

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

**ROBSON XAVIER GOMES, DARWIN  
ALIESKY CUESTA-ROJAS and JOSÉ  
NOLBERTO TACURI-TACURI**, on  
behalf of themselves and all those similarly  
situated,

Petitioners-Plaintiffs,

v.

**CHAD WOLF**, Acting Secretary of  
Department of Homeland Security,

**MARCOS CHARLES**, Immigration and  
Customs Enforcement, Enforcement and  
Removal Operations, Acting Field Office  
Director,

**CHRISTOPHER BRACKETT**,  
Superintendent of the Strafford County  
Department of Corrections,

Respondents-Defendants.

Civil Action No. 1:20-cv-453-LM

**NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION AND  
MOTION FOR EXPEDITED DISCOVERY**

PLEASE TAKE NOTICE THAT, as soon as they may be heard, Plaintiffs-Petitioners (“Plaintiffs”) will, and hereby do move this Court, pursuant to Federal Rule of Civil Procedure 65, to grant its motion for a preliminary injunction and enter an order halting the transfer of civil immigration detainees from other ICE detention facilities to SCDOC and directing Defendants to expedite the production of the priority discovery listed in the enclosed Proposed Order. As grounds for this Motion, Plaintiffs rely on and incorporate fully the memorandum of law in support of the motion, and the exhibits thereto, all of which are submitted herewith.

Respectfully Submitted,

**PETITIONERS/PLAINTIFFS**

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Date: April 20, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2020, I electronically filed the foregoing document with the United States District Court for the District of New Hampshire by using the CM/ECF system. I certify that the parties or their counsel of record registered as ECF Filers will be served by the CM/ECF system, and paper copies will be sent to those indicated as non-registered participants, if any.

/s/ Nathan P. Warecki

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**MEMORANDUM OF LAW IN SUPPORT OF PETITIONER-PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION AND  
MOTION FOR EXPEDITED DISCOVERY**

*(Counsel for Petitioners-Plaintiffs listed on  
signature page)*

April 20, 2020

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
PRELIMINARY STATEMENT .....	1
BACKGROUND .....	3
I. COVID-19 Poses a Grave Risk of Infection, Illness, and Death. ....	3
II. Detained Individuals Face a Substantial Risk of Contracting COVID-19. ....	4
III. Conditions in SCDOC Pose a Considerable Risk to the Health of Detainees and to Public Health at Large. ....	6
ARGUMENT .....	8
I. Plaintiffs Are Likely To Succeed on the Merits. ....	9
II. Plaintiffs Will Suffer Irreparable Harm in the Form of Increased Risk of Infection, Illness, and Death in the Absence of Emergency Relief. ....	13
III. The Public Interest and Balance of Equities Weigh Heavily in Plaintiffs' Favor. ....	14
IV. Plaintiffs' Request for Relief. ....	15
CONCLUSION.....	15

**TABLE OF AUTHORITIES****Page(s)****CASES**

<i>Basank v. Decker</i> , No. 20-cv-2518, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020).....	11, 14
<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979).....	9
<i>Braintree Labs., Inc. v. Citigroup Glob. Markets Inc.</i> , 622 F.3d 36,(1st Cir. 2010) .....	9
<i>Castillo v. Barr</i> , No. 20-cv-00605, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020).....	11-12, 14, 15
<i>Coscia v. Town of Pembroke</i> , 659 F.3d 37 (1st Cir. 2011) .....	10
<i>DeGidio v. Pung</i> , 920 F.2d 525 (8th Cir. 1990) .....	11
<i>DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.</i> , 489 U.S. 189 (1989).....	9-10
<i>E. D. v. Sharkey</i> , 928 F.3d 299 (3d Cir. 2019) .....	10
<i>Farmer v. Brennan</i> , 511 U.S. 825, 828 (1994) .....	10
<i>Helling v. McKinney</i> , 509 U.S. 25 (1993).....	10
<i>Hutto v. Finney</i> , 437 U.S. 678 (1978).....	11
<i>Leite v. Bergeron</i> , 911 F.3d 47 (1st Cir. 2018) .....	10
<i>Revere v. Mass. Gen. Hosp.</i> , 463 U.S. 239 (1983).....	9
<i>Rio Grande Cmty. Health Ctr., Inc. v. Rullan</i> , 397 F.3d 56 (1st Cir. 2005).....	13



**Page(s)****CASES**  
(*cont.*)

<i>Savino v. Souza</i> , No. 20-cv-10617, 2020 WL 1703844 (D. Mass. Apr. 8, 2020).....	2, 8, 10
<i>Wheeler v. HXI, LLC</i> , No. 10-cv-145, 2010 WL 3023518 (D.N.H. July 28, 2010).....	9
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7, 20 (2008) .....	9

**CONSTITUTIONAL PROVISIONS**

Fifth Amendment .....	9, 11, 13
Eighth Amendment .....	9, 10, 11

**OTHER AUTHORITIES**

Ctrs. for Disease Control and Prevention, <i>Cases in U.S.</i> (case counts as of Apr. 18, 2020), <a href="https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html">https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html</a> .....	1
Ctrs. for Disease Control and Prevention, <i>How to Protect Yourself &amp; Others</i> (Apr. 19, 2020), <a href="https://www.cdc.gov/coronavirus/2019-ncov/index.html">https://www.cdc.gov/coronavirus/2019-ncov/index.html</a> .....	1
Governor of New Hampshire, Exec. Order 2020-04 (Mar. 13, 2020), <a href="https://www.governor.nh.gov/newsmedia/orders-2020/documents/2020-04.pdf">https://www.governor.nh.gov/newsmedia/orders-2020/documents/2020-04.pdf</a> .....	3
Immigration and Customs Enforcement, <i>ICE Guidance on COVID-19</i> (updated Apr. 17, 2020, 6:00 p.m.), <a href="https://www.ice.gov/coronavirus">https://www.ice.gov/coronavirus</a> (click on “Confirmed Cases” tab). .....	5
Jo Craven McGinty, Why Doesn’t Flu Tank Economy Like Covid-19?, WALL STREET JOURNAL (Apr. 10, 2020), <a href="https://www.wsj.com/articles/why-doesnt-flu-tankeconomy-like-covid-19-11586511000">https://www.wsj.com/articles/why-doesnt-flu-tankeconomy-like-covid-19-11586511000</a> .....	13
Mary McIntyre, <i>N.H. Correctional Facilities Release Inmates To Prevent Spread Of COVID-19</i> , NHPR (Apr. 1, 2020), <a href="https://www.nhpr.org/post/nh-correctional-facilities-release-inmates-prevent-spread-covid-19#stream/0">https://www.nhpr.org/post/nh-correctional-facilities-release-inmates-prevent-spread-covid-19#stream/0</a> .....	2
State of New Hampshire, <i>Novel Coronavirus 2019 (COVID-19)</i> (data updated as of Apr. 18, 2020, at 9:00 a.m.), <a href="https://www.nh.gov/covid19/">https://www.nh.gov/covid19/</a> .....	3

Plaintiffs-Petitioners (“Plaintiffs”)—civil immigration detainees held by Respondents-Defendants (“Defendants”) at the Strafford County Department of Corrections (“SCDOC”) under the authority of Immigration and Customs Enforcement (“ICE”)—respectfully submit this memorandum of law in support of their motion for a preliminary injunction and motion for expedited discovery (“Instant Motion”).

### **PRELIMINARY STATEMENT**

Plaintiffs seek emergency relief from this Court to alleviate their imminent risk of contracting the virus that causes COVID-19 (“coronavirus”), as their continued detention prevents them from following Centers for Disease Control and Prevention (“CDC”) guidelines and state and local directives aimed at reducing the likelihood of contracting COVID-19. The Instant Motion seeks to prevent transfer of additional detainees to SCDOC—an ongoing practice that heightens the imminent risk that Plaintiffs and putative class members’ will contract the virus.

In a matter of weeks, the COVID-19 pandemic has infected more than 690,714 people in the United States, resulting in the deaths of 35,443 people.<sup>1</sup> In order to combat this unprecedented threat to public health, the CDC has recommended that individuals maintain a distance from other people of at least six feet at all times, use face coverings whenever in public places, and frequently wash hands or use hand sanitizer.<sup>2</sup> Because those held in confinement are not able to comply with these CDC guidelines—and in recognition of the mortal danger that COVID-19 poses to detainees—jails and prisons across the country have reduced the population of those in criminal

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<sup>1</sup> Ctrs. for Disease Control and Prevention, *Cases in U.S.* (case counts as of Apr. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

<sup>2</sup> Ctrs. for Disease Control and Prevention, *How to Protect Yourself & Others* (Apr. 19, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

custody, including in this State. *See* Declaration of Dr. Dora Schriro (“Schriro Decl.”), attached hereto as “Exhibit H”<sup>3</sup> to the Instant Motion, ¶¶ 49-52.<sup>4</sup>

Federal courts across the country also have recognized the serious threat that COVID-19 poses to incarcerated individuals.<sup>5</sup> Of note, on April 8, 2020, the Honorable William G. Young granted class certification for a class of civil immigration detainees who have been detained in the District of Massachusetts in conditions substantially similar to the detention conditions the putative class faces at SCDOC. *See Savino v. Souza*, No. 20-cv-10617, 2020 WL 1703844 (D. Mass. Apr. 8, 2020). In certifying the class, which included “all detainees” housed at the facility in question, Judge Young noted that the court was following “the light of reason and the expert advice of the CDC in aiming to reduce the population in the detention facilities so that all those who remain (including staff) may be better protected.” *Id.* at \*9.

Despite the movement within the criminal justice system to change existing practices in response to the current national health crisis, Defendants are either unwilling or unable to implement social distancing among civil immigration detainees held at SCDOC and, therefore, have not taken necessary, critical, and urgent steps to safeguard the class members’ health and to prevent the spread of COVID-19.

This Court’s urgent intervention is needed to remedy the ongoing constitutional violations that the current conditions at SCDOC impose on Plaintiffs. Through the Instant Motion, Plaintiffs

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<sup>3</sup> References herein to “Ex.” refer either to the exhibits appended the Declaration to the Declaration of Nathan P. Warecki (“Warecki Decl.”) in Support of the Petition (Exhibits A through G) or the exhibits appended to the Instant Motion (H through J).

<sup>4</sup> Mary McIntyre, *N.H. Correctional Facilities Release Inmates To Prevent Spread Of COVID-19*, NHPR (Apr. 1, 2020), <https://www.nhpr.org/post/nh-correctional-facilities-release-inmates-prevent-spread-covid-19#stream/0>.

<sup>5</sup> *See* First Amended Petition for Writ of Habeas Corpus (“Petition”), dated Apr. 17, 2020, ECF No. 5, ¶ 5 (collecting cases).

respectfully request that this Court issue an injunction that prohibits the transfer of civil immigration detainees from other facilities to SCDOC until all public health protocols designed to prevent the transmission of COVID-19 have been implemented to levels that permit adequate social distancing. The requested injunction, in combination with the Plaintiff's motion for expedited bail hearings for Plaintiffs and all putative class members, would allow this Court to assess the individual circumstances of detainees at SCDOC, and also would mitigate the unnecessary risk posed by Defendants' acceptance of new detainees into the facility in contravention of Plaintiffs' and putative class members' due process rights.

## **BACKGROUND**

### **I. COVID-19 Poses a Grave Risk of Infection, Illness, and Death.**

COVID-19 is a global pandemic of which the United States currently is the epicenter. *See* Schiro Decl. ¶¶ 14, 54. Within New Hampshire, 1,342 people have been confirmed to have contracted COVID-19, 192 of whom (14%) have required hospitalization, and 38 have died.<sup>6</sup> On March 13, 2020 Governor Chris Sununu declared a state of emergency, announcing aggressive recommendations to curb the spread of COVID-19 in response to the growing health crisis.<sup>7</sup>

The COVID-19 disease is caused by a novel virus with no cure, no vaccine, and no known immunity. *See* Declaration of Dr. Marc Stern ("Stern Decl."), Ex. A, ¶ 3. While nearly everyone appears to be at risk of infection, the effects of the virus are particularly serious for certain populations, including people over 50 and those with a variety of medical conditions, such as lung and heart disease, and immunocompromised conditions. *Id.* ¶ 5. Vulnerable people who are

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<sup>6</sup> State of New Hampshire, *Novel Coronavirus 2019 (COVID-19)* (data updated as of Apr. 18, 2020, at 9:00 a.m.), <https://www.nh.gov/covid19/>.

