defendants' "reply" in support of a motion they have not argued is, in fact, a further reply to the motion for Preliminary Injunction, it should be stricken. N.D. Cal. Civ. L.R. 7-3(d).

Proposed PI is more comprehensive than the TRO, it only requires that Defendants do what is constitutionally required of them.

Defendants rely heavily on *Thakker v. Doll*, 2020 WL 2025384 (M.D. Pa. Apr. 27, 2020), in which the court, having granted a TRO, issued a preliminary injunction requiring the release of plaintiffs from one correctional institution but denied release to plaintiffs in two other facilities. (Opp. at 10-11.) The court supported its decision to deny injunctive relief as to two institutions by concluding that, because those institutions had not yet suffered an uncontrolled outbreak, the "enhanced procedures" must be "working." By contrast, in the third institution an injunction was granted because an outbreak there showed that those same procedures "have been ineffective." *Thakker* at *5-6. This mode of analysis, however, cannot be squared with the mandate of *Helling v. McKinney*, 509 U.S. 25, 34 (1993) that it would be improper to "deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing had yet happened to them." Moreover, unrebutted expert testimony establishes the overwhelming likelihood that an outbreak will occur, if it has not already begun.[5]

2. Even if the Court Found Defendants' Measures to Be Sufficient, an Injunction Would Still Be Necessary

Even if the Court were to determine that Defendants' actions had eliminated any constitutional violation, a preliminary injunction would remain necessary to prevent Defendants from reverting to pre-litigation conduct. While Defendants do not explicitly argue that their actions have rendered Plaintiffs' claims moot, that is the gist of their contention as they rely heavily on mitigation measures taken only after the case began.

"A defendant's voluntary cessation of a challenged practice ordinarily does not deprive a federal court of its power to determine the legality of the practice. If it did, courts would be

[5] Defendants' reliance on *Murai v. Adducci*, 2020 WL 2526031 (E.D. Mich. May 18, 2020) and *Dawson v. Asher*, 2020 WL 1304557 (W.D. Wash. Mar. 19, 2020) is similarly misplaced. In *Murai*, the court relied not only on the fact of "minimal confirmed cases" within the facility but also on the notion that the petitioner would be at greater risk on the outside. *Murai* at *5. Such a conclusion finds no support in this case, where unrebutted expert testimony establishes that detainees would be at less risk on the outside. (*See* Hernandez, ECF 35, ¶¶ 29-34.) In *Dawson*, the court relied not only on the absence of evidence of infection, but also on the plaintiffs' failure to address the defendants' preventive measures. *Dawson* at *2. Here, Plaintiffs have addressed Defendants' preventive measures through unrebutted expert testimony.

compelled to leave the defendant free to return to its old ways." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 169-70 (2000). The well-established rule is that "voluntary cessation of challenged conduct moots a case . . . only if it is 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000) (*quoting United States v. Concentrated Phosphate Export Assn., Inc.*, 393 U.S. 199, 203 (1968)). The party asserting mootness bears a "heavy burden" to persuade the court that "the challenged conduct cannot reasonably be expected to start up again." *Friends of the Earth*, 528 U.S. at 189. This "voluntary cessation" rule applies with equal force when the defendant's cessation of challenged conduct is the result of a TRO, *Innovation Law Lab v. Nielsen*, 310 F.Supp.3d 1150, 1164 (D. Or. 2018); and it also applies in habeas cases, *Diouf v. Napolitano*, 634 F.3d 1081, 1084 n.3 (9th Cir. 2011).

Defendants have not attempted to meet their "heavy burden" to show that they would not revert to their prior practices, nor could they. In issuing the TRO, the Court correctly noted that Defendants' conduct up to that time "speaks volumes about where the safety of the people at these facilities falls on ICE's list of priorities." (TRO at 3 (footnote omitted).) The measures taken since then have been for the sole purpose of avoiding an injunction. And at the same time, Defendants have opposed every bail application submitted by Plaintiffs, including those filed on behalf of individuals without criminal records and those with serious medical vulnerabilities. In just the past few days, they have transferred more people *into* Mesa Verde than this Court has ordered released.[6] And by challenging this Court's bail authority, they seek the immediate return of all previously released detainees. There can be no doubt that if an injunction is not entered, Defendants will increase the number of people at Mesa Verde and Yuba.

B. Plaintiffs' Narrowly Tailored Proposed Remedy Falls Squarely Within the Court's Power

Contrary to Defendants' argument that Plaintiffs' proposed injunction is "overbroad" and "unduly intrusive," the Proposed PI is laser-focused on ensuring that the two facilities make social distancing possible, and vests Defendants with maximum flexibility to devise plans for

[6] Over the past three days, Defendants released 12 detainees at Mesa Verde pursuant to the Court's bail orders, but added 16 new detainees to that facility. (Schenker Dec. ¶ 3 & Exh. B.)

rectifying the constitutional violation. (Proposed PI at 2(a).) It is narrowly tailored to "remedy the specific harm alleged." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009).[7]

Defendants contend that federal courts cannot provide equitable remedies where a statute "provides otherwise." (Opp. at 15.) But the case Defendants cite, *Garfias-Rodriguez v. Holder*, 702 F.3d 504, 525 (9th Cir. 2012), did not involve a constitutional violation. Defendants simply ignore the numerous Ninth Circuit cases cited by Plaintiffs that hold that in conditions of confinement cases involving constitutional violations, district courts have "broad powers to fashion a remedy," *Sharp v. Weston*, 233 F.3d 1166, 1173 (9th Cir. 2000), including by means of population caps and release orders. (Pls.' Opening Br. at 13-14.)

