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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

**SEVENTH SUPPLEMENTAL
DECLARATION OF ROBERT B.
GREIFINGER, MD**

JUDGE VINCE CHHABRIA

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Seventh Supplemental Declaration of Robert B. Greifinger, MD

I, Robert B. Greifinger, declare as follows:

1. I am a physician who has worked in health care for prisoners for more than 30 years. I have managed the medical care for inmates in the custody of New York City (Rikers Island) and the New York State prison system. I have been an independent consultant on prison and jail health care since 1995. My clients have included the U.S. Department of Justice, Division of Civil Rights (for 24 years) and the U.S. Department of Homeland Security, Section for Civil Rights and Civil Liberties (for six years). I am familiar with immigration detention centers, having toured and evaluated the medical care in approximately 20 immigration detention centers, out of the several hundred correctional facilities I have visited during my career. I currently monitor the medical care in three large county jails for Federal Courts.
2. I provided seven earlier declarations in this case, *see* ECF Nos. 5-2, 39-1, 229-19, 477-29, 487, 591-4, 913,¹ and testified at the evidentiary hearing the Court held in November 2020. I now provide this supplemental declaration to evaluate GEO Group's request to modify the preliminary injunction issued in December 2020 as to the Mesa Verde Immigration Detention Facility, in light of current COVID-19 epidemiology in carceral settings.
3. In addition to the documents I reviewed previously for this case, I have reviewed:
 - a GEO Group's motion to modify the December 2020 preliminary injunction (ECF 1082);
 - b the declarations GEO submitted in support of their motion to modify the preliminary injunction (ECF 1082-1 & 1082-2);
 - c GEO Group's renewed motion to modify the December 2020 preliminary injunction (ECF 1104); and,
 - d current CDC guidance concerning COVID-19.
4. From the information I have reviewed, and based on my experience and professional expertise, it is my opinion that it is premature to modify the mitigation measures that the December 2020 preliminary injunction requires at Mesa Verde, particularly as the Delta variant of SARS-CoV-2 spreads rapidly throughout the United States and the CDC recommends reinstating mitigation measures throughout society.
5. GEO Group's motion seeks to modify the preliminary injunction in three ways: (1) by eliminating the population cap for any dormitory at Mesa Verde that contains only fully vaccinated detainees, (2) by eliminating the weekly testing of all fully vaccinated detainees and staff, unless they are exposed to a COVID-positive person

¹ I am captioning this my "Seventh Supplemental Declaration" to accurately capture the number of declarations I have submitted. However, two of my prior declarations were each inadvertently captioned as "Third Supplemental Declaration," and as a result, my last declaration was captioned as my "Fifth Supplemental Declaration" even though it was in fact my sixth.

and have symptoms of infection, and (3) by establishing a total facility population cap of 300 detainees.

6. CDC guidance does not support GEO Group's requests. At the time GEO Group filed its motion, the CDC stated that "correctional settings" should "continue to practice additional prevention strategies (e.g., wearing masks, social distancing) after vaccine has been administered[.]"² The CDC "strongly recommend[ed]" that detention facilities "continue using **all the tools** available to help stop transmission, like continue to wear a mask, stay at least 6 feet (two arm lengths) away from others (social distancing), avoid crowds and poorly ventilated spaces, and wash your hands often if soap and water aren't available, use hand sanitizer containing at least 60% alcohol." (Emphasis in original.) These protections remained necessary "while experts learn more about the protection that COVID-19 vaccines provide under real-life conditions," including how long vaccine-conferred immunity lasts and "whether the vaccine can decrease the chances that an infected person can spread the virus." While the CDC later issued new "FAQ" language focusing on detained persons and correctional staff wearing well-fitting masks, its other guidance and its recent statements on the danger of the Delta variant, including for vaccinated people, show that GEO Group's requests remain unsupported by CDC guidance.

7. As the CDC states in its June 9, 2021 interim guidance on fully vaccinated individuals, "not enough information is available to determine a specific level of vaccination coverage needed to modify facility-level prevention measures[.]"³ It also recommends the maintenance of mitigation measures where the physical characteristics of a facility allow COVID-19 to spread easily: "Maintain COVID-19 prevention measures for longer durations in facilities where the layout, ventilation, or movement patterns inhibit physical distancing or the frequency of air exchange."⁴ As the Court knows from my prior declarations and testimony and its own findings, the open dorms at Mesa Verde are optimized for viral transmission. Moreover, I am aware of no evidence in the case concerning the capacity of the ventilation system to adequately filter and transfer air in a manner that would mitigate the risks of detention in congregate dorms.