<sup>7</sup> Governor of New Hampshire, Exec. Order 2020-04 (Mar. 13, 2020), <https://www.governor.nh.gov/newsmedia/orders-2020/documents/2020-04.pdf>.

infected with COVID-19 can experience severe respiratory illness, which may require intensive care support. Stern Decl. ¶ 6. While the elderly and those with serious conditions are most at risk of serious infection, or death, “it is becoming clear that younger individuals are not protected from severe complications requiring hospitalization and placement in intensive care[.]” *Id.* ¶ 5.

The incubation period—the time between infection and the development of symptoms—typically is five days. Declaration of Dr. Jonathan Louis Golob (“Golob Decl.”), Ex. B, ¶ 6. “It is believed that people can transmit the virus without being symptomatic and, indeed, that a significant amount of transmission may be from people who are infected but asymptomatic or pre-symptomatic.” Stern Decl. ¶ 4. Because COVID-19 infections may not be apparent, the only way to control the virus “is to use preventative strategies, including social distancing.” *Id.* ¶ 3.

## **II. Detained Individuals Face a Substantial Risk of Contracting COVID-19.**

Congregate environments in which people live in close proximity present an atmosphere where infectious diseases that are transmitted via the air are more likely to spread. *Id.* ¶ 8. Therefore, “to the extent that detainees are housed in close quarters, unable to maintain a six-foot distance from others, and sharing or touching objects used by others, the risks of spread are greatly, if not exponentially, increased . . . .” *Id.* Indeed, Dr. Marc Stern who recently served as Assistant Secretary for Health Care at the Washington State Department of Corrections explains that:

[Detention centers] are not closed systems. Staff, new detainees, attorneys, and inanimate objects – all potential vectors for virus – are introduced into the system every day. Thus, despite the government’s best efforts to follow preventive guidelines, the introduction of virus into the detention center is almost inevitable. Moreover, because staff and some visitors travel each day from the facilities back to their homes, when infection develops in the facility, there is also significant risk that the infection will be transmitted to the family and friends of the staff and visitors.

*Id.* at ¶ 11. To take just one recent example of how quickly COVID-19 can spread through a detention facility, the Rikers Island jail complex in New York City saw a transmission rate that

was over seven times the rate seen in the city as a whole, as the disease spread from one case to over 200 in the matter of only 12 days. Golob Decl. ¶ 12.; *see generally* Petition ¶ 65.

Defendants understand both the problems posed the COVID-19 pandemic and the solutions needed to combat the spread in their detention facilities. *See generally* Schriro Decl. ICE reports 124 confirmed cases of COVID-19 among civil immigration detainees in its custody and 30 cases among ICE employees at its facilities in the United States.<sup>8</sup> ICE publicly acknowledges the need for social distancing, an attenuate reduction of the population of all detention facilities to increase social distancing, and claims to be following other recommendations of public health officials, including the CDC, to implement certain protocols, such as hygiene and handwashing, screening, risk mitigation, and quarantine to stop COVID-19 in its detention facilities.<sup>9</sup> However, as John Sandweg, a former Acting Director of ICE, observes:

ICE detention centers are extremely susceptible to outbreaks of infectious diseases . . . . [P]reventing the coronavirus from being introduced into these facilities is impossible. The design of these facilities requires inmates to remain in close contact with one another—the opposite of the social distancing now recommended for stopping [its] spread. . . .

Declaration of John Sandweg (“Sandweg Decl.”), Ex. G, ¶ 5. Accordingly, and in Mr. Sandweg’s view, “the most effective way to [reduce the risk of a detention center outbreak] is to drastically reduce the number of people it is currently holding.” *Id.* at ¶ 8. Further, Mr. Sandweg believes that “ICE has the operational capacity to quickly and drastically reduce the population of civil immigration detainees while still protecting public health as much as possible.” *Id.* at ¶ 9.

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<sup>8</sup> Immigration and Customs Enforcement, *ICE Guidance on COVID-19* (updated Apr. 17, 2020, 6:00 p.m.), <https://www.ice.gov/coronavirus> (click on “Confirmed Cases” tab).

<sup>9</sup> *Id.* (last visited Apr. 16, 2020) (click on “Overview & FAQs” tab, click on “Detention” and then scroll to “How does ICE mitigate the spread of COVID-19 within its detention facilities” and “How are ICE detention facilities engaging in social distancing” (emphasis added)).



Mr. Sandweg’s assessment aligns with that of Dr. Dora Schriro, a corrections expert who has held numerous executive-level positions in federal, state, and local governments, including as founding Director of the ICE Office of Detention Policy and Planning. *See* Schriro Decl. ¶¶ 1-12. It is Dr. Schriro’s opinion that: (i) “the plans that ICE has put forth are insufficient to protect the detained population, detention staff, and the public at-large” from the spread of COVID-19, *id.* ¶ 16; and (ii) “alternatives to detention can be used effectively and safely to ensure that immigrant detainees are not subjected to unnecessary risk from COVID-19 while ensuring public safety and appearance for court hearings[,]” *id.* ¶ 43. Dr. Schriro ultimately recommends that:

[ICE] should release as many [medically] vulnerable individuals as possible, as quickly as possible, with only those conditions that are necessary to ensure participation in court proceedings or other appointments. I also recommend that any other individuals deemed likely to comply on appropriate conditions of supervision where necessary be released immediately, to protect themselves, other detainees, correctional and medical staff, and the general public, without impeding immigration court proceedings or other legally-required appointments.

*Id.* ¶¶ 53-54.

### **III. Conditions in SCDOC Pose a Considerable Risk to the Health of Detainees and to Public Health at Large.**

Despite ICE’s public statements with respect to COVID-19, detainees at SCDOC are subject to living conditions that violate the recommendation of infectious disease experts across the globe, and, as a result, they are more susceptible to contracting the deadly virus. *See id.* ¶ 24. As reported by SangYeob Kim, an immigration staff attorney at the American Civil Liberties Union of New Hampshire who has represented dozens of noncitizens detained at SCDOC, as of April 17, 2020, there are approximately 62 civil immigration detainees at SCDOC. Affidavit of SangYeob Kim (“Kim Aff.”), Ex. C, ¶ 5. In most units at SCDOC, each detainee shares with another detainee a small cell outfitted with a bunkbed. *Id.* at ¶¶ 9, 11, 13. At least one unit (Unit J) has an “open” setup with multiple bunkbeds on two floors without any cells. *Id.* at 15.

Neither setup is conducive to social distancing. Kim Aff. ¶¶ 9, 12, 15. In the small cell setup, social distancing only can be maintained if everyone was confined to their cells, but even then, “social distancing for cells with two detainees can hardly be maintained within the cell. Further, when the unit is not under lockdown, detainees come out to the common area without any possibility of maintaining social distancing.” *Id.* at ¶ 9; *see id.* at 12. In the open setup, social distancing is impossible both because each bunkbed is less than six feet from another bed, and because detainees can freely move around their floor at their discretion at any time and detainees from one floor can visit the other when the unit is not on lockdown. *Id.* at ¶ 15.

The experiences of Plaintiffs reinforce Mr. Kim’s observations of SCDOC. Two of the three named Plaintiffs are confined to Unit J with the open set up. Plaintiff Darwin Aliesky Cuesta-Rojas, reports that he is confined with 16 immigration detainees and more than 20 additional criminal detainees. *See* Affidavit of Darwin Aliesky Cuesta-Rojas (“Cuesta-Rojas Aff.”), Ex. D, ¶¶ 3-4. Both he and another Plaintiff, José Nolberto Tacuri-Tacuri, report that there is no social distancing policy in place and, given that bunk beds are roughly three feet apart, no separation is possible. *Id.* ¶¶ 4, 6; Affidavit of José Nolberto Tacuri-Tacuri (“Tacuri-Tacuri Aff.”), Ex. E, ¶ 4. Both Mr. Cuesta-Rojas and Mr. Tacuri-Tacuri report that inmates continue to eat in close proximity to one another—three or four to a table. Cuesta-Rojas Aff. ¶ 6; Tacuri-Tacuri Aff. ¶¶ 5-6.

Plaintiff Robson Xavier Gomes is housed in Unit G. Affidavit of Robson Xavier Gomes (“Gomes Aff.”), Ex. F, ¶ 2. He reports that he shares a cell with another incarcerated person and they cannot arrange their beds so that they are at least six feet apart. *Id.* ¶¶ 3, 6. Mr. Gomes shares a toilet, showers, and other communal spaces, with other inmates. *Id.* ¶¶ 3-5, 8. Mr. Gomes reports that food is delivered to him by other incarcerated persons, none of whom wear facemasks or gloves. Other than lockdown, there is no social distancing policy enforced in Unit G. *Id.* ¶ 8.



Plaintiffs’ inability to practice social distancing is exacerbated by the fact that SCDOC is not a closed system. Indeed, Plaintiffs report that they routinely are exposed to new detainees and other individuals, *see* Tacuri-Tacuri Aff. ¶ 7; Cuesta-Rojas Aff. ¶¶ 7-8; Gomes Aff., ¶ 10, including detainees who have been outside the closed system for appearances in immigration court, Affidavit of John S. Burlock, Ex. I, ¶¶ 3-5, or the ICE field office in Burlington, Massachusetts, *see* Affidavit of Pedro Gonzalez Cuarca, Ex. J, ¶¶ 8-9. Defendants have also begun to transfer detainees from the Bristol County House of Corrections (“BCHOC”) to SCDOC. *See Savino v. Souza*, No. 20-cv-10617 (D. Mass. Apr. 15, 2020), ECF No. 87. Mr. Cuesta-Rojas notes that one of the new detainees that recently arrived came from New York—the epicenter of the COVID-19 outbreak—but that no steps were taken to isolate the detainee. Cuesta-Rojas Aff. ¶ 9. Moreover, according to Plaintiffs, SCDOC does not appear to have taken other preventative measures—besides social distancing—to stop the potential for spreading the disease, by for example, equipping detainees with protective gear or cleaning supplies. *See* Tacuri-Tacuri Aff. ¶ 10, Cuesta-Rojas Aff. ¶ 6.

Finally, and importantly, SCDOC does not appear to have taken steps to protect its most vulnerable detainees. For example, although Mr. Tacuri-Tacuri suffers from asthma, he continues to be exposed to new inmates, Tacuri-Tacuri Aff. ¶¶ 7, 9, and reports that he has recently had difficulty breathing, and even coughed up blood, but has not received a medication that has alleviated his condition, *id.* at ¶ 9. Mr. Gomes suffers from hypertension and has a heart arrhythmia. Gomes Aff. ¶ 12. These medical conditions elevate these Plaintiffs’ risk for developing a life-threatening condition from a COVID-19 infection. Golob Decl., ¶ 3.

### ARGUMENT

A district court’s assessment of whether to grant a preliminary injunction requires the consideration of four factors: (i) the movant’s likelihood of success on the merits; (ii) whether and

the extent to which the movant will suffer irreparable harm in the absence of an injunction; (iii) a balance of the equities; and (iv) the potential impact of an injunction on the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The irreparable harm factor is assessed on “a sliding scale, working in conjunction with a moving party’s likelihood of success on the merits, such that the strength of the showing necessary on irreparable harm depends in part on the degree of likelihood of success shown.” *Braintree Labs., Inc. v. Citigroup Glob. Markets Inc.*, 622 F.3d 36, 42 (1st Cir. 2010) (citations and quotation marks omitted).

The assessment of a plaintiff’s request for expedited discovery requires a showing of “good cause for expedited discovery by showing that the need for the requested discovery outweighs the burden to the Defendant, in light of the interests of the administration of justice.” *Wheeler v. HXI, LLC*, No. 10-cv-145, 2010 WL 3023518, at \*1 (D.N.H. July 28, 2010).

#### **I. Plaintiffs Are Likely To Succeed on the Merits.**

Through their Petition, Plaintiffs bring a single cause of action, on behalf of themselves and a class of similarly situated civil immigrant detainees, asserting a violation of their Fifth Amendment due process rights because of conditions at SCDOC that amount to unconstitutional punishment. *Cf. Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). While Plaintiffs’ claims are appropriately brought under the Fifth Amendment, basic principles from Eighth Amendment jurisprudence establish why they are likely to succeed on the merits on their claim. Specifically, the Eighth Amendment—which provides fewer protections to individuals convicted of *criminal* offenses than the Fifth Amendment does for *civil* detainees, *cf. Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)—imposes on the government an affirmative duty to provide conditions of reasonable safety and general well-being to those in its custody:

The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual’s liberty that it renders him unable

to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.

*DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989). In short, due process requires the government “to refrain at least from treating a pretrial detainee with deliberate indifference to a substantial risk of serious harm to health.” *Savino v. Souza*, No. 20-cv-10617, 2020 WL 1703844, at \*6 (D. Mass. Apr. 8, 2020); *see Farmer v. Brennan*, 511 U.S. 825, 828 (1994) (convicted persons must show “deliberate indifference” on the part of prison officials to establish a violation of the Eighth Amendment).

Deliberate indifference “may consist of showing a conscious failure to provide medical services where they would be reasonably appropriate.” *Coscia v. Town of Pembroke*, 659 F.3d 37, 39 (1st Cir. 2011). “To show such a state of mind, the plaintiff must provide evidence that the defendant had actual knowledge of impending harm, easily preventable, and yet failed to take the steps that would have easily prevented that harm.” *Leite v. Bergeron*, 911 F.3d 47, 52-53 (1st Cir. 2018) (quoting *Zingg v. Groblewski*, 907 F.3d 630, 635 (1st Cir. 2018) (further citation and internal quotation marks omitted). Courts generally apply the same standard for civil immigration detainees as for pre-trial detainees. *See E. D. v. Sharkey*, 928 F.3d 299, 306-07 (3d Cir. 2019) (stating that “the legal rights of an immigration detainee [are] analogous to those of a pretrial detainee” and collecting cases of other circuits); *Savino*, 2020 WL 1703844, at \*6.

Moreover, it is well-settled that a detainees’ constitutional protections extend to “future harms,” including a “condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or a month or year.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Therefore, constitutional violations can arise from “the exposure of inmates to a serious, communicable disease,” even when “the complaining inmate shows no serious symptoms.” *Id.*;

see *Hutto v. Finney*, 437 U.S. 678, 682-83, 687 (1978) (risk of exposing inmates to communicable diseases such as hepatitis and venereal disease violates the Eighth Amendment); *DeGidio v. Pung*, 920 F.2d 525, 526, 533 (8th Cir. 1990) (inadequate screening and control procedures in response to tuberculosis outbreak violated the Eighth Amendment).

Here, as courts across the country have already recognized, the COVID-19 pandemic poses a substantial risk of harm to individuals incarcerated in facilities where adherence to CDC guidance is not possible. As one court found in ordering the release of certain civil immigration detainees:

The risk of contracting COVID-19 in tightly-confined spaces, especially jails, is now exceedingly obvious. It can no longer be denied that Petitioners, who suffer from underlying illnesses, are caught in the midst of a rapidly-unfolding public health crisis . . . . Petitioners need not demonstrate that they actually suffered from serious injuries” to show a due process violation. Instead, showing that the conditions of confinement pose an unreasonable risk of serious damage to their future health is sufficient.

Respondents have exhibited, and continue to exhibit, deliberate indifference to Petitioners’ medical needs. The spread of COVID-19 is measured in a matter of a single day—not weeks, months, or years—and Respondents appear to ignore this condition of confinement that will likely cause imminent, life-threatening illness.

*Basank v. Decker*, No. 20-cv-2518, 2020 WL 1481503, at \*5 (S.D.N.Y. Mar. 26, 2020) (internal citations and quotation marks omitted). The next day, another court used identical logic to find civil immigration detainees were likely to succeed on the merits of their Fifth Amendment claim:

Civil detainees must be protected by the Government. Petitioners have not been protected. They are not kept at least 6 feet apart from others at all times. They have been put into a situation where they are forced to touch surfaces touched by other detainees, such as with common sinks, toilets and showers. Moreover, the Government cannot deny the fact that the risk of infection in immigration detention facilities—and jails—is particularly high if an asymptomatic guard, or other employee, enters a facility. . . . The Petitioners have established that there is more than a mere likelihood of their success on the merits.

*Castillo v. Barr*, No. 20-cv-00605, 2020 WL 1502864, at \*5-6 (C.D. Cal. Mar. 27, 2020).

Most recently, Judge Young of the District of Massachusetts has relied upon this same data and the conditions at BCHOC in North Dartmouth, Massachusetts to certify a class of civil immigration detainees held at that facility. Relying upon CDC data, Judge Young wrote that:

Since COVID-19 is highly contagious and the quarters are close, the Detainees' chances of infection are great. Once infected, taking hospitalization as a marker of 'serious harm,' it is apparent that even the young and otherwise healthy detainees face a 'substantial risk' (between five and ten percent) of such harm.

*Savino*, 2020 WL 1703844, at \*7. Focusing on the petition for habeas corpus and motion for class certification before him, Judge Young exercised his “inherent power to release . . . petitioner[s]] pending determination of the merits” where, as is the case here, there is a “a health emergency” and the “petitioner[s] have also demonstrated a likelihood of success on the merits.” *Id.*, at \*8 (citing *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972); *Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001)). Pursuant the court’s inherent power to release individual detainees pending determination of the merits of their case—and the “nightmarish pandemic” affecting civil immigration detainees—the District of Massachusetts is assessing individual bail applications from detainees with the aim of “reducing the population of the detention facilities so that all those who remain (including staff) may be better protected.” *Id.* at \*9.

Here, Defendants “know of” the substantial risk of serious harm from COVID-19. *See, e.g.*, First Am. Petition ¶¶ 56-61. Indeed, the record is replete with evidence showing the breadth of the pandemic, the special problems faced by correctional facilities given their populations live in congregate environments, and the efforts of government officials, courts, and ICE to combat its spread (particularly in light of inadequate testing and the lack of a cure). *See supra*, pp. 3-8. In light of the present conditions at SCDOC that are unlikely to change in an appreciable way, and the Defendants’ deliberate indifference to the dangers those condition pose to the Plaintiffs’ health,



this Court should join those described above in finding that Plaintiffs are likely to succeed in prevailing on the merits of their Fifth Amendment claim.

## **II. Plaintiffs Will Suffer Irreparable Harm in the Form of Increased Risk of Infection, Illness, and Death in the Absence of Emergency Relief.**

If the Court finds that Plaintiffs are likely to prevail on their Fifth Amendment claim, it also must find that they have made a showing of irreparable harm. Indeed, the universally-recognized dangers posed COVID-19, particularly to vulnerable populations enclosed in congregate environments, is the only consideration this Court needs to support a finding that the putative class “cannot adequately be compensated for either by a later-issued permanent injunction, after a full adjudication on the merits, or by a later-issued damages remedy.” *Rio Grande Cmty. Health Ctr., Inc. v. Rullan*, 397 F.3d 56, 76 (1st Cir. 2005).

If any Plaintiff contracts COVID-19 as a result of their close confinement, they will have contracted an illness with no known cure, Stern Decl. ¶ 3, and a disease with a fatality rate that is *more than thirty times higher* than the seasonal flu.<sup>10</sup> For those who survive, the infection can “severely damage the lung tissue, requiring an extensive period of rehabilitation and some cases a permanent loss of respiratory capacity.” Golob Decl. ¶ 9. While the risk of infection is present for all detainees, the risks are exacerbated significantly for individuals suffering from chronic conditions, including Plaintiffs Tacuri-Tacuri and Gomes. *See* Tacuri-Tacuri Aff. ¶ 9; Gomes Aff. ¶ 12. Moreover, due to the close confinement conditions at SCDOC, if even just one Plaintiff, putative class member, other detained person, or facility employee, vendor, or contractor contracts the virus, it is highly likely that the virus will quickly spread, subjecting all Plaintiffs to the serious harm this illness would cause. *See* Stern Decl. ¶ 11; Golob Decl. ¶ 12. As Dr. Stern succinctly

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<sup>10</sup> Jo Craven McGinty, Why Doesn’t Flu Tank Economy Like Covid-19?, WALL STREET JOURNAL, (Apr. 10, 2020), <https://www.wsj.com/articles/why-doesnt-flu-tankeconomy-like-covid-19-11586511000>.

noted, by the time SCDOC reports a confirmed case of COVID-19, “it likely will be too late given the unique nature of correctional facilities.” *See* Stern Decl. ¶ 16. For these reasons, the Court should find that the high risk of imminent infection, illness, and death to which all Plaintiffs currently are subjected constitutes irreparable harm that demands this Court’s prompt attention.

### **III. The Public Interest and Balance of Equities Weigh Heavily in Plaintiffs’ Favor.**

For reasons that have been recognized by multiple courts in the context of this pandemic, both the balance of equities and the public interest weigh heavily in favor of the Plaintiffs’ requested relief. As an initial matter, for all of the reasons discussed above, “Petitioners face irreparable injury—to their constitutional rights and to their health.” *Basank v. Decker*, No. 20-cv-2518, 2020 WL 1481503, at \*6 (S.D.N.Y. Mar. 26, 2020). Plaintiffs’ interest in protecting their health and safety also aligns with that of Defendants, public health officials, and the public at large who have an interest in preventing potential spread of the virus at SCDOC because an infection among detainees could affect guards, visitors, attorneys, and the families of those people. *See Castillo v. Barr*, No. 20-cv-00605, 2020 WL 1502864, at \*6 (C.D. Cal. Mar. 27, 2020).

Moreover, with respect to the government interest prong of the assessment, “there is no harm to the Government when a court prevents the Government from engaging in unlawful practices,” *id.*, and any public safety interest the government purports to have does not remotely justify the continued exposure of detainees to life-threatening illness. To the extent Defendants are inclined to take the position that release of detainees under appropriate tailored conditions of supervision to ensure effective social distancing poses a danger to the public, or that the detainees would be flight risks, those arguments are unconvincing for three principal reasons.

*First*, as the *Castillo* court recognized, “[t]he risk that Petitioners, here, will flee, given the current global pandemic, is very low, and reasonable conditions can be fashioned to ensure their future appearance at deportation proceedings.” *Id.* at \*5. *Second*, ICE has a range of highly

effective tools at its disposal to ensure that individuals report for court hearings and other appointments, including conditions of supervision. Schriro Decl. ¶¶ 44, 46. *Third*, the Plaintiffs and putative class members are *civil* detainees who either have never been convicted of any crime or have already served their criminal sentences. If they were U.S. citizens, they would already be free from any kind of state supervision, deemed rehabilitated and no further risk to the public. *See Castillo*, 2020 WL 1502864, at \*5. The notion that their immigration status transforms them into such a public danger that they categorically cannot be released—even under careful supervision and even during a life-threatening pandemic—is baseless. Given the appreciation for the seriousness of this pandemic amongst other state actors, ICE’s continued refusal to protect the constitutional rights of civil detainees is all the more unreasonable.

#### **IV. Plaintiffs’ Request for Relief.**

Plaintiffs seek an injunction immediately halting the transfer of civil immigration detainees to SCDOC until all public health protocols designed to prevent the transmission of COVID-19 have been implemented to levels that permit adequate social distancing.

In addition, in order to facilitate assessment of their class members, Plaintiffs request that the Court order Defendants to expedite the production of the priority discovery listed in the enclosed Proposed Order, which seeks information that is exclusively in the Defendants’ possession regarding all current civil immigration detainees at SCDOC.

#### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant its motion for a preliminary injunction, and enter an order halting the transfer of civil immigration detainees from other ICE detention facilities to SCDOC and directing Defendants to expedite the production of the priority discovery listed in the enclosed Proposed Order.



Respectfully Submitted,

**PETITIONERS/PLAINTIFFS**

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/s/ Nathan P. Warecki

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Date: April 20, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2020, I electronically filed the foregoing document with the United States District Court for the District of New Hampshire by using the CM/ECF system. I certify that the parties or their counsel of record registered as ECF Filers will be served by the CM/ECF system, and paper copies will be sent to those indicated as non-registered participants, if any.

/s/ Nathan P. Warecki

## EXHIBIT H

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

**ROBSON XAVIER GOMES, DARWIN  
ALIESKY CUESTA-ROJAS and JOSÉ  
NOLBERTO TACURI-TACURI**, on  
behalf of themselves and all those similarly  
situated,

Petitioners-Plaintiffs,

v.