Defendants' invocation of stays of injunctive relief in COVID-19-related cases is unavailing. (Opp. 16-17.) As an initial matter, Defendants completely ignore the Supreme Court's recent 6-3 decision declining to stay an injunction similar to the Proposed PI in a COVID-19 case concerning a subclass of medically vulnerable federal inmates. There, the district court granted a preliminary injunction ordering the government "to evaluate each subclass member's eligibility for transfer out of [FCI] Elkton through any means . . . within two (2) weeks." *Wilson v. Williams*, 4:20-cv-00794, 2020 WL 1940882, *10 (N.D. Ohio Apr. 22, 2020). Given the government's "limited efforts to reduce the COVID-19 risk for subclass members," the court later ordered, *inter alia*, "Respondents to make full use of the home confinement authority beyond the paltry grants of home confinement it has already issued" and expedited processing of requests for compassionate release. *Wilson v. Williams*, No. 4:20-cv-00794, 2020 WL 2542131, *1 (N.D. Ohio May 19, 2020). After the Sixth Circuit declined to stay the order, the government sought relief from the Supreme Court, arguing that the injunction would result in release or transfer of at least a third of FCI Elkton's population and was accordingly unreasonably intrusive. The Supreme Court denied the stay. *Williams v. Wilson*, --

[7] Contrary to Defendants' claim that preliminary declaratory relief does not exist (Opp. at 15), the Ninth Circuit has upheld the issuance of such relief. *See Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 845-47, 859 (9th Cir. 2002) (affirming preliminary declaratory order that statute was preempted), *opinion amended on denial of reh'g*, 312 F.3d 416 (9th Cir. 2002); *see also Merrill Lynch, Pierce, Fenner & Smith Inc. v. Doe*, 868 F. Supp. 532, 535–36, 541 (S.D.N.Y. 1994).

U.S. --, 2020 WL 2644305 (May 26, 2020). While the denial was based in part on the "procedural posture" of the case, the Supreme Court's order suggests that relief requiring depopulation to address the risk of COVID-19 is not inherently overbroad.

All of the circuit court stays cited by Defendants are distinguishable. The only stay issued from the Ninth Circuit came in a case where the district court's injunction required immediate, large-scale depopulation (250 detainees within seven days of the injunction), along with court intervention into minute details of facility administration (regular disinfection by "professionally trained cleaning staff," adding toilet seats, etc.). *Roman v. Wolf,* No. 20-55436, 2020 WL 2188048, at *1 (9th Cir. May 5, 2020). Since the relief ordered by the district court in *Roman* is far different than the relief sought here, the Ninth Circuit's partial stay, which provided no substantive analysis (other than leaving the injunction in place to the extent that it required substantial compliance with CDC guidelines), offers no meaningful guidance to this Court.

The two other stays concern criminal detention (and, therefore, the Eighth Amendment, as opposed to the more generous Fifth Amendment), and emphasize a state's heightened interest in administering prisons free of outside interference. In both cases, the district courts had issued detailed orders to state authorities directing allocation scarce carceral resources. *See Swain v. Junior,* 958 F.3d 1081, 1090 (11th Cir. 2020); *Valentine v. Collier,* 956 F.3d 797, 803 (5th Cir. 2020).[8] Unlike the relief in *Swain* and *Valentine,* the Proposed PI does not include measures that *Valentine* characterized as an "administrative nightmare" and does not direct Defendants how to allocate scarce resources. Instead, the Proposed PI grants Defendants discretion to devise appropriate plans to achieve necessary social distancing in their facilities. (Proposed PI ⁋ 2(b).)

[8] In *Swain,* the injunction required, among other things, that officials provide all inmates with a personal supply of soap and disinfectant products ("even though," the court noted, "they may be more critical at another county facility") and required testing in the facility of all inmates with COVID-19 symptoms and of anyone with whom they had been in contact ("at the expense of other county facilities"). 958 F.3d at 1090. The Eleventh Circuit explained that "[a]bsent a stay, the defendants will lose the discretion vested in them under state law to allocate scarce resources among different county operations necessary to fight the pandemic." *Id.* In *Valentine,* the district court's injunction required prison officials to implement an array of detailed requirements, including immediate wide-scale COVID-19 testing, guidelines for cleaning surfaces down to 30-minute intervals and with mandated bleach products, and guidelines for oral presentations. 956 F.3d at 799-800. The court found that these measures amounted to an intrusive level of "micromanagement." *Id.* at 806.

ICE's failure to promote social distancing prior to this Court's intervention is another point of material distinction from the stay cases. *Swain* found no evidence "indicat[ing] that the defendants will abandon the current safety measures absent a preliminary injunction, especially since the defendants implemented many of those measures before the plaintiffs even filed the complaint." Here, there is every reason to believe ICE would seek to increase the population of class members absent the preliminary injunction. Its "guidance," after all, states that 75% of maximum capacity in any facility is acceptable.[9] And, even as Mesa Verde and Yuba detainees filed numerous COVID-19 lawsuits in March and April, ICE took little action to reduce the population at those facilities. Only with the filing of this lawsuit—and particularly the entry of the TRO—did ICE begin to act more decisively, though still short of what public health experts believe to be minimally required. In addition, Defendants seek to vacate all of the Court's orders for release on bail, which would rapidly increase the populations at both facilities.