8. The CDC also recommends that, before relaxing mitigation measures, facilities consider the "historical levels of transmission within the facility and the ability to swiftly respond to outbreaks, including ... space for potential quarantine and isolation."⁵ The CDC recommends that "[i]f historical transmission levels have been

² CDC, "Vaccine FAQs in Correctional & Detention Centers," rev'd Feb. 16, 2021, at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/vaccine-faqs.html>, accessed April 6, 2021.

³ CDC, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," rev'd June 9, 2021, at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, accessed Aug. 1, 2021.

⁴ *Id.*

⁵ CDC, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," rev'd June 9, 2021, at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, accessed Aug. 1, 2021.

high or outbreak response has been difficult in the facility,” facilities should “consider maintaining COVID-19 prevention measures for a longer duration.”⁶ As this Court is also aware from my previous declarations and testimony and its own findings, the congregate, dormitory structure of Mesa Verde and limited isolation space has historically led to swift, high levels of transmission that were difficult to control.

9. The CDC also explicitly recommends that “[f]acility prevention procedures should not be lifted when any transmission is occurring within the facility.”⁷ Based on a GEO Group filing (ECF 1126), as recently as July 8, a GEO staff member worked in the facility while infected with COVID-19. While this latter infection, in and of itself, does not necessarily demonstrate transmission within the facility, it suggests substantial risk of transmission, knowing what we know about the prevalence of the Delta variant and this variant’s increased risk of transmission.
10. Another factor that the CDC recommends be evaluated before relaxing mitigation measures is the level of community spread, “both in the community where the facility is located and in the communities from which incarcerated/detained people originate.” According to published information, Kern County is currently averaging 128 new COVID-19 cases per day, an alarming increase from where that figure stood two weeks ago.⁸ The CDC’s “community transmission” tracker, which the CDC cites in guidance on testing in correctional and detention settings, registers current rates of community transmission in Kern County as “substantial.”⁹ GEO Group has submitted no evidence about the transmission rates in communities or correctional facilities from where new detained persons might be arrested or transferred, making it impossible to credibly say that it would be reasonably safe to allow the repopulation of Mesa Verde through such arrests and transfers.
11. GEO Group also seeks to largely abandon two “[b]aseline prevention measures” the CDC believes a facility should “always keep in place,” even if some relaxation of mitigation measures is otherwise appropriate under the factors discussed above.
 - a “Maintain COVID-19 testing strategies: If a facility chooses to modify prevention measures, maintaining a robust testing program (including both diagnostic and screening testing) can provide critical data for ongoing assessment. See Interim Guidance for SARS-CoV-2 Testing in Correctional and Detention Facilities for more information about testing strategies, including options for designing a screening testing program based on the

⁶ *Id.*

⁷ *Id.*

⁸ Tracking the coronavirus in Kern County, Los Angeles Times, July 30, 2021, at <https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/kern-county/>, accessed July 31, 2021.

⁹ CDC, “COVID-19 Integrated County View,” at <https://covid.cdc.gov/covid-data-tracker/#county-view>, accessed Aug. 2, 2021.

unique features of a particular facility and its population.”¹⁰ GEO Group’s request to do away with all screening testing for vaccinated individuals while repopulating Mesa Verde ignores this baseline prevention measure, and would be a particularly bad idea given new information about the ability of vaccinated people to transmit SARS-CoV-2.

- b “Continue to have a plan for scalable isolation and quarantine: Facilities should maintain the ability to respond quickly to an increase in the number of positive cases.”¹¹ In light of this and similar guidance, I am concerned about the prospect of Mesa Verde being repopulated where there are only five cells in which individuals could be medically isolated based on a COVID-19 exposure (or the development of COVID-19 symptoms). If the Court were to grant GEO Group’s motion, there could be up to 100 people in a vaccinated dorm and up to 300 people in the facility as a whole. Such increased numbers make it more likely that Mesa Verde will not have space to quarantine people as required by CDC guidance. As far as I can tell, GEO Group has not created a plan to account for the ongoing need to medically isolate people who have either been exposed to COVID-19 or who present COVID-19 symptoms, despite asking the Court to allow it to significantly increase the population at Mesa Verde. This is particularly concerning given GEO Group’s prior failures to develop meaningful plans to address foreseeable COVID-19 contingencies at Mesa Verde.

12. CDC guidance also does not support the pace at which GEO Group seeks to relax mitigation measures. “Procedures must be changed gradually ... Any modifications to procedures should be conducted in a stepwise fashion, one prevention measure at a time, with continued screening testing to carefully monitor for COVID-19 cases in the facility before making changes to additional prevention measures.”¹²

13. The CDC’s action last week to promote mitigation measures throughout society in light of the surge of Delta variant cases and new evidence that vaccinated people carry significant viral loads further demonstrates the inconsistency between GEO Group’s requests and the CDC’s current view of appropriate public health measures.¹³

14. Dr. Henderson’s declaration relies on *general* CDC guidance concerning how fully vaccinated persons may interact indoors with other fully vaccinated persons. ECF No. 1082-1, ¶ 7. The citation on which he relies does not support the conclusion which he reaches. The CDC guidance that Dr. Henderson relies on states only that fully vaccinated people can “[v]isit with other fully vaccinated people indoors without

¹⁰ CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” rev’d June 9, 2021, at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, accessed Aug. 1, 2021.