**CHAD WOLF**, Acting Secretary of  
Department of Homeland Security,

**MARCOS CHARLES**, Immigration and  
Customs Enforcement, Enforcement and  
Removal Operations, Acting Field Office  
Director,

**CHRISTOPHER BRACKETT**,  
Superintendent of the Strafford County  
Department of Corrections,

Respondents-Defendants.

Civil Action No. 1:20-cv-00453-LM

**DECLARATION OF DR. DORA SCHRIRO**

I, Dora Schriro, declare as follows:

**Background and Qualifications**

1. I am a career public servant who has served as an executive-level administrator, policy maker, and homeland security advisor. I was appointed to lead a number of city and state agencies and a federal office.

2. I was the Commissioner of the Connecticut Department of Emergency Services and Public Protection encompassing six state agencies including the Connecticut State Police and Homeland Security and Emergency Management, from 2014 through 2018. I served concurrently as Connecticut's Homeland Security Advisor from 2016 through 2018. My Department of Homeland Security (DHS) security clearance was Top Secret. During my tenure as Director, we grappled with Ebola and through our Division of Emergency Management and Homeland Security, developed a protocol specifically for first responders – including the Connecticut State Police, all the state's local Police Departments, career and volunteer fire fighters and other first responders, all of whom we served through the Department's six divisions

including the Connecticut State Police, Police Officer Standards and Training (POST), the Connecticut Fire Academy, Emergency Management and Homeland Security, Scientific Services (the state's crime lab), and Statewide Telecommunications. Additionally, as the state's Homeland Security Advisor, I interfaced with many of the DHS offices and agencies on an ongoing basis including the Federal Emergency Management Agency with which we had an active and ongoing partnership.

3. I was Senior Advisor to DHS Secretary Janet Napolitano on U.S. Immigration and Customs Enforcement (ICE) Detention and Removal, and the founding Director of the ICE Office of Detention Policy and Planning in 2009. During my tenure, I authored the report Immigration Detention Overview and Recommendations, DHS' template for immigration detention reform. My report included a number of recommendations specific to risk assessments, the continuum of control, pre-release planning, alternatives to detention, and healthcare. Specific to healthcare, I found the assessment, treatment, and management of pandemic and contagious diseases was inconsistent across Division of Immigration Health Services (DIHS)-staffed and non-dedicated Intergovernmental Service Agreement (IGSA) facilities and recommended improvements should be made to ensure that all facilities are capable of managing large-scale outbreaks. Unfortunately, these findings have recency today.<sup>1</sup> At the invitation of DHS Secretary Jeh Johnson, I also served in 2015 and 2016 as a member of the DHS Advisory Committee on Family Residential Facilities and co-authored its report.

4. I was the Commissioner of two city jail systems: the St. Louis City Division of Corrections, which included the St. Louis Police Department Prison Intake Facility, from 2001 to 2003; and the New York City (NYC) Department of Correction from 2009 to 2014. I was also the Warden of the Medium Security Institution, a jail in St. Louis City, Missouri, from 1989 to 1993. During my tenure as Warden, I routinely released pretrial inmates, conditioned upon daily check-in and random drug testing, to comply with a court-ordered facility population cap. During my tenure as Commissioner of the NYC Department of Correction, I opened NYC's first centralized reception and diagnostic facility in which comprehensive risk assessment, custody classification, and gang identification were completed, and discharge planning was initiated. I also created pre-trial and post-plea diversion opportunities for the mentally ill and seriously mentally ill jail population and special housing for the young adult population. During an earlier appointment to the NYC Department of Correction as Assistant Commissioner for Programs Services from 1985 to 1989, I also oversaw the city's work release program for pre-trial and city-sentenced inmates.

5. I was the Director of two state correctional systems: the Missouri Department of Corrections, which encompasses state prisons, probation, and parole, from 1993 to 2001; and the Arizona Department of Corrections, which encompasses state prisons and parole, from 2003 to 2009. During my tenure as Director of the Arizona Department of Corrections, the department was the first correctional system to be selected Winner of the Innovations in American Government awards program, for a prison-based reform we named Parallel Universe—pre-release preparation in which all inmates participated from the first to the last day of their

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<sup>1</sup> Dora Schriro, Immigration Detention Overview and Recommendations, DHS ICE (Oct. 6, 2009), <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

incarceration guided by norms and values closely mirroring those of the community. As Director of the Missouri Department of Corrections, I also served on the state's Sentencing Commission.

6. I was a member of the adjunct faculties of University of Missouri-St. Louis Department of Criminology from 1990 to 1998, St. Louis University School of Law from 2000 to 2002, and Arizona State University Sandra Day O'Connor School of Law from 2005 to 2008, during which time I taught graduate-level Criminology and Correctional Law courses and led Sentencing Seminars.

7. I have served continuously on the Women's Refugee Commission since 2012, and the American Bar Association (ABA) Commission on Immigration since 2014.

8. I am knowledgeable about both the American Correction Association and ICE Performance-Based and National Detention Standards, including Medical Care, Disability Identification, Assessment and Accommodations, and Classification Systems, which is premised on objective, evidence-based risk assessments and the least restrictive housing and community-based assignments consistent with those assessments. I have also participated in the development of ABA professional standards for both correctional systems and ICE detention facilities. I am familiar with the California Board of State and Community Corrections Title 15 Minimum Standards for Local Detention Facilities. I am also familiar with bond procedures in state, federal, and immigration courts.

9. I am knowledgeable about the operation of civil detention and criminal pre-trial and sentenced correctional facilities, and the individuals in the custody of both systems.

10. I have served as a Corrections expert to the California Department of Justice, Disability Rights California, and the Hampton County, Massachusetts Sheriff's Department. I am currently engaged by the California Department of Justice, the American Civil Liberties Union, the Southern Poverty Justice Center, and the St. Louis University School of Law Legal Clinics.

11. A complete and correct Resume, which includes a list of my publications from the last ten years, is attached as Appendix A.

12. In the previous four years, I have testified as an expert at trial or by deposition in the following case: Endicott v. Hurley et al. No. 2:14-cv-107 DDN (E.D. Mo.).

### **Expert Assignment**

13. Plaintiffs' counsel has asked me, based on my expertise in the operation of civil and criminal detention systems, including those used to house ICE detainees, to address whether conditions in immigration detention place detainees at risk of contracting COVID-19 and whether alternatives to detention can be used to release medically vulnerable and low-risk individuals from immigration detention while maintaining public safety and ensuring compliance with court orders.



## Findings and Conclusions

14. According to the World Health Organization, COVID-19 has reached pandemic status.<sup>2</sup> There is no vaccine to prevent transmission, and there is no cure for COVID-19.<sup>3</sup> The likelihood of its recurrence is great.<sup>4</sup> The World Health Organization, the Centers for Disease Control and Prevention, and other public health experts recommend the use of social distancing and other preventive strategies to control the virus.<sup>5</sup> The Vera Institute of Justice and Community-Oriented Correctional Health Services further recommend that authorities in correctional and immigration detention settings “[u]se their authority to release as many people from their custody as possible.”<sup>6</sup>

15. I have reviewed the relevant guidance released by ICE and the CDC: The ICE Health Service Corps (IHSC) Interim Guidance, issued on March 6, 2020;<sup>7</sup> the updated ICE statement on changes to enforcement operations, issued on March 18, 2020;<sup>8</sup> the ICE memorandum on COVID-19, issued on March 27, 2020;<sup>9</sup> the ICE guidance on release of medically vulnerable individuals, issued on April 4, 2020;<sup>10</sup> the ICE Enforcement and Removal Operations COVID-19 Pandemic Response Requirements issued on April 10, 2020 (“ERO COVID-19 PRR”);<sup>11</sup> and the CDC guidance on managing coronavirus disease 2019 in correctional and detention facilities, issued March 23, 2020.<sup>12</sup>

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<sup>2</sup> European Regional Office, *WHO announces COVID-19 outbreak a pandemic*, WHO (Mar. 12, 2020), <http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic>.

<sup>3</sup> *Coronavirus Disease 2019 (COVID-19): Situation Summary*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html> (last updated Mar. 21, 2020).

<sup>4</sup> Ed Yong, *How the Pandemic Will End*, THE ATLANTIC (Mar. 25, 2020), <https://www.theatlantic.com/health/archive/2020/03/how-will-coronavirus-end/608719/>.

<sup>5</sup> *Coronavirus disease advice for the public*, WHO, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public> (last updated Mar. 18, 2020); *How to Protect Yourself*, CDC (2020), <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html> (last updated Mar. 18, 2020); Saralyn Cruickshank, *Now is not the time to ease social distancing measures, experts say*, THE HUB AT JOHNS HOPKINS UNIVERSITY (Mar. 24, 2020), <https://hub.jhu.edu/2020/03/24/no-time-to-ease-social-distancing/>.

<sup>6</sup> COMMUNITY-ORIENTED CORRECTIONAL HEALTH SERVICES & VERA INSTITUTE OF JUSTICE, *GUIDANCE FOR PREVENTIVE AND RESPONSIVE MEASURES TO CORONAVIRUS FOR JAILS, PRISONS, IMMIGRATION DETENTION AND YOUTH FACILITIES 2* (Mar. 18, 2020), <https://cochs.org/files/covid-19/covid-19-jails-prison-immigration.pdf>.

<sup>7</sup> ICE HEALTH SERVICE CORPS, *INTERIM REFERENCE SHEET ON 2019-NOVEL CORONAVIRUS (COVID-19)* (Mar. 6, 2020) [hereinafter *IHSC Interim Reference Sheet*].

<sup>8</sup> ICE NEWS RELEASES, *Updated ICE Statement on COVID-19* (Mar. 18, 2020), <https://www.ice.gov/news/releases/updated-ice-statement-covid-19> [hereinafter *March 18 ICE Statement*].

<sup>9</sup> See ICE, *Enforcement and Removal Operations, Memorandum on Coronavirus Disease 2019 (COVID-19) Action Plan, Revision 1*, March 27, 2020 [hereinafter *March 27 ICE Memorandum*].

<sup>10</sup> Email from Peter B. Berg, Assistant Dir. of Field Operations, ICE, to Field Office Dirs. and Deputy Field Office Dirs. (Apr. 4, 2020, 05:17:40 P.M.) (detailing ICE’s protocols for the release of medically vulnerable detainees) (hereinafter *ICE Release Guidance*).

<sup>11</sup> IMMIGRATION AND CUSTOMS ENFORCEMENT, *ENFORCEMENT AND REMOVAL OPERATIONS, COVID-19 PANDEMIC RESPONSE REQUIREMENTS (PRR) 11, Version 1.0*, April 10, 2020 [hereinafter *ERO COVID-19 PRR*].

<sup>12</sup> CENTERS FOR DISEASE CONTROL & PREVENTION, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> [hereinafter “*CDC, Interim Guidance*”].

16. It is my opinion, based on years of my experience as Warden and then Commissioner of four correctional systems and Director of the ICE Office of Detention Policy and Planning, and my continuing oversight and assessments of correctional and immigration detention facilities in the capacity as an Expert, that the plans that ICE has put forth are insufficient to protect the detained population, detention staff, and the public at-large. ICE, a federal agency, requires a robust national response to COVID-19, a plan that encompasses all detention facilities, is supported by a unified system of health care, one that meets all CDC requirements, and contemplates a continuum of control that includes alternatives to detention.

17. Jails, prisons, and immigration detention facilities are known notorious amplifiers of infectious disease.<sup>13</sup> A large number of state and local correctional systems recognizing the harm they can cause by failing to act timely and effectively, have taken affirmative actions to reduce the size of their systems to curb the spread of the coronavirus disease and are realizing positive results. ICE, which operates the largest system of incapacitation in the country, has lagged in its efforts to lower its census and to address conditions of detention for those detainees who remain in its custody.