Finally, Defendants' argument that "there is no habeas jurisdiction" in cases challenging conditions of confinement (Opp. at 9) is without merit. The Supreme Court recently suggested that an immigration detainee should seek expedited relief from unconstitutional conditions of confinement through habeas. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1863 (2017) (noting that "the habeas remedy, if necessity required its use, would have provided a faster and more direct route to relief" for detainees because "[a] successful habeas petition would have required officials to place respondents in less-restrictive conditions immediately"). Ninth Circuit case law—including the cases cited by Defendants—also makes clear that habeas jurisdiction *is* available in conditions of confinement cases wherever a successful claim would accelerate a prisoner's release. *See Ramirez v. Galaza*, 334 F.3d 850, 858-859 (9th Cir.2003). Here habeas jurisdiction lies, as there is an inherent link between the alleged violation and the prospect of release. *See Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973) (claims requesting present or future release are "within the core of habeas corpus"). Indeed, Defendants implicitly concede the link between the

[9] *See* ICE, *COVID-19 Pandemic Response Requirements* (April 10, 2020), https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf.

violation and the appropriate remedy when they tout the efficacy of their own releases in helping to mitigate unconstitutional conditions. (Opp. at 4-5.)

C. The Court Has the Authority to Continue the Bail Process

The Court correctly ruled that it has authority to release class members on bail as a provisional remedy (TRO at 5 & n.17). "Bail pending a decision in a habeas case" is available, albeit "reserved for extraordinary cases involving special circumstances or a high probability of success." *Land v. Deeds*, 878 F.2d 318, 318 (9th Cir. 1989). The COVID-19 pandemic certainly constitutes a "special circumstance."

Contrary to Defendants' arguments, the Court also has authority to release class members as a provisional constitutional remedy pursuant to its federal question jurisdiction. (Complaint, ECF 1, ¶ 13). The Court's federal question jurisdiction includes "inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief." *Reebok Intern., Ltd. v. Marnatech Enterprises, Inc*., 970 F.2d 552, 559 (9th Cir. 1992). Congress may limit that "inherent power to issue provisional remedies" through "a comprehensive enforcement scheme containing the exclusive remedies for a given *statutory violation*," *id.* at 561 (emphasis added), but that limitation on remedies does not extend to cases involving *constitutional* violations. Courts have long exercised their authority to remedy constitutional violations by ordering people released from unconstitutional conditions. *See Brown v. Plata*, 563 U.S. 493, 499 (2011) (affirming remedial order in § 1983 action that "required [the State] to release some number of prisoners before their full sentences have been served"); *Brenneman v. Madigan*, 343 F. Supp. 128, 139 (N.D. Cal. 1972) ("If the state cannot obtain the resources to detain persons . . . in accordance with minimum constitutional standards, then the state simply will not be permitted to detain such persons."); *see also* Pls.' Opening Br. at 12-13.

Defendants cite *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir.1979), to support their view that courts can order release only via habeas, but *Crawford* did not establish such a general rule. Rather, it held that, since the conditions problems alleged *there* (*inter alia*, lack of conjugal visits

and deficient law library) could be cured without release, release was not warranted. *Id*. at 892-93. Defendants' reading of *Crawford* is also foreclosed by *Plata*, which was *not* a habeas case.[10]

Defendants make three other arguments that this Court lacks authority to admit class members to bail; each fails. *First*, Defendants cite *Chin Wah v. Colwell*, 187 F. 592 (9th Cir. 1911) for the proposition that district courts only have the authority expressly given to them by an immigration statute, and cannot release a petitioner under habeas jurisdiction while the merits are pending. But the Supreme Court has since held that the general federal habeas statute, 28 U.S.C. § 2241, gives district courts habeas authority in immigration cases. *I.N.S. v. St. Cyr*, 533 U.S. 289, 302-03 (2001).[11] *See also Demore v. Kim*, 538 U.S. 510, 517 (2003) (applying *St. Cyr* to find jurisdiction over immigration detention claim). Under *St. Cyr*, § 2241 codifies the common law writ as it existed in 1789, under which habeas courts possessed the power to admit a petitioner to bail even absent statutory authorization. *See Wright v. Henkel*, 190 U.S. 40, 63 (1903) (quoting *Queen v. Spilsbury*, 2 Q. B. 615 (1898) for the proposition that "the Queen's Bench had, 'independently of statute, by the common law, jurisdiction to admit to bail'"). Defendants' reliance on *Chin Wah* is irreconcilable with the *St. Cyr* framework.

Moreover, Defendants misread *Chin Wah*. It did not address whether a district court has the inherent authority to grant bail in a habeas case challenging immigration detention.[12] The petitioner's principal argument appears to have been that the Chinese Exclusion Act provided federal courts with authority to admit an individual to bail pending his appeal of his deportation

[10] Defendants' other authority is no more convincing. *Marino v. Vasquez*, 812 F.2d 499, 507 (9th Cir. 1987) states only that *in a habeas proceeding*, release authority "derives from the power to issue the writ itself." But *Marino* does not purport to address provisional remedies in federal question cases.

[11] *St. Cyr* held that reading the immigration statutes to foreclose review under § 2241 would create serious constitutional problems under the Suspension Clause. Thus, if Defendants were correct that the Court lacked the authority to release class members on bail, that result would likely violate the Suspension Clause. *See Boumediene v. Bush*, 553 U.S. 723, 746 (2008) (quoting *St. Cyr*, 533 U.S. at 301) ("'at the absolute minimum' the [Suspension] Clause protects the writ as it existed when the Constitution was drafted and ratified").