¹¹ *Id.*

¹² *Id.*

¹³ CDC, “Interim Public Health Recommendations for Fully Vaccinated People,” rev’d July 28, 2021, at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>, accessed Aug. 1, 2021

wearing a masks or social distancing.”¹⁴ (Emphasis added.) It does not state that fully vaccinated people can or should be housed in congregate settings together, let alone housed together in numbers that would prevent meaningful social distancing. As noted above, the *specific* CDC guidance makes clear that it remains premature to house fully vaccinated people in congregate housing where social distancing is impossible. Moreover, the same CDC guidance on which Dr. Henderson relies urges vaccinated people to “avoid medium- and large-sized in-person gatherings,” and to wear a mask and engage in “physical distancing” while “in public” and even while “visiting” with anyone vaccinated who may reside with anyone “unvaccinated” and “at increased risk for severe COVID-19 disease.”

15. Dr. Henderson also relies on what he calls “the vaccine’s prevention of serious illness” to form the “medical opinion that removing any population cap for dorm[s] housing fully vaccinated individuals would be reasonable and are not inconsistent with the CDC’s updated recommendations.” ECF No. 1082-1, ¶ 7. I disagree that the COVID-19 vaccines prevent all serious illness. It is accurate that the authorized vaccines are highly effective at preventing death, ICU hospitalization and other forms of “severe” COVID disease. However, the vaccines have not been shown to prevent a number of COVID-19 symptoms that doctors would typically consider to be serious, including severe body aches, vomiting, diarrhea, respiratory distress, and life-threatening vascular conditions like blood clots and stroke.
16. The CDC has also made clear that there is much we do not know about the effectiveness of approved vaccines against COVID-19 variants, such as the Delta variant that is currently dominant. “We are still learning how effective the vaccines are against new variants of the virus that causes COVID-19. New variants of the virus that causes COVID-19 are spreading in the United States. Current information suggests that COVID-19 vaccines authorized for use in the United States offer protection against most variants. However, some variants might cause illness in some people after they are fully vaccinated if the variants are circulating in the community.”¹⁵ Last week, a CDC document recognized that recent outbreaks in large groups of fully vaccinated people suggest the possibility that vaccinated people may be able to transmit the virus to one another and to the unvaccinated. The CDC concurrently raised questions about the level of vaccine effectiveness against the Delta variant. All of this undermines Dr. Henderson’s conclusion that it would be safe to put 100 vaccinated people together in the dorms at Mesa Verde.
17. Dr. Henderson also states that COVID-19 vaccines “have tested to be more than 95% protective against serious illness such as hospitalization and death in clinical trials.” ECF No. 1082-1, ¶ 6. I have been informed that the detainees at Mesa Verde received the Janssen/Johnson & Johnson vaccine, which did not have a trial showing that it is 95% protective against serious illness – that 95% figure comes from the trials for the Pfizer and Moderna vaccines. Janssen’s trials showed much lower figures at

¹⁴ CDC, “Interim Public Health Recommendations for Fully Vaccinated People,” rev’d April 2, 2021, at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>, accessed April 6, 2021.

¹⁵ CDC, “Key Things to Know About COVID-19 Vaccines,” rev’d June 25, 2021, at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html>, accessed Aug. 1, 2021.

preventing moderate to severe COVID-19 symptoms—66% efficacy against moderate to severe/critical COVID-19 across all countries.¹⁶

18. Another noteworthy aspect of GEO Group’s motion is the absence of any information regarding GEO Group’s plan for vaccinating new arrivals at Mesa Verde, including how the facility would procure vaccines for the new arrivals and how new arrivals would be managed between the time they are booked and the time they become “fully vaccinated” as defined by the CDC (for example, 14 days after administration of the Janssen vaccine). CDC guidance makes clear that “continu[ing] to encourage COVID-19 vaccination for those who have not yet received it” is a necessary baseline mitigation measure.¹⁷ The CDC elsewhere “recommends everyone” in a correctional setting “get vaccinated against COVID-19.”¹⁸ Given that poor planning has enabled outbreaks at Mesa Verde in the past, it is concerning the GEO Group includes no plan or other information about administration of COVID-19 vaccines while proposing dramatic redensification.