18. These are the primary measures ICE has taken to date, and their outcomes.

19. The IHSC issued Interim Reference Sheet on 2019-Novel Coronavirus (COVID-19), Version 6.0, March 6, 2020, informing its health care staff that revised CDC guidance expanded testing to a wider group of symptomatic patients. However, it directed that providers should use their judgement to determine if a patient has signs and symptoms compatible with COVID-19 and whether the patient should be tested. They were strongly encouraged to test for other causes of respiratory illness including infection such as influenza.<sup>14</sup> The memorandum appeared to achieve its intended effect. In the same period of time that the Bureau of Prisons was testing extensively and reported 337 confirmed cases of COVID-19 and eight deaths,<sup>15</sup> the NYC Department of Correction, confirmed 287 cases,<sup>16</sup> and Cook County jails, over 350.<sup>17</sup> ICE has reported on April 18<sup>th</sup> that 124 detainees have tested positive,<sup>18</sup> climbing from 89 cases reported on April 15<sup>th</sup>.<sup>19</sup> ICE has refused to provide confirmed cases of vendors and contractors.<sup>20</sup>

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<sup>13</sup> Kelsey Kauffman, *Why Jails Are Key to "Flattening the Curve" of Coronavirus*, THE APPEAL (Mar. 13, 2020), <https://theappeal.org/jails-coronavirus-covid-19-pandemic-flattening-curve/>.

<sup>14</sup> IHSC Interim Reference Sheet.

<sup>15</sup> Bureau of Prisons, COVID-19 Cases, <https://www.bop.gov/coronavirus/> (last updated Apr. 17, 2020).

<sup>16</sup> THE NEW YORK TIMES, Coronavirus in the U.S.: Latest Map and Case Count, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last updated Apr. 17, 2020, 8:24 A.M. E.T.).

<sup>17</sup> *Report: Cluster of COVID-19 Cases at Cook County Jail the Largest in Nation*, NBC CHICAGO (Apr. 7, 2020), <https://www.nbcchicago.com/news/local/report-cluster-of-covid-19-cases-at-cook-county-jail-the-largest-in-the-nation/2252000/> (accessed Apr. 17, 2020).

<sup>18</sup> ICE Guidance on COVID-19, *Confirmed Cases*, ICE, <https://www.ice.gov/coronavirus> (last updated Apr. 17, 2020, 12:04 P.M.).

<sup>19</sup> Nina Shapiro, *ICE releases some detainees from Tacoma center, but advocates say coronavirus outbreak is inevitable*, SEATTLE TIMES (Apr. 16, 2020), <https://www.seattletimes.com/seattle-news/immigrant-advocates-say-outbreak-at-northwest-detention-is-a-matter-of-time/> (last updated Apr. 16, 2020, 1:07 P.M.).

20. The ICE newsroom issued Updated Statement on COVID-19 on March 18, 2018. ICE Enforcement and Removal Operations (ERO) will focus enforcement on public safety risks and individuals subject to mandatory detention based on criminal grounds. ICE notified Congress that it will halt arrests except for those deemed “mission critical” to “maintain public safety and national security.”<sup>21,22</sup> In essence, ICE has acknowledged its prosecutorial discretion and committed to exercise it. For those individuals who do not fall into those categories, ERO will exercise discretion to delay enforcement actions until after the crisis or utilize alternative to detention, as appropriate. Public safety risks casts a wide net and individuals subject to mandatory detention based on criminal grounds includes persons charged but not convicted, and persons who could have been charged.<sup>23</sup>

21. ERO issued a subsequent memorandum, COVID-19 Detained Docket Review, to Field Office Directors and Deputy Directors, on April 4, 2020, providing additional guidance on the release of medically vulnerable individuals pursuant to the March 18 announcement. The field was informed the categories of cases had been expanded and that the presence of a medical risk factor should be considered a “significant discretionary factor weighing in favor of release.” However, the guidance provides that risk factors may not always be determinative and detainees subject to mandatory detention shall not be released. On April 17, ICE’s posture hardened. Acting Director Albence, acknowledging that only 400 detainees have been tested – of whom over 100 have tested positive for the coronavirus disease – asserted that continued detention during the pandemic is a necessary deterrent to avert a “rush at the borders.”<sup>24</sup> Detention for the express purpose of deterrence for any reason is impermissible; to knowingly fail to protect at-risk individuals from contracting a deadly disease is unconscionable.

22. Based on my experience at DHS, ICE exercises discretion to release or decline to detain medically vulnerable individuals, even when those individuals are, per statute, mandatorily detained. Regardless of statute, ICE has the capacity to, and in fact does, release medically vulnerable individuals when necessary for public health. The recent memoranda released on March 18 and April 4 to field office directors and deputy field office directors regarding mandatory detention requirements are unnecessarily restrictive.<sup>25</sup>

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<sup>20</sup> Monique O. Madan, *ICE Refuses to Say if its Contractors Have COVID-19. A Federal Judge Just Ordered it to.*, MIAMI HERALD (Apr. 15, 2020), <https://www.miamiherald.com/news/local/immigration/article242022731.html>.

<sup>21</sup> Maria Sacchetti and Arelis R. Hernández, *ICE to Stop Most Immigration Enforcement Inside U.S., Will Focus on Criminals During Coronavirus Outbreak*, WASHINGTON POST (Mar. 18, 2020), [https://www.washingtonpost.com/national/ice-halting-most-immigration-enforcement/2020/03/18/d0516228-696c-11ea-abef-020f086a3fab\\_story.html](https://www.washingtonpost.com/national/ice-halting-most-immigration-enforcement/2020/03/18/d0516228-696c-11ea-abef-020f086a3fab_story.html)

<sup>22</sup> Ian Kullgren, *ICE to Scale Back Arrests During Coronavirus Pandemic*, POLITICO (Mar. 18, 2020), <https://www.politico.com/news/2020/03/18/ice-to-scale-back-arrests-during-coronavirus-pandemic-136800>.

<sup>23</sup> March 18 ICE Statement.

<sup>24</sup> U.S. HOUSE OF REPRESENTATIVES, HOUSE COMMITTEE ON OVERSIGHT AND REFORM, *DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus*, (Apr. 17, 2020), <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees> [hereinafter *DHS Officials Refuse to Release Asylum Seekers*].

<sup>25</sup> ICE Release Guidance.



23. ERO issued Memorandum on Coronavirus Disease 2019 (COVID-19), Action Plan, Revision 1, on March 27, 2020. The revision was applicable only to ICE's 42 IHSC-staffed and non-IHSC staffed, ICE-dedicated facilities.<sup>26</sup> With regards to the remaining 192 locations, all non-dedicated facilities, ICE deferred to local, state, tribal, territorial and federal public health authorities but recommended that actions contained in this memo be considered best practices.<sup>27</sup> The impact of differentiating expectations is significant. The conditions of detention for a detainee in a national system of incapacitation varies not by his or her assessed needs or risk but by location, treating similarly situated detainees differently. Additionally, this Plan references the CDC Interim Guidance<sup>28</sup> but does not require its adoption by either the dedicated or non-dedicated facilities.

24. ERO issued COVID-19 Pandemic Response Requirements, Version 1.0, on April 10, 2020. The Pandemic Response Requirements (PPR) reaffirmed ICE's different performance expectations for dedicated and non-dedicated facilities but it also directed all detention facilities to comply with the CDC's guidance some of which is contrary to or omitted in the instructions issued by ICE. These inconsistencies are significant and impede compliance. ICE headquarters failed to produce one complete and accurate set of instructions. It is unrealistic to expect that the field has the time or expertise to recognize and reconcile the many substantive differences.

- a. *Intake screening.* The CDC requires a screening at intake for signs and symptoms, whereas ICE directs a verbal screening, basically, several questions concerning recent travel and contact. ICE makes no mention of taking the detainee's temperature although it directed that the facilities take that of their staff at the beginning of each shift. The CDC also believes screening should be ongoing whereas ICE expects it would occur at intake only. With an average length of stay of 56 days this year to date, ICE overlooked the majority of the population.
- b. *Monitoring and management, suspected exposures.* ICE directs monitoring occur in a single cell "depending on the space available" and otherwise in a unit with others,<sup>29</sup> which is most frequently the case. It is unclear whether ICE issues masks.
- c. *Social distancing.* The facilities are densely populated. The housing units usually have 50 to 100 or more beds. The population eats, sleeps, and recreates in large groups. Detainees are shackled to one another during transports and sit or stand shoulder to shoulder on benches in Intake and the medical unit, and the pill line. ERO's PPR acknowledges that "strict social distancing may not be possible in

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<sup>26</sup> A dedicated facility is an immigration detention center that houses only ICE detainees. A non-dedicated facility hosts more than one confined population. ICE utilizes 234 facilities to detain persons in its custody of which 42 are dedicated and 192 are non-dedicated. IHSC staffs 21 of the 42 dedicated detention facilities.

<sup>27</sup> March 27 ICE Memorandum.

<sup>28</sup> CDC, *Interim Guidance*.

<sup>29</sup> ERO COVID-19 PPR at 14.

congregate settings such as detention facilities,” and requires facilities to implement suggested measures to enhance social distancing only “to the extent practicable.”<sup>30</sup>

- d. *Intra- and inter-facility movement.* The CDC addressed limiting transmission between facilities as well as within by restricting transfers unless absolutely necessary. The DOJ Bureau of Prisons limited its inter-facility transfers on March 13;<sup>31</sup> ICE adopted its own restriction on April 14 but with latitude for unspecified security considerations.
- e. *Cleaning and sanitation.* CDC guidelines provide clear details about the types of cleaning agents and applications that should be adopted; ICE has none. That is unfortunate. Detainees are responsible for cleaning their own living area and are “employed” by the facility as porters to clean common areas in their housing units and throughout the facility. Most often, they perform these duties without any training and only limited supervision and cleaning supplies and no protective gloves, glasses, and gowns or coveralls. The facilities also rely on detainees to perform most of the food preparation and cooking as well as the laundry and sanitation, but there is no universal health screening protocol to ensure that everyone preparing and serving the meals and laundering the clothes and bedding as well as cleaning the facility are not sick or symptomatic.
- f. *Focus and Press.* ICE is an enforcement agency that promulgated requirements to address a pandemic disease that threatens its workforce, all the persons in its custody, and the communities to which they return at the end of their shifts or upon their release from custody. Some requirements are conditioned “as practicable,” for example, “All detained persons shall be offered the seasonal influenza vaccine throughout the influenza season, where possible.”<sup>32</sup> Other recommendations are couched as “make an effort to,” notably, to reduce number of persons systemwide who are detained. There is no clear path to compliance; for example, the circumstances under which detainees can expect to be tested for COVID-19 remains unclear. The guidance continues to rely on the quarantine of persons who may have been exposed or evidence symptoms. Also, troubling there is no assurance of quarantine in a single cell; most are quarantined as a group, increasing the likelihood of their exposure. Flattening the curve is an undertaking which ERO, a network of over 200 detention facilities, an average daily population of 33,000 and year-to-date admissions approaching 140,000, must succeed. It is my opinion, the equivocation expressed throughout the PRR and preceding instruction, about most matters but mandatory detention, conveys a lack

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<sup>30</sup> *Id.* at 13

<sup>31</sup> FEDERAL BUREAU OF PRISONS COVID-19 ACTION PLAN, *Agency-Wide Modified Operations*, BOP (Mar. 13, 2020), [https://www.bop.gov/resources/news/20200313\\_covid-19.jsp](https://www.bop.gov/resources/news/20200313_covid-19.jsp).

<sup>32</sup> ERO COVID-19 PRR at 7.

of urgency when nothing is needed more than to focus and press quickly and comprehensively towards full implementation.

### **Conditions in Immigration Detention**

25. As a matter of law, immigration detention is unlike criminal incarceration. Yet immigration detainees and pre-trial inmates and sentenced prisoners tend to be seen by the public as comparable which is to say, dangerous, and both confined populations are typically managed in similar ways, as if they are dangerous.<sup>33</sup> All three categories of confined people are ordinarily assigned to secure facilities with hardened perimeters in remote locations at considerable distances from counsel and their families as well as a hospital with an emergency room or intensive care beds. With just a few exceptions, the facilities that ICE uses to detain immigrants were originally built, and currently operate, as jails and prisons to confine pre-trial and sentenced prisoners. Their design, construction, staffing plans, and population management strategies are based largely upon the principles of command and control. Additionally, ICE adopted detention standards based on corrections law, which are largely not applicable to immigration detainees and which were promulgated by a correctional organization, the American Correctional Association, to guide the operation of correctional facilities.<sup>34</sup>

26. Based on my years of experience overseeing and managing secure facilities, conditions in immigration detention facilities place people in close contact with one another and allow disease to spread freely. The facilities to which ICE detainees are assigned vary in age and architecture. Most are premised upon restricted movement and management by groups. Quite a few do not have windows that open and ventilation is poor. The housing units consist of single and double cells, cells with as many as four or five bunkbeds, or dormitories of varying size, usually 50 to 100 beds or more in size. Even to the extent that facilities are able to reduce population sizes to 75 percent capacity, as ICE recommends, individuals must still come into frequent contact and are still likely to live and sleep in multi-person dorms or cells.