[12] Notably, Chin Wah's application for bail was during the appeal of his deportation order, not during the habeas challenging his detention. While habeas jurisdiction over *deportation* orders has been reshaped in the past century, there should be no question that a district court has the power to admit someone to bail while exercising habeas jurisdiction over *immigration detention*, as in this case. *See Bolante v. Keisler*, 506 F.3d 618, 620 (7th Cir. 2007).

order. The court agreed with the petitioner's statutory analysis but affirmed the district court's denial of release as a matter of discretion. 187 F. at 595. In doing so, *Chin Wah* articulated that "there was no authority to admit to bail in deportation cases prior to the act of 1892." 187 F. at 593-94. That statement, however, appears to refer to the absence of explicit *statutory* authority in the immigration laws, not the absence of any *common law* authority. Indeed, *Chin Wah* favorably cited *In re Ah Tai*, 125 Fed. 795, 796-97 (D. Mass 1903), which describes cases where courts had admitted immigration petitioners to bail prior to 1892. Whatever *Chin Wah* means today (nearly seventy years since it was last cited by any court within the Ninth Circuit), it cannot foreclose the admission of class members to bail because it never mentions § 2241 and because its discussion of inherent authority is mere dicta as it was decided on statutory grounds.

Second, Defendants claim that 8 U.S.C. § 1226(e) and statutory mandatory detention provisions override the Court's authority to release class members pending a resolution of this case. As the Supreme Court has repeatedly held, Section 1226(e)'s "clear text does not bar" *constitutional* challenges. *Demore*, 538 U.S. at 517; *see also Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (§ 1226(e) does not bar consideration of constitutional entitlement to individualized bond hearing); *Nielsen v. Preap*, 139 S. Ct. 954, 962 (2019) (same); *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017) (constitutional challenge to manner of setting bond). Defendants acknowledge this binding interpretation (Opp. at 23 n.24) but claim it does not apply here because Section 1226(e) can still bar *interim* release. But the rationales in *Demore*, *Rodriguez*, *Preap*, and *Hernandez* foreclose that distinction. Those cases construe Section 1226(e) to bar review only over discretionary determinations, not constitutional claims. Defendants' view would also require this Court to reject both the commonplace practice of Northern District courts releasing immigrant habeas petitioners via temporary restraining orders and the well-settled law that courts—both in habeas and injunctive cases—have authority to issue interim orders to ensure ultimate effective relief.[13] *See, e.g., Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL1082648 (N.D. Cal. 2020).

[13] To the extent Defendants rely on mandatory detention provisions, none of those statutes contain a "clear statement of congressional intent to repeal habeas jurisdiction." *See St. Cyr*, 533 at 298; *see also Mapp v. Reno*, 241 F.3d 221, 227 (2d Cir. 2001) ("Absent a clear direction from

Defendants also invoke 8 U.S.C. § 1252(f)(1), which restricts lower courts' ability to enjoin certain portions of the INA, but concede that binding Ninth Circuit authority holds that § 1252(f)(1) "does not restrict injunctive relief on a class basis" where class members are in removal proceedings and face immediate violation of their rights. (Opp. at 17, n.17 (citing *Padilla v. ICE*, 953 F.3d 1134, 1151 (9th Cir. 2020).) Defendants claim that the provision of the Proposed PI suspending new entrants to Mesa and Yuba falls outside of *Padilla*'s holding. But that provision would not enjoin the "operation" of *any* provision of the INA because it does not prohibit Defendants from detaining people elsewhere. Contrary to Defendants' implicit contention, detention is *not* the only way to meet their legitimate objectives. The choice "is not between imprisonment and the [non-citizen] living at large . . . It is between imprisonment and supervision under release conditions that may not be violated." *See Zadvydas v. Davis*, 533 U.S. 678, 696 (2001).

Third, Defendants audaciously assert that, even if this Court possesses authority to hear bail applications, Plaintiffs have failed to meet the "extraordinary case" standard. There is no question, however, that conditions are extraordinary given the "significant risk of harm" class members face from their inability to practice social distancing, which remains the only known way to keep someone safe from contracting COVID-19. TRO at 5-6; *see also Coronel v. Decker*, 2020 WL 1487274 * 9 (S.D.N.Y. Mar. 27, 2020).

Defendants cite *United States v. Dade*, 2020 WL 2570354 (9th Cir. May 22, 2020), but that case actually supports Petitioners' claims. There, the Ninth Circuit denied release to a federal prisoner pending an appeal of his motion to vacate his sentence under 28 U.S.C. § 2255. The motions panel held that, as a prerequisite for release pending appeal, Dade had to first establish he met the standards set forth in the Bail Reform Act,18 U.S.C. § 3143(b)—i.e., that he was not likely to flee or pose a danger if released, *id.* at * 2—which he failed to do. *Id.* at *5. *Dade* also stated release is "reserved for extraordinary cases," *id.* (citing *United States v. Mett*, 41 F.3d 128, 1282 (9th Cir. 1995)), but observed COVID-19 is "indeed a special circumstance

Congress, federal judicial power is unaltered, and the authority of the federal courts to admit to bail parties properly within their jurisdiction remains unqualified.").

[that could] warrant a change in the conditions of his confinement . . . if those risks are not being adequately addressed." Had Dade met the standards in the Bail Reform Act, his "asserted risks in prison would be a factor that [the panel] could consider." Far from supporting Defendants' assertion that the Ninth Circuit has categorically held that COVID-19 cannot be an "exceptional circumstance," *Dade* indicates the opposite.[14]

IV. CONCLUSION

For all of the above reasons, the Court should enter the Proposed PI.