19. GEO Group also does not provide information about what percentage of staff are vaccinated. This omission is significant because Dr. Henderson states that his opinion on eliminating any population cap for vaccinated dormitories depends on “all staff members who interact with the vaccinated detainees” being “either fully vaccinated or wearing masks, social distancing, and maintaining proper hygiene techniques.” ECF No. 1082-1, ¶ 7. Unfortunately, staff at prisons, jails and detention facilities have too often been reluctant to agree to universal vaccination. As I noted in my November testimony, I am also concerned about inconsistent mask-wearing at Mesa Verde based on the documents I have reviewed and my virtual visit to the facility. I have also consistently noted the high risks of COVID transmission of staff at correctional and detention facilities – both to those in custody and those in the surrounding communities. Without further information confirming that all staff members at Mesa Verde who interact directly or indirectly with detainees *are* fully vaccinated *and* wearing masks and social distancing, I do not believe that Dr. Henderson’s apparent assumption about staff vaccination and practices can be considered relevant.

20. Dr. Henderson also states that under updated CDC recommendations, fully vaccinated people should not be tested “unless they have been exposed to someone known to be Covid-positive and they have symptoms of infection.” ECF No. 1082-1, ¶ 8. He uses this to assert that fully vaccinated detainees and staff need not be vaccinated absent exposure *and* COVID symptoms. This is inconsistent with current CDC guidance. That guidance states that “[f]ully vaccinated people with no COVID-like symptoms following an exposure to someone with suspected or confirmed COVID-19” “should

¹⁶ The study showed a slightly higher efficacy (72%) in the United States, however, at the time of the study certain concerning variants, including Delta, were not circulating in the United States.

¹⁷ CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” rev’d June 9, 2021, at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, accessed Aug. 1, 2021

¹⁸ CDC, “Vaccine FAQs in Correctional & Detention Centers,” rev’d June 1, 2021, at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/vaccine-faqs.html>, accessed Aug. 1, 2021.

be tested” within 3-5 days of that exposure.¹⁹ As the CDC elsewhere explains, “Regardless of whether they develop symptoms of COVID-19, incarcerated/detained persons who are fully vaccinated should continue to be tested for SARS-CoV-2 following an exposure to someone with suspected or confirmed COVID-19.”²⁰

21. It is also important to note that reluctance to be vaccinated is heightened in detention settings. A recent CDC report demonstrated this with regard to the COVID vaccine. In a survey of three prisons and 13 jails,²¹ fewer than half of those in custody expressed a willingness to be vaccinated. Forty-five percent expressed a refusal to be vaccinated, and approximately 10 percent expressed hesitancy. In this study, individuals reported the motivation for their reluctance or refusal to be inadequate information, concerns about efficacy or safety, “distrust of health care, correctional, or governmental personnel or institutions,” or a perception that the vaccine was unnecessary. The study concluded, in part, that it is important for vaccination information to be “culturally relevant and appropriate for persons of all health literacy levels.” The study also recognized that “detained persons might have inherent higher distrust of governmental systems based on their interactions with law enforcement or the justice system or their experiences with institutional racism, emphasizing the need for trust messengers.” I share these conclusions. As I have previously stated with regard to mask-wearing, there is an important role to be played in detention settings for authorities to positively encourage vaccination among those in custody. Reluctance to be vaccinated by those being detained is understandable and should be addressed through thoughtful communication by those who manage detention settings. I have not seen any proposals presented in the materials I have reviewed that suggest such communication has occurred or is being planned at Mesa Verde. In addition to the broader epidemiological concerns discussed throughout this declaration, I would be concerned about the premature lifting of mitigation measures prior to the implementation of such communication measures by detention center authorities.
22. In sum, neither CDC guidance nor other epidemiological principles support the lifting of protective mitigation measures at Mesa Verde under the facts presented by GEO Group. Moreover, it is important for the detention center authorities to develop and implement proactive and culturally appropriate communications to encourage widespread vaccination and to create a meaningful plan for COVID-19 contingencies prior to the relaxation of mitigation measures.

¹⁹ CDC, “Interim Public Health Recommendations for Fully Vaccinated People,” rev’d July 28, 2021, at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>, accessed Aug. 1, 2021.

²⁰ CDC, “Recommendations for Quarantine Duration in Correctional and Detention Facilities,” rev’d June 9, 2021, at <https://www.cdc.gov/coronavirus/2019-ncov/community/quarantine-duration-correctional-facilities.html>, accessed Aug. 1, 2021.

²¹ Marc Stern, et al., “Willingness to Receive a COVID-19 Vaccination Among Incarcerated or Detained Persons in Correctional and Detention Facilities — Four States, September–December 2020,” CDC’s Morbidity and Mortality Weekly Report, April 2, 2021, at <https://www.cdc.gov/mmwr/volumes/70/wr/mm7013a3.htm>.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of August, 2021 in Eastham, Massachusetts.

A handwritten signature in blue ink, appearing to read "Robert B. Greifinger", written over a horizontal line.

Robert B. Greifinger, M.D.