27. Detainees spend the majority of time in their housing area. A recreation deck is often adjacent to the housing unit in facilities built in the past 25 years, while older facilities utilize a yard. Detainees access the recreation yard, religious services, the law library, and visitation under officer escort. In the course of a day, they can be staged in multi-person holding tanks and waiting rooms in Intake, the Medical Unit, and other areas, escorted as whole housing units, and transported en masse in buses shackled to one another, and they routinely eat their meals together. None of these circumstances permit detained people to maintain social distancing of at least six feet, as recommended by public health experts. Staggering meal and recreation times, as suggested by ICE and CDC guidance,<sup>35</sup> would be useful in limiting the number of people in each area but doing so would require greater staffing and therefore is not generally feasible. Doing so also would not ensure that people are able to keep six feet apart in cafeterias or recreation rooms in which tables and chairs are bolted down close together and people may

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<sup>33</sup> *Zadvydas v. Davis*, 533 U.S. 678, 609 (2001).

<sup>34</sup> THE AMERICAN CORRECTIONAL ASSOCIATION, PERFORMANCE-BASED STANDARDS FOR ADULT, LOCAL DETENTION FACILITIES, 4<sup>TH</sup> ED., JUNE 2004, AND ACA 2016 STANDARDS SUPPLEMENT (2016).

<sup>35</sup> *Id.* at 13; CDC, *Interim Guidance*, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

have to line up to get trays or equipment or use the restroom. Extended hours may also impact turnout with fewer detainees rising for breakfast before sunrise or outdoor recreation after dark.

28. Segregation cells intended for disciplinary and administrative purposes are frequently used to detain special populations whose unique medical, mental health, and protective custody requirements cannot be accommodated in general population housing including medical isolation.

29. It is also important to note that the demeanor of the immigration detention population is distinct from the criminally incarcerated population. Despite the characterization by ICE that the majority are criminal aliens, that term has changed over the past several years to include persons charged but not pled or proven guilty and persons who may have been charged but were not. The majority of the population is eligible for housing in a dormitory, signifying a low propensity for violence.

30. It is my experience that the majority of detainees are motivated by the desire for repatriation or relief, and exercise exceptional restraint under the most difficult of circumstances in custody as well as the community on their recognizance, bond, or community supervision. While working at ICE and having reviewed hundreds of detainee institutional files since then, only a few detainees file grievances, and fewer are disciplined for an infraction, particularly any serious infraction.

31. It is also my experience that many detainees are fearful for their health and well-being in the custody of ICE. Under ordinary circumstances, they have difficulty accessing healthcare. They often wait days for appointments for emergent and urgent matters. The formulary is limited, and all off-site specialty services must be pre-approved by IHSC. Once a prescription is ordered, it can take days before it is filled and is often discontinued without notice. Health care consistent with community expectations such as prescription glasses, dental cleanings, and filling cavities is frequently denied.

32. Sanitation practices at immigration detention facilities generally do little to curb the spread of illness. Issuance of cleaned clothing, sheets, towels, and blankets are regulated, and the quantity of each item in a detainee's possession at any time limited in number. As a rule, the beds, mattresses, and personal property containers are not sanitized between detainees' assignments. Detainees are responsible for cleaning their own living areas. They are also employed by the facility as porters to clean common areas including their dayrooms and restrooms, facility corridors, the medical unit, recreation areas, kitchen, and mess hall. In either instance, they usually perform these duties without any training, and are provided only limited supervision, cleaning materials and supplies, and no protective gloves, glasses, and gowns or coveralls as recommended by the CDC.<sup>36</sup>

33. Objects with which many detainees come in contact frequently—notably, the phones, tables and chairs, paperback books, decks of cards and board games, the boxes in which they deposit kites to staff members, and other high-touch surfaces in the housing units—are not

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<sup>36</sup> *Id.*



sanitized or replaced routinely. Similarly, the equipment issued in recreation areas, the kiosks and other furnishing and equipment in the law library, and the various staging and holding areas in Intake and Medical Unit, as well as the courtrooms and attorney and regular visit areas, receive limited attention.

34. Under ordinary circumstances, little to no instruction regarding sanitation is provided to the population at large or to detainees with work assignments. Instruction when given on any subject is most often in English and sometimes Spanish, and far less frequently in any other of detainees' native languages.

35. In general, tissues are not provided, handkerchiefs are unauthorized articles of clothing, and access to toilet paper and paper towel is limited, leaving detainees with nowhere to sneeze, cough, or wipe their noses other than into their own clothes, sheets, blankets, or towels, none of which is replaced daily. Additionally, detainees' access to hand soap, toothpaste and toothbrushes, and shampoo is limited, particularly for the indigent who are dependent upon the facility for their replenishment. A minority of detainees have an institutional job and most of them earn a dollar a day. Most of the items sold including hygiene products, are marked up. A bar of soap can cost as much as two dollars.

36. Also of concern, ICE facilities often rely on detainees to perform most of the cooking and cleaning in the facility, but neither ICE nor the ICE Health Service Corps (IHSC) has a universal health screening protocol to ensure that all the persons preparing and serving meals and cleaning the area are not sick or symptomatic. Some facilities also utilize detainees to distribute meal trays that are delivered to the housing units. In these locations, disposable plastic gloves are sometimes available but not hairnets or masks. It does not appear that practices employed in the kitchen and mess hall carry over to meal service in the dayrooms.

37. It is also my experience that the population is especially alarmed about the spread of the coronavirus to and through the facilities to which they are confined. Hotlines are fielding calls from detainees who have underlying health conditions including diabetes, cancer, kidney issues, asthma, or are otherwise medically vulnerable especially the elderly, mentally ill and transgender persons. One recent caller, who has asthma and reported a fever and serious cough, told the ABA hotline that the facility tested him for tuberculosis but not for COVID-19 and released him back to his pod. Many have expressed concern about their inability to stay physically distant from one another, the lack of precautions being taken by their facilities, the frequency with which detainees are being transferred in from other facilities, the lack of personal protection equipment (PPE) for them and facility staff, and that as the census drops the facility is closing housing units not, spreading out the remaining detainees to every other bed or more. The hotline has also received reports that detainees are being told to clean their housing units, but they are not being given cleaning solutions or are permitted to clean more frequently than once a day and that they have not been issued hand soap or hand sanitizer.

38. There are other disparities that are imbedded in ICE's site and facility selection process including whether there is a hospital nearby the detention facility and if it has any



intensive care beds. Presently, about a third of all detainees are housed in a facility outside a 25-mile radius of hospital with an ICU bed.<sup>37</sup>

39. It is my opinion that the detainees' concerns are real, and their reports are credible. Any one of these circumstances, make it more likely that respiratory diseases such as COVID-19 will spread quickly once they are introduced into any of ICE's detention facilities.

40. It is also my opinion that ERO's Pandemic Response Requirements, its plan to protect the population and the public, will not suffice. Basically, ICE proposes "efforts should be made to reduce the detained population to approximately 75 percent of capacity" and for all those who remain detained, "wherever possible, all staff and detainees should maintain a distance of six feet from one another" and otherwise adhere to CDC guidelines, where practicable.<sup>38</sup>

41. It is now clear that ICE is unwilling to identify infected individuals and refused to release to release asylum seekers and other non-violent detainees despite the spread of coronavirus through its detention facilities.<sup>39</sup> In stark contrast, best correctional and correctional health care practice requires, at a minimum, the preemptive release of individuals who are at-risk of serious illness or death if they become infected with COVID-19. As Dr. Scott Allen and Dr. Josiah Rich, medical experts to the Department of Homeland Security, recommended in their recent letter to Congress on the pandemic, "[m]inimally, DHS should consider releasing all detainees in high risk medical groups such as older people and those with chronic diseases." Dr. Allen and Dr. Rich concluded that "acting immediately will save lives not of only those detained, but also detention staff and their families, and the community-at-large."<sup>40</sup>

### **Alternatives to Detention**

42. Initially, ICE proposed only one population, persons medically at-risk primarily due to age or other infirmity and not subject to mandatory detention, for consideration for release. Now, ICE will no longer consider any detainees for release whether to protect those who are medically at-risk or to lower the census to prevent the spread of the coronavirus through the facilities and into the community. This posture can have a devastating effect nationwide. To protect medically at-risk persons who are detained today, and to reduce the likelihood of infecting others in the weeks and months to come, ICE should reduce the census as quickly as possible and then, sustain it. The most effective way in which to accomplish this is by enlarging not shrinking the pool, which in this instance should include those who are medically at-risk as well and other, low-risk individuals who would be successful on community supervision .

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<sup>37</sup> Kristina Cooke, Mica Rosenberg, Ryan McNeil, *As pandemic rages, US immigrants detained in areas with few hospitals*, REUTERS (Apr. 3, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-detention-insi/as-pandemic-rages-u-s-immigrants-detained-in-areas-with-few-hospitals-idUSKBN21L1E4>.

<sup>38</sup> ERO COVID-19 PRR.

<sup>39</sup> *DHS Officials Refuse to Release Asylum Seekers*.

<sup>40</sup> See Scott A. Allen, MD, FACP & Josiah Rich, MD, MPH, *Letter to House and Senate Committees on Homeland Security* (Mar. 19, 2020), <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf> [hereinafter "Allen & Rich"].

43. Based on my experience operating state and local correctional systems that included probation and parole departments and working in various capacities within DHS including to make an assessment of ICE's alternative to detention program, it is my opinion that alternatives to detention can be used effectively and safely to ensure that immigrant detainees are not subjected to unnecessary risk from COVID-19 while ensuring public safety and appearance for court hearings and other appointments.

44. The research literature and government oversight agencies concur. Alternatives to detention, including supervised release, informed by individualized risk assessment, are a highly effective method of managing immigration cases without either unnecessary pretrial detention or risk to public safety or risk of failure to appear for court hearings. Compliance rates with supervised release are extremely high; for example, a recent Government Accountability Office report found that 99 percent of immigrant participants in ICE's alternative to detention program appeared at scheduled court hearings.<sup>41</sup> ICE also operated a very successful Family Case Management Program until recently.<sup>42</sup> According to the DHS Inspector General report, overall compliance was 99 percent for ICE check-ins and appointments, and 100 percent for attendance in court hearings. Two percent of participants absconded during the process.<sup>43</sup>

45. Doctors serving as subject matter experts for DHS agree that ICE should release at least medically vulnerable people in light of the current COVID-19 pandemic.<sup>44</sup>

46. However, small and incremental changes in admissions or releases do not fully protect currently detained people from contracting or spreading COVID-19—and especially those who are at-risk of serious illness or death. Instead, ICE can ensure their safety by making full use of its alternatives to detention program. Alternatives to detention include release on personal recognizance, and release on conditions such as phone call check-ins or, when absolutely necessary, electronic surveillance. These alternatives also include the Intensive Supervision Appearance Program (ISAP), in which staff maintains contact with participants with reminder calls and letters and coaching towards meeting all the upcoming reporting requirements and follows up within 48 hours after each court appearance. Under ISAP, when a participant, or the government, files an appeal in the person's removal case and while that appeal is pending, monitoring is modified as necessary to include the addition or removal of GPS or Voice-ID technology, and to increase or decrease in-office and home visit frequency. And if reinstated, alternatives to detention could include a program modeled on ICE's Family Case Management Program, offering orientation and education for participants about their legal rights and responsibilities; individualized service plans; assistance with transportation logistics; tracking and monitoring of immigration obligations (to include ICE check-ins, attendance at immigration

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<sup>41</sup> Report to Congressional Committees, *Alternative to Detention, Improved Data and Collection and Analysis Needed to Better Assess Program Effectiveness*, GOVERNMENT ACCOUNTABILITY OFFICE (2014), <https://www.gao.gov/assets/670/666911.pdf>.

<sup>42</sup> Frank Bajak, *ICE shuts helpful family management program amid budget cuts*, ASSOCIATED PRESS (June 9, 2017), <https://www.csmonitor.com/USA/Foreign-Policy/2017/0609/ICE-shuts-helpful-family-management-program-amid-budget-cuts>.

<sup>43</sup> DHS OFFICE OF INSPECTOR GENERAL, U.S. Immigration and Customs Enforcement's Award of the Family Case Management Program, Contract (Redacted) (Nov. 30, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-22-Nov17.pdf>.