Dated: May 29, 2020

Respectfully submitted,

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[14] Moreover, Defendants' logic that the "extraordinary case" standard would be more stringent as applied to immigration detainees, as opposed to criminal detainees seeking post-conviction relief, defies logic. (*See* Opp. at 25.) As explained by the Ninth Circuit, criminal detainees seeking post-conviction relief "come before the habeas court with a strong—and in the vast majority of cases conclusive—presumption of guilt," *In re Roe*, 257 F.3d 1077, 1081 (9th Cir. 2001), while immigration detainees are only detained pursuant to an alleged violation of civil immigration law.

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UNITED STATES DISTRICT COURT
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SAN FRANCISCO DIVISION

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Petitioners-Plaintiffs,

v.

DAVID JENNINGS, Acting Director of the San Francisco Field Office of U.S. Immigration and Customs Enforcement; MATTHEW T. ALBENCE, Deputy Director and Senior Official Performing the Duties of the Director of the U.S. Immigration and Customs Enforcement; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; GEO GROUP, INC.; NATHAN ALLEN, Warden of Mesa Verde Detention Facility,

Respondents-Defendants.

CASE NO. 3:20-CV-02731-VC

DECLARATION OF ARNULFO RAMIREZ RAMOS IN SUPPORT OF PETITIONERS-PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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DECLARATION OF ARNULFO RAMIREZ RAMOS

1. I make this declaration from my personal knowledge and, if called to testify to these facts, could and would do so competently. I make this declaration in support of the Motion for Preliminary Injunction in *Zepeda Rivas, et al. v. Jennings*, et al., 20-cv-02731-VC.

2. My full name is Arnulfo Ramirez Ramos. I was born in Guatemala and I am 37 years old. I arrived in the United States in about 2001. My wife is a US Citizen and we have been married for about 11 years, and we have a US Citizen daughter who is about to turn 11 together. I also have two daughters and a son.

3. I have been in detention since November 24, 2018. I was first held by ICE at the Central Arizona Florence Complex, and was transferred to Taft Correctional Facility from May 2019 to March 6, 2020, where I contracted Valley Fever. On March 6, 2020, I was then transferred to Mesa Verde and was there from March 6, 2020 to about March 18, 2020. For a few days, I was in a holding facility that I only know as "El Cono." On March 21, 2020, I was transferred back to the La Palma Correctional Center in Eloy, Arizona. I was held in La Palma from March 21 until May 25, 2020.

4. At La Palma, a lot of people got sick with the coronavirus. It was around March 26 or 27 that we heard about the first people getting sick, in C Dorm. We were told that all of those people were put into quarantine. I was in A Dorm. But people kept getting sick. We were so scared. We did not want to die in detention because of the coronavirus.

5. We decided to go on hunger strike because we were so scared to get coronavirus and die. But they did not give us any more information and we knew that more people were getting sick. So, on April 11, we refused to go back into our dorms and asked them to tell us what they were going to do to protect us. I was sitting at a table when guards threw tear gas at us, and one canister exploded right next to me. Then, they put me in the hole along with a lot of other detainees. I was in the hole for 30 days as punishment. I was not able to talk with my family during all that time.

6. About one week after we were put in the hole, the detainee in the cell next to me got really sick. He was taken to the hospital for three or four days, and when he came back to La Palma, he was put back in the hole. During our time out of cells to shower, I asked him what had happened. That is when he told me that he had tested positive for coronavirus. He told me that it was really hard to breathe. He had a bad cough, a fever, and really bad body aches.

7. I was out of the hole again on May 11 and put in A Dorm. There were about 40 people in my housing unit. There were people there that got sick. One person had a bad cough, and he was only given some pills. The truth is that I feel like I was exposed to coronavirus at La Palma. The medics did not pay any attention to us.

8. On May 26, 2020, I was transferred from La Palma to Mesa Verde. When I arrived at Mesa Verde, it was about 5 or 5:30pm. A nurse took my temperature and my blood pressure. That was it. They asked me if I was sick and if I had a fever, cough or body aches. The nurse also asked me if I had COVID 19, and I said I did not think so, but I had never been tested. They did not ask me if I had been exposed to the coronavirus. They asked where I was coming from, and I told them La Palma. It was about 9 or 10 pm when I was given a blanket and assigned my bed in D Dorm. No effort was made to isolate me or segregate me from other detainees in D Dorm.

9. There was another person who came with me on May 26 from La Palma to Mesa Verde. We were together through the whole intake process, and then when officers walked us to our dorms, he was taken to a different dorm than me. I believe he was put in A Dorm.

I, Arnulfo Ramirez Ramos, declare under penalty of perjury that the foregoing is true and correct to the best of my recollection. I sign this from Bakersfield, California.

Date: May 29, 2020

//s// *Arnulfo Ramirez Ramos*
Arnulfo Ramirez Ramos

CERTIFICATE OF TRANSLATION AND AFFIRMATION

I, Theodora Simon, certify that I am fluent in Spanish and English and that I am competent to interpret between these languages. I further certify that I have read the foregoing to Arnulfo Ramirez Ramos in Spanish. I further declare that I am competent to render this interpretation and that I would testify to the same under the penalty of perjury if I were called upon to do so.

I further certify that on May 29, 2020 I read the foregoing to Arnulfo Ramirez Ramos and that he affirmed that the foregoing is true and correct. I have not been able to obtain a signature from Arnulfo Ramirez Ramos because the Mesa Verde Detention Center is located approximately five hours away from my home by car, and at the time I reviewed the foregoing declaration with him, the county where I reside was, and remains, under a "shelter in place" order.