<sup>44</sup> Allen & Rich.

court hearings); and safe repatriation and reintegration planning for participants who are returning to their home countries.<sup>45</sup>

47. GPS monitoring when recommended, requires minimal physical contact and does not pose risk to the officer or the detainee taking routine precautions. The contact necessary to place an ankle monitor on an individual is minimal, and necessary precautions to avoid spread of COVID-19 are easily implemented and commonly done. Moreover, after initial installation there is little need for future physical contact. On-going communication by phone is routine. In my opinion, supervision by means of GPS affords appreciably more social distancing for persons in ICE's custody and ICE personnel than does any interaction between a detainee and detention officer in the confines of detention setting.

48. Alternatives to detention are effective because they are tailored to an individual depending on their levels of need and risk in the community. Such tailored alternatives maximize medically vulnerable and low-risk people's ability to remain healthy in the community while protecting public safety and the integrity of court proceedings and other legal requirements. When there is a threat to our health and well-being, especially one as serious as COVID-19, we count on the government to protect us from undue harm. The government assumes the same responsibility for those in its custody who lack the autonomy to care for themselves. Today, "flattening the curve" so that the infection rate for COVID-19 stays below the healthcare system capacity is key both to controlling the pandemic in the United States and to preventing undue harm to those of us in custody. As individuals, our responsibility to ourselves and others is to limit our social interactions and maintain rigorous personal hygiene practices. For government and institutions, "flattening the curve" requires focusing on densely populated places in which its inhabitants cannot isolate themselves. That is why increasingly more governors have closed all but the essential governmental agencies and businesses and are focusing now on jails and prisons, widely recognized by the healthcare community to be "amplifiers of infectious diseases" such as COVID-19.<sup>46</sup> They do so because they recognize the conditions that can keep diseases from spreading—such as social distancing and rigorous sanitation—are nearly impossible to achieve in correctional and immigration detention facilities.

49. Numerous state and local systems have acted to reduce detention in light of COVID-19, both by decreasing pretrial detention and by releasing detained and sentenced individuals. These measures demonstrate that people can be protected from COVID-19 consistent with public safety needs.

50. At the local level, leaders have been swift to act:

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<sup>45</sup> ICE, Fact Sheet: Stakeholder Referrals to the ICE/ERO Family Case Management Program, 2016, <https://www.aila.org/infonet/ice-fact-sheet-family-case-management-program>.

<sup>46</sup> Prison Policy Initiative, *Responses to the COVID-19* (Mar. 26, 2020), <https://www.prisonpolicy.org/virus/virusresponse.html>.



- District attorneys in San Francisco, California<sup>47</sup> and Boulder, Colorado<sup>48</sup> have taken steps to release people held pretrial, with limited time left on their sentence, and charged with non-violent offenses.
- Ohio courts in Cuyahoga County<sup>49</sup> and Hamilton County<sup>50</sup> have begun to issue court orders and conduct special hearings to increase the number of people released from local jails. On a single day, judges released 38 people from the Cuyahoga County Jail, and they hope to release at least 200 more people charged with low-level, non-violent crimes.
- The Los Angeles County Sheriff's Department<sup>51</sup> has reduced their jail population by 10% in the past month to mitigate the risk of virus transmission in crowded jails. To reduce the jail population by 1,700 people, the Sheriff reports releasing people with less than 30 days left on their sentences and is considering releasing pregnant people and older adults at high risk.
- In Travis County, Texas,<sup>52</sup> judges have begun to release more people from local jails on personal bonds (about 50% more often than usual), focusing on preventing people with health issues who are charged with non-violent offenses from going into the jail system.
- Court orders in Spokane, Washington<sup>53</sup> and in three counties in Alabama<sup>54</sup> have authorized the release of people being held pretrial and some people serving sentences for "low-level" misdemeanor offenses.
- In Hillsborough County, Florida,<sup>55</sup> over 160 people were released following authorization via administrative order for people accused of ordinance violations, misdemeanors, traffic offenses, and third-degree felonies.

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<sup>47</sup> Darwin Bond Graham, *San Francisco Officials Push to Reduce Jail Population to Prevent Coronavirus Outbreak*, THE APPEAL (Mar. 11, 2020) <https://theappeal.org/coronavirus-san-francisco-reduce-jail-population/>.

<sup>48</sup> Elise Schmelzer, *Denver, Boulder Law Enforcement Arresting Fewer People to Avoid Introducing Coronavirus to Jails*, THE DENVER POST (Mar. 16, 2020), <https://www.denverpost.com/2020/03/16/colorado-coronavirus-jails-arrests/>.

<sup>49</sup> Kevin Freeman, *Cuyahoga County Jail Releasing Some Inmates Early to Help Minimize Potential Coronavirus Outbreak*, FOX 8 (Mar. 14, 2020), <https://fox8.com/news/coronavirus/cuyahoga-county-jail-releasing-some-inmates-early-to-help-minimize-potential-coronavirus-outbreak/>.

<sup>50</sup> Kevin Grasha, *Order to Authorize Hamilton County Sheriff to Release Low-Risk, Nonviolent Jail Inmates*, CINCINNATI ENQUIRER (Mar. 16, 2020), <https://www.cincinnati.com/story/news/crime/crime-and-courts/2020/03/16/coronavirus-hamilton-county-sheriff-release-low-risk-inmates/5062700002/>.

<sup>51</sup> Justin Carissimo, *1,700 Inmates Released from Los Angeles County in Response to Coronavirus Outbreak*, CBS NEWS (Mar. 24, 2020), <https://www.cbsnews.com/news/inmates-released-los-angeles-county-coronavirus-response-2020-03-24/>.

<sup>52</sup> Ryan Autullo, *Travis County Judges Releasing Inmates to Limit Coronavirus Spread*, THE STATESMAN (Mar. 16, 2020), <https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread?fbclid=IwAR3VKawwn3bwSLSO9jXBxXNRuaWd1DRLsCBFc-ZkPN1INWW8xznzLPvZYNO4>.

<sup>53</sup> Chad Sokol, *Dozens Released from Spokane County Custody Following Municipal Court Emergency Order*, THE SPOKESMAN (Mar. 17, 2020), <http://www.courts.wa.gov/content/publicupload/eclips/2020%2003%2018%20Dozens%20released%20from%20Spokane%20County%20custody%20following%20Municipal%20Court%20emergency%20order.pdf>.

<sup>54</sup> Marty Roney, *Coronavirus: County Jail Inmates Ordered Released in Autauga, Elmore, Chilton Counties*, MONTGOMERY ADVERTISER (Mar. 18, 2020), <https://www.montgomeryadvertiser.com/story/news/crime/2020/03/18/county-jail-inmates-ordered-released-autauga-elmore-chilton-counties/2871087001/>.

- In Arizona, the Coconino County<sup>56</sup> court system and jail have released around 50 people who were held in the county jail on non-violent charges.
- In Salt Lake County, Utah,<sup>57</sup> the District Attorney reported that the county jail plans to release at least 90 people this week and to conduct another set of releases of up to 100 more people the following week.
- The New Jersey Chief Justice signed an order calling for the temporary release of 1,000 people from jails (almost a tenth of the entire state's county jail population) across the state of New Jersey<sup>58</sup> who are serving county jail sentences for probation violations, municipal court convictions, "low-level indictable crimes," and "disorderly persons offenses."
- The New York City Department of Correction has released approximately 1,600 people from its jails.<sup>59</sup>

51. At the state level, state correctional systems are also taking steps to reduce the prison population in the face of the pandemic:

- The North Dakota parole board<sup>60</sup> granted early release dates to 56 people held in state prison with expected release dates later in March and early April.
- The director of the Iowa Department of Corrections<sup>61</sup> reported the planned, expedited release of about 700 incarcerated people who have been determined eligible for release by the Iowa Board of Parole.
- In Illinois,<sup>62</sup> the governor signed an executive order that eases the restrictions on early prison releases for "good behavior" by waiving the required 14-day notification to the State Attorney's office. The executive order explicitly states that this is an effort to reduce the prison population, which is particularly vulnerable to the COVID-19 outbreak.

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<sup>55</sup> WFTS Digital Staff, 164 "Low Level, Nonviolent" Offenders Being Released From Hillsborough County Jails, ABC NEWS (Mar. 19, 2020), <https://www.abcactionnews.com/news/region-hillsborough/164-low-level-nonviolent-offenders-being-released-from-hillsborough-county-jails>.

<sup>56</sup> Scott Buffon, *Coconino County Jail Releases Nonviolent Inmates in Light of Coronavirus Concerns*, ARIZONA DAILY SUN (Mar. 20, 2020), [https://azdailysun.com/news/local/coconino-county-jail-releases-nonviolent-inmates-in-light-of-coronavirus/article\\_a6046904-18ff-532a-9dba-54a58862c50b.html](https://azdailysun.com/news/local/coconino-county-jail-releases-nonviolent-inmates-in-light-of-coronavirus/article_a6046904-18ff-532a-9dba-54a58862c50b.html).

<sup>57</sup> Jessica Miller, *Hundreds of Utah Inmates Will Soon Be Released In Response To Coronavirus*, SALT LAKE CITY TRIBUNE (Mar. 20, 2020), [https://www.sltrib.com/news/2020/03/21/hundreds-utah-inmates/?fbclid=IwAR3r8BcHeEkoAOcyP3pmBu9XWkeJ4MMsDC\\_LUH4YZn2QGd18hALk4vM9X1c](https://www.sltrib.com/news/2020/03/21/hundreds-utah-inmates/?fbclid=IwAR3r8BcHeEkoAOcyP3pmBu9XWkeJ4MMsDC_LUH4YZn2QGd18hALk4vM9X1c).

<sup>58</sup> Kathleen Hopkins, *Coronavirus in NJ: Up to 1,000 Inmates to Be Released From Jails*, ASBURY PARK PRESS (Mar. 23, 2020), <https://www.app.com/story/news/2020/03/23/nj-coronavirus-up-1-000-inmates-released-jails/2897439001/>.

<sup>59</sup> *New York City Jail Population Reduction in the Time of COVID-19*, CITY OF NEW YORK (Apr. 2020), <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/04/MOCJ-COVID-19-Jail-Reduction.pdf>.

<sup>60</sup> Arielle Zions, *DOC, Gov. Noem Not Planning Special Coronavirus Releases From Prisons*, RAPID CITY JOURNAL (Mar. 21, 2020), [https://rapidcityjournal.com/news/local/crime-and-courts/doc-noem-not-planning-special-coronavirus-releases-from-prisons/article\\_d999f510-7c7c-5d19-ab3a-77176002ef99.html](https://rapidcityjournal.com/news/local/crime-and-courts/doc-noem-not-planning-special-coronavirus-releases-from-prisons/article_d999f510-7c7c-5d19-ab3a-77176002ef99.html).

<sup>61</sup> Linh Ta, *Iowa's Prisons Will Accelerate Release of Approved Inmates to Mitigate COVID-19*, TIMES-REPUBLICAN (Mar. 23, 2020), <https://www.timesrepublican.com/news/todays-news/2020/03/iowas-prisons-will-accelerate-release-of-approved-inmates-to-mitigate-covid-19/>.

<sup>62</sup> Rylee Tan, *Illinois Reaches 1,285 COVID-19 Cases, Gov. Pritzker Eases Restrictions on Prison Release*, LOYOLA-PHOENIX (Mar. 23, 2020), <http://loyolaphoenix.com/2020/03/illinois-reaches-1285-covid-19-cases-gov-pritzker-eases-restrictions-on-prison-release/>.

- Illinois' governor signed a second executive order suspended all admissions to the Illinois Department of Corrections ("IDOC") from Illinois county jails, with exceptions solely authorized by the IDOC Director.<sup>63</sup>
- The CA Department of Corrections & Rehabilitation released to parole 3,500 nonviolent offenders with 60 days or less left on their sentences.<sup>64</sup>
- Kentucky's governor commuted 186 sentences and released 743 inmates within 6 months of completing their sentences.<sup>65</sup>
- New Jersey's governor signed an executive order to temporarily release nonviolent offenders.<sup>66</sup>

52. In addition to releasing people from jail and prison, jurisdictions are reducing jail admissions, contributing to the reduction in average daily populations, alleviating overcrowding and reducing density.