Date: May 29, 2020

//s// *Theodora Simon*
Theodora Simon

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I, Emilou MacLean, declare as follows:

1. I am an attorney admitted to practice in California. I am a deputy public defender in the immigration unit of the San Francisco Office of the Public Defender and counsel for Petitioners-Plaintiffs in this action. I submit this declaration in support of Petitioners-Plaintiffs' Reply in Support of Motion for Preliminary Injunction and Opposition to Motion to Dissolve TRO. I have personal knowledge of the facts stated in this declaration.

Symptoms of COVID-19 from Medical Records

2. In the course of preparing bail applications in this litigation, I have reviewed dozens of medical records of class members who have been detained at Yuba County Jail and Mesa Verde Detention Center over the last two months. Looking only at medical records produced by Defendants concerning medical visits taking place between March 2020 and the present, I have identified various medical records which include references to CDC-recognized symptoms of COVID-19. The Centers for Disease Control and Prevention (CDC) recognizes as symptoms of COVID-19: "fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, diarrhea" and further notes that symptoms can range from "mild to severe."[1] The particular medical records are not being produced to protect the confidentiality of the subjects, but they are available for the Court's in camera review if requested.

3. A number of these records show that class members reported CDC-recognized symptoms of COVID-19. None of the records I reviewed reflected that the class member had been tested for COVID-19. Following are some examples of the records I reviewed.

[1] CDC, "Symptoms of Coronavirus," rev'd May 13, 2020, at https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html (last visited May 29, 2020).

4. One detainee at Mesa Verde reported a sore throat, dry cough, runny nose, and cough on March 30, 2020; cough, headache, body aches, sore throat, chest pain, as well as a history of heart problems on April 8, with the record noting that "Detainees in dorm c similar symptoms"; and on April 28, 2020, reports with "'body aches,' 'headache' and 'feeling weak.' Denies cough, fever, chills."

5. Another detainee at Mesa Verde submitted a medical slip for fever, headaches and sore throat on April 17, 2020 and explicitly asked for a coronavirus test, stating "I don't know if I have coronavirus can you do a test because I feel sick." (In Spanish: "*No se si tengo coronavirus pueden aserme [sic] un examen porque siento enfermo*.") On April 20, 2020 he was seen by a provider for "sore throat, body aches, and tactile fevers" with a note that "Pt [patient] requesting to have COVID-19 testing." The medical provider noted that he had no international travel and no interaction with "laboratory-confirmed" cases, and did not conduct a test. The provider notes state that "Pt [patient] …. [d]enied international travel prior to arrest and detention. . . Denied any contacts [with] laboratory-confirmed COVID-19 individuals."

6. Another detainee at Mesa Verde submitted a medical slip on March 20, 2020, writing that "my chest is heavy as if I don't have air to breathe." (In Spanish: "*mi pecho pesado como que me falta air para respirar*.") He reported chest congestion and body aches. He was seen on March 23, 2020 for self-reported sore throat, runny nose, headache, "fever" and cough.

7. A detainee at Yuba County Jail reported on March 20, 2020 that she suffered from a cough, sore throat and green phlegm and was provided, among other things, "over the counter medications a. for fever and/or mild pain."

8. A detainee at Yuba County Jail reported on March 4, 2020 shortness of breath, cough, congestion, body aches and chills.

ICE COVID-19 Screening Form

9. Some class members have a "Coronavirus Supplemental Screening" within their medical records. One class member had such a screening document included in their Mesa Verde medical records on March 25, 2020 which included two questions and advised that an individual was "cleared" if they did not have "contact with a person with laboratory-confirmed COVID-19 in the past 14 days" and did not travel outside the United States. The form inquires:

(1) Have you had close contact with a person with laboratory-confirmed COVID-19 in the past 14 days?
(2) What countries have you traveled from or through in the past 2 weeks?

If **YES** to Question #1 or patient has relevant travel history in the past 14 days: Does the patient have fever or respiratory illness?
If **YES** to Question #1 or patient has relevant travel history WITHOUT fever or respiratory illness: detainee must be placed in observation for 14 days. Notify the Site Medical Director and IHSC Field Medical Coordinator. A medical hold shall be placed on the detainee as well.

(3) If **YES** to Question #1 or patient has relevant travel history **AND** has fever or respiratory illness [certain precautions and notifications must be taken].
(4) If **NO** to Question #1 AND patient does not have relevant travel history: the patient is cleared for purpose of this screening.

(Emphasis in original.)

Confirmed COVID-19 Cases at La Palma ICE Detention Center

10. On May 29, 2020, I reviewed the ICE webpage tracking "confirmed cases" of COVID-19, available at https://www.ice.gov/coronavirus. According to ICE's records, as of May 23, 2020, there were 75 confirmed cases of COVID-19 among the detained population at La Palma Correctional Facility in Eloy, Arizona.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of May 2020 in Berkeley, California.

/s/ Emilou MacLean
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Petitioners-Plaintiffs,

v.

DAVID JENNINGS, Acting Director of the San Francisco Field Office of U.S. Immigration and Customs Enforcement; MATTHEW T. ALBENCE, Deputy Director and Senior Official Performing the Duties of the Director of the U.S. Immigration and Customs Enforcement; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; GEO GROUP, INC.; NATHAN ALLEN, Warden of Mesa Verde Detention Facility,

Respondents-Defendants.

CASE NO. 3:20-CV-02731-VC

DECLARATION OF MARTIN S. SCHENKER IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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Attorneys for Petitioners-Plaintiffs
*Admitted *Pro Hac Vice*

I, Martin S. Schenker, declare as follows:

1. I am a partner with the law firm of Cooley LLP, co-counsel of record in the above-captioned matter for named Plaintiffs Angel De Jesus Zepeda Rivas, Brenda Ruiz Tovar, Lawrence Mwaura, Luciano Gonzalo Mendoza Jeronimo, Coraima Yaritza Sanchez Nuñez, Javier Alfaro, Dung Tuan Dang, and the Provisional Class. I have knowledge of the following, and if called as a witness, I could and would testify competently thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of an email I received from Shiwon Choe, counsel for the government, on May 19, 2020.

3. Attached hereto as **Exhibit B** are true and correct copies of emails I received from Jonathan Birch, a Paralegal Specialist in the U.S. Attorney's Office, on May 27 and May 28, 2020, and a true and correct copy of an email I received on May 29, 2020 from Lucy Rollins, a Legal Assistant in the U.S. Attorney's Office.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of May 2020 at San Francisco, California.

/s/ Martin S. Schenker
Martin S. Schenker

EXHIBIT A

Schenker, Marty

From: Choe, Shiwon (USACAN) <Shiwon.Choe@usdoj.gov>
Sent: Tuesday, May 19, 2020 10:12 AM
To: Schenker, Marty
Cc: Emilou Maclean; Garbers, Wendy (USACAN); Zack, Adrienne (USACAN)
Subject: Zepeda Rivas v. Jennings, No. 3:20-cv-02731
Attachments: 2d suppl. objs. and resps. to 1st set of interrogs.pdf; suppl. objs. and resps. to 1st set of interrogs..pdf

[External]

Dear Marty:

In response to your request yesterday for the number of detainees (both ICE and non-ICE) in each housing unit at Yuba County Jail, please see the below, which reflects the counts as of last night:

A. 5 ICE detainees, 8 non-ICE detainees
B. 14 ICE detainees, 3 non-ICE detainees
C. 20 ICE detainees, 0 non-ICE detainees
D. 0 ICE detainees
E. 26 ICE detainees, 2 non-ICE detainees
F. 0 ICE detainees
G. 5 ICE detainees, 4 non-ICE detainees
H. 8 ICE detainees, 2 non-ICE detainees
I. 0 ICE detainees
J. 2 ICE detainees, 7 non-ICE detainees
K. 5 ICE detainees, 6 non-ICE detainees
L. 3 ICE detainees, 6 non-ICE detainees
N. 0 ICE detainees
O. 0 ICE detainees
P. 2 ICE detainees, 6 non-ICE detainees
Q. (males) 0 ICE detainees, 1 non-ICE detainee
(females) 1 ICE detainee, 2 non-ICE detainees
R. 1 ICE detainee, 6 non-ICE detainees
S. 0 ICE detainees
T. 1 ICE detainee, 0 non-ICE detainees

Please also see attached Federal Defendants' second supplemental responses to Plaintiffs' first set of interrogatories, which contain updated information regarding the dining halls and meals at Mesa Verde (as discussed at the last case management conference).

Finally, please see attached a new copy of Federal Defendants' [first] supplemental responses to Plaintiffs' first set of interrogatories, with a hard-copy signature from Assistant Field Office Director Dana Fishburn on the verification. The substance of these responses is unchanged. (We are sending out of an abundance of caution to avoid any possible issues regarding Ms. Fishburn's prior electronic signature, when she did not have access to a scanner.)

Best regards,
Shiwon

Shiwon Choe
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F: (415) 436-6748
E: shiwon.choe@usdoj.gov

EXHIBIT B

Isela Bravo

From: Birch, Jonathan (USACAN) <Jonathan.Birch@usdoj.gov>
Sent: Wednesday, May 27, 2020 4:46 PM
To: 'Jonathan Rosenthal'
Cc: Bree Bernwanger; Garbers, Wendy (USACAN); Winslow, Sara (USACAN); Choe, Shiwon (USACAN); Sean Riordan; Angelica Salceda; Emilou Maclean; Francisco Ugarte; Genna Beier; Jordan Wells; Judah Lakin; Marty Schenker; Zack, Adrienne (USACAN); Timothy Cook; Bill Freeman; 'Patrick Fuster'; 'Catherine Padhi'; Rollins, Lucy (USACAN)
Subject: Zepeda Rivas: May 27 releases and May 26 new arrivals

Please find below the names and A-numbers of the individuals who were released today, those pending release and new arrivals. Yuba County had no arrivals.

Yuba County Jail:

A-Number	Last Name	First Name	Reason
089858601	CARMONA-BLANCO	ADRIAN	Transferred for removal
PENDING			
208247260	HE	JUNZHEN	ERO bond set 5/6/20 and waiting on individual to post bond.
215572065	RODRIGUEZ-MAGANA	ERNESTO	5/5/20: IJ set bond of $10,000.

Mesa Verde releases:

A-Number	Last Name	First Name	Reason for Release
036898625	ARELLANO-CORONA	SALVADOR	Released for removal
043651696	OCHOA	DANIEL OMAR	Released for removal
092029322	PEREZ-HERRERA	Jose	Released for removal
093143212	HERNANDEZ CISNEROS	ROBERTO	Released for removal
PENDING			
205491234	DIKSHAT	DIKSHAT	IJ bond of $20K lowered to $10K, because individual previously breached conditions of $9K bond. Waiting on individual to pay bond.

Mesa Verde arrivals:

A-Number	Last Name	First Name	Age	Sex	Book-In Date
087594358	RAMIREZ-RAMOS	ARNULFO	37	M	05/26/2020
088717741	LUCAS-PEDRO	DOMINGO	35	M	05/26/2020
092029322	PEREZ-HERRERA	Jose	40	M	05/26/2020
215563561	DELACRUZ	MARIO	32	M	05/26/2020

Jon Birch
Paralegal Specialist

U.S. Attorney's Office, NDCA
450 Golden Gate Ave
San Francisco, CA 94102
(415) 436-7422

Isela Bravo

From: Birch, Jonathan (USACAN) <Jonathan.Birch@usdoj.gov>
Sent: Thursday, May 28, 2020 4:47 PM
To: 'Jonathan Rosenthal'
Cc: Bree Bernwanger; Garbers, Wendy (USACAN); Winslow, Sara (USACAN); Choe, Shiwon (USACAN); Sean Riordan; Angelica Salceda; Emilou Maclean; Francisco Ugarte; Genna Beier; Jordan Wells; Judah Lakin; Marty Schenker; Zack, Adrienne (USACAN); Timothy Cook; Bill Freeman; 'Patrick Fuster'; 'Catherine Padhi'; Rollins, Lucy (USACAN)
Subject: Zepeda Rivas: May 28 releases and May 27 new arrivals

Please find below the names and A-numbers of the individuals who were released today, those pending release and new arrivals. Yuba County had no arrivals.

Yuba County Jail:

A-Number	Last Name	First Name	Reason
094810453	TOVAR-REYES	RENE	District Court ordered release
PENDING			
208247260	HE	JUNZHEN	ERO bond set 5/6/20 and waiting on individual to post bond.
215572065	RODRIGUEZ-MAGANA	ERNESTO	5/5/20: IJ set bond of $10,000.

Mesa Verde releases:

A-Number	Last Name	First Name	Reason for Release
215562512	CABRERA-ARVIZO	SALVADOR	District Court ordered release
204619354	DOMINGUEZ CANDELARIA	FELIX	District Court ordered release
073507320	GRANT	DONOVAN	District Court ordered release
098649201	MONTOYA-AMAYA	MARCO	District Court ordered release
208559623	RODRIGUEZ NUNEZ	LEOBARDO	District Court ordered release
PENDING			
205491234	DIKSHAT	DIKSHAT	IJ bond of $20K lowered to $10K, because individual previously breached conditions of $9K bond. Waiting on individual to pay bond.

Mesa Verde arrivals:

A-Number	Last Name	First Name	Age	Sex	Book-In Date
094375069	Gaspar-machado	Aaron	44	M	05/27/2020
204907133	Corrales Olea	Paulo	22	M	05/27/2020
041402446	Velazquez-medina	Manuel	38	M	05/27/2020
205714544	Morales-sanchez	Henry	43	M	05/27/2020
215563549	Labastida	Alexander	27	M	05/27/2020
047924807	Edmondson	Alton	39	M	05/27/2020

208559954	Narvaez	Pedro	25	M	05/27/2020

Jon Birch
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Tara Coughlin

From: Rollins, Lucy (USACAN) <Lucy.Rollins@usdoj.gov>
Sent: Friday, May 29, 2020 4:31 PM
To: 'Jonathan Rosenthal'
Cc: Bree Bernwanger; Garbers, Wendy (USACAN); Winslow, Sara (USACAN); Choe, Shiwon (USACAN); Sean Riordan; Angelica Salceda; Emilou Maclean; Francisco Ugarte; Genna Beier; Jordan Wells; Judah Lakin; Marty Schenker; Zack, Adrienne (USACAN); Timothy Cook; Bill Freeman; 'Patrick Fuster'; 'Catherine Padhi'; Birch, Jonathan (USACAN)
Subject: Zepeda Rivas: May 29 releases and May 28 new arrivals

[External]

Please find below the names and A-numbers of the individuals who were released today, those pending release and new arrivals. Yuba County had no arrivals.

Yuba County Jail releases:

A-Number	Last Name	First Name	Reason
093379310	KAKANDE	ALI	District Court ordered release
027322079	KEO	KETHIKOUN	District Court ordered release

Yuba County Pending:

208247260	HE	JUNZHEN	ERO bond set 5/6/20 and waiting on individual to post bond.
215572065	RODRIGUEZ-MAGANA	ERNESTO	5/5/20: IJ set bond of $10,000.

Mesa Verde releases:

A-Number	Last Name	First Name	Reason for Release
200242307	BASORTA-ZAMORA	JOSE	District Court ordered release
061312537	BRAVO ZAMBRANO	JUAN	District Court ordered release
213001086	FRANCO PAZ	CARLOS	District Court ordered release
201945253	JOCOP-PIRIR	JUAN DOMINGO	District Court ordered release
200149687	LOPEZ-HERNANDEZ	SENOBIO	District Court ordered release
088449711	Mendez-roeda	Miguel	Released for removal
046609108	NORIEGA-VALENZUELA	ANGEL ELEAZAR	Released for removal
073886461	NUNEZ SALGADO	ARMANDO	District Court ordered release
206876352	Pliego-cayetano	Adrian	Released for removal

Mesa Verde Pending:

205491234	DIKSHAT	DIKSHAT	IJ bond of $20K lowered to $10K, because individua previously absconded on $9K bond. Waiting on individual to pay bond.

Mesa Verde arrivals:

A-Number	Last Name	First Name	Book-In Date
097352876	Chung	Yong Joo	05/28/2020
079357359	Garcia	Demetrio	05/28/2020
088449711	Mendez-roeda	Miguel	05/28/2020
206876352	Pliego-cayetano	Adrian	05/28/2020
070956887	Ramirez	Arnoldo	05/28/2020

Lucy Rollins
Legal Assistant
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