- In Bexar County, Texas,<sup>67</sup> the Sheriff released a COVID-19 mitigation plan that includes encouraging the use of cite and release and "filing non-violent offenses at large," rather than locking more people up during this pandemic.
- The Baltimore, Maryland State's Attorney<sup>68</sup> will dismiss pending criminal charges against anyone arrested for drug offenses, trespassing, and minor traffic offenses, among other nonviolent offenses.
- District attorneys in Brooklyn, New York<sup>69</sup> and Philadelphia, Pennsylvania,<sup>70</sup> have taken steps to reduce jail admissions by releasing people charged with non-violent offenses and not actively prosecuting low-level, non-violent offenses.

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<sup>63</sup> EXECUTIVE ORDER 2020-13 (Mar. 26, 2020), <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-13.aspx>.

<sup>64</sup> Justin Wise, *California to Release up to 3,500 Non-Violent Inmates Amid Coronavirus Outbreak*, THE HILL (Mar. 31, 2020), <https://thehill.com/homenews/state-watch/490498-california-to-release-3500-non-violent-inmates-amid-coronavirus-outbreak>.

<sup>65</sup> *Kentucky Plans to Release More Than 900 Prisoners Because of the COVID-19 Outbreak*, WDRB.COM (Apr. 2, 2020), [https://www.wdrb.com/news/kentucky-plans-to-release-more-than-900-prisoners-because-of-the-covid-19-outbreak/article\\_aef84282-7541-11ea-8a18-efe5a8cf107d.html?eType=EmailBlastContent&eId=14e33471-26cd-4585-b9b6-e1e52182b91c](https://www.wdrb.com/news/kentucky-plans-to-release-more-than-900-prisoners-because-of-the-covid-19-outbreak/article_aef84282-7541-11ea-8a18-efe5a8cf107d.html?eType=EmailBlastContent&eId=14e33471-26cd-4585-b9b6-e1e52182b91c).

<sup>66</sup> Gov. Philip Murphy, N.J. Executive Order No. 124 (Apr. 10, 2020), <http://d31hzhkh6di2h5.cloudfront.net/20200410/c0/64/ce/2c/0ef068b5d2c6459546c33a46/EO-124.pdf>.

<sup>67</sup> Courtney Friedman, *Bexar County Sheriff Announces COVID-19 Prevention Plan For Jail Inmates, Deputies*, KSAT.COM (Mar. 14, 2020), <https://www.ksat.com/news/local/2020/03/15/bexar-county-sheriff-announces-covid-19-prevention-plan-for-jail-inmates-deputies/>.

<sup>68</sup> Tim Prudente and Phillip Jackson, *Baltimore State's Attorney Mosby to Stop Prosecuting Drug Possession, Prostitution, Other Crimes Amid Coronavirus*, BALTIMORE SUN (Mar. 18, 2020), <https://www.baltimoresun.com/coronavirus/bs-md-ci-cr-mosby-prisoner-release-20200318-u7knneb6o5gqvnqmtpejftavia-story.html>.

<sup>69</sup> Andrew Denney and Larry Celona, *Coronavirus In NY: Brooklyn DA to Stop Prosecuting "Low-Level" Offenses*, NEW YORK POST (Mar. 17, 2020), <https://nypost.com/2020/03/17/coronavirus-in-ny-brooklyn-da-to-stop-prosecuting-low-level-offenses/>.

<sup>70</sup> Samantha Melamed and Mike Newall, *With Courts Closed by Pandemic, Philly Police Stop Low-Level Arrests to Manage Jail Crowding*, PHILADELPHIA INQUIRER (Mar. 18, 2020), <https://www.inquirer.com/health/coronavirus/philadelphia-police-coronavirus-covid-pandemic-arrests-jail-overcrowding-larry-krasner-20200317.html>.



- Police departments in Los Angeles County, California,<sup>71</sup> Denver, Colorado,<sup>72</sup> and Philadelphia, Pennsylvania<sup>73</sup> are reducing arrests by using cite and release practices, delaying arrests, and issuing summons. In Los Angeles County, the number of arrests has decreased from an average of 300 per day to about 60 per day.
- The state of Maine<sup>74</sup> vacated all outstanding bench warrants (for over 12,000 people) for unpaid court fines and fees and for failure to appear for hearings in an effort to reduce jail admissions.
- State and federal courts in Connecticut have begun releasing sentenced prison and jail inmates vulnerable to complications from COVID-19 as well.<sup>75</sup>
- In response to the Oklahoma Department of Corrections' decision not to admit any new people to state prisons, Tulsa and Oklahoma counties are trying to keep their jail population down by not arresting people for misdemeanor offenses and warrants, and by releasing 130 people this past week through accelerated bond reviews and plea agreements.
- In King County, Washington, Seattle jails are no longer accepting people booked for misdemeanor charges that do not present a public safety concern or people who are arrested for violating terms of community supervision. The Department of Adult and Juvenile Detention is also delaying all misdemeanor "commitment sentences" (court orders requiring someone to report to a jail at a later date to serve their sentence).

53. Individuals with medical vulnerability to COVID-19 face irreparable harm if they continue to be detained and are unlikely to pose significant flight or public safety threats if they were released under conditions consistent with objective assessments of risk. The government, including local and federal officials responsible for ICE detainees, should release as many of these vulnerable individuals as possible, as quickly as possible, with only those conditions that are necessary to ensure participation in court proceedings or other appointments.

54. Given the severity of COVID-19 and the rapidly escalating rate of infection and death in the United States, as well as the increased risks in facilities housing ICE detainees, I also recommend that any other individuals deemed likely to comply on appropriate conditions of supervision where necessary be released immediately, to protect themselves, other detainees, correctional and medical staff, and the general public, without impeding immigration court proceedings or other legally-required appointments.

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

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<sup>71</sup> Salvador Hernandez, *Los Angeles Is Releasing Inmates Early And Arresting Fewer People Over Fears Of The Coronavirus In Jails*, BUZZFEED NEWS (Mar. 16, 2020), <https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release>.

<sup>72</sup> Schmelzer.

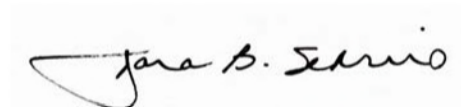
<sup>73</sup> Melamed and Newall.

<sup>74</sup> Judy Harrison, *Maine Courts Vacate Warrants for Unpaid Fines and Fees*, BANGOR DAILY NEWS (Mar. 16, 2020), <https://bangordailynews.com/2020/03/16/news/state/maine-courts-vacate-warrants-for-unpaid-fines-and-fees>.

<sup>75</sup> Edmund H. Mahony, *Courts Ponder the Release of Low-Risk Inmates in an Effort to Block the Spread of COVID-19 to the Prison System*, HARTFORD COURANT (Mar. 24, 2020), <https://www.courant.com/coronavirus/hc-news-covid-inmate-releases-20200323-20200324-oreyf4kdbf3adv6u6ajsj57u-story.html>.



Executed this 19<sup>th</sup> day in April 2020, in New York City, NY.

A handwritten signature in black ink, reading "Dora B. Schriro". The signature is written in a cursive style with a large, stylized initial "D".

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Dora Schriro

# **APPENDIX A**

**DORA B. SCHIRO, Ed.D. J.D.**  
EXECUTIVE EXPERIENCE

*State of Connecticut, Middletown CT (2014–2018)*

**CT Homeland Security Advisor** (2016–2018), DHS clearance, Top Secret, appointed by Gov. Dannel Malloy  
**Commissioner**, Department of Emergency Services & Public Protection (2014–2018), appt. by Gov. Malloy

- Responsible for CT State Police, Emergency Management & Homeland Security, Scientific Services, Fire Prevention & Control, Police Officer Standards & Training, Statewide Telecommunications.
- FY2018 operating budget, \$185M; federal grants, \$348M; bond funding, \$79M; 1817 employees
- Public Safety & Service, Homeland Security, and Emergency Response, Recovery & Resiliency
- Accomplishments: 1. Comprehensive procedural justice effort with body-worn cameras, all state police on patrol, civilian complaint process, 21<sup>st</sup> century curricula for state & local law enforcement, an investigative protocol for officer-involved shootings, annual reports of uses of force, traffic stops & police pursuits, mandatory police agency accreditation, and ICE-interface protocol; 2. Drug intervention & enforcement including a dark-web opioid taskforce, equipping all troopers and training first responders to administer naloxone; 3. Other harm reduction efforts including a multi-jurisdictional cybersecurity investigative unit, comprehensive gun control, community-focused active shooter preparedness, wrap-around DV safety & support, K-12 & post-secondary school safety planning, and Ebola & Zika first responder protocols

*City of New York, New York, New York (2009–2014)*

**Commissioner**, New York City Department of Correction, appointed by Mayor Michael Bloomberg

- Responsible for adult detention, prisoner processing, and operation of criminal court pens, an average of 12,000 inmates daily and 100,000 pretrial and city-sentenced inmate admissions annually
- FY2014 operating budget, \$1.065B, capital budget, \$691.9M; 10,440 employees
- Focus: Special Populations; Intake, Classification and Discharge Planning; Staff Accountability; Alternatives to Disciplinary Segregation; Alternatives to Detention
- Accomplishments: 1<sup>st</sup> U.S. Social Impact Bond funded program, adolescent pre-release initiative; Justice Reinvestment funded pre-release preparation for adults; pre-trial & post-plea diversion for the mentally ill; comprehensive reform of disciplinary segregation with clinical alternatives for special populations; centralized intake with risk & needs classification, gang identification, and discharge planning

*US Department of Homeland Security, Washington DC (2009–2009)*

**Senior Advisor to Secretary on ICE Detention and Removal**, appointed by DHS Sec. Janet Napolitano

**Director, ICE Office of Detention Policy and Planning**, appointed by ICE Asst. Sec. John Morton

- Focus: Design a civil detention system satisfying all safety and security needs and legal requirements
- Authored, *2009 Report on ICE Detention Policies and Practices: A Recommended Course of Action for Systems Reform*, DHS' adopted template for improving the operation of immigration detention
- Improved the efficiency and effectiveness and increased the transparency of ICE detention operations

*State of Arizona, Phoenix, Arizona (2003–2009)*

**Department Director**, Arizona Department of Corrections, appointed by Gov. Janet Napolitano

- Responsible for adult corrections and community supervision including 39,000 inmates and 7,200 parolees daily and 55,000 felons annually (21,000 admissions/11,500 case openings)
- FY2009 operating budget, \$1.23B; 9,750 employees
- Focus: Systems reform, re-entry, victim services, strategic planning, privatization oversight
- Winner, 2008 Innovations in American Government, and first prison-based reform awards recipient

Dora B. Schriro, Ed.D. J.D.

Page 2

*City of St. Louis*, St. Louis, Missouri (2001–2003)

**Commissioner of Corrections**, St. Louis City Division of Corrections, appointed by Mayor Francis Slay

- Responsible for adult detention, prisoner processing, and city probation and parole including 1,500 jail inmates and 2,000 offenders on supervision daily (9,000 admissions/63,000 bookings annually)
- FY2003 operating budget, \$68M; 615 employees
- Focus: Population management, alternative sentencing initiatives, staff development
- Opened and operated the city's first combined police prisoner processing and detention center

*State of Missouri*, Jefferson City, Missouri (1993–2001)

**Department Director**, Missouri Department of Corrections, appointed by Gov. Mel Carnahan

- Responsible for adult corrections and probation and parole services including 28,000 prisoners and 65,000 offenders on community supervision daily, 35,000 admissions/72,000 case openings annually
- FY2002 operating budget, \$500M; 11,000 employees
- Focus: Systems and sentencing reform, litigation reduction, restorative justice, capital construction
- Winner, Council of State Governments Innovations award program; four-time Innovations in American Government Finalist and Semi-Finalist

*City of St. Louis*, St. Louis Missouri (1989–1993)

**Correctional Superintendent**, St. Louis City Division of Correction, appointed by Mayor Vince Schoemehl

- Responsible for 600 pre-trial and city sentenced inmates, 4,000 admissions annually
- FY1993 operating budget, \$26M; 210 employees
- Focus: Court oversight, overcrowding, certified juveniles, community relations

*City of New York*, New York, New York (1984–1989)

**Assistant Commissioner**, New York City Department of Correction, appointed by Mayor Ed Koch

- Responsible for design and delivery of inmate programs services, programs development, grants
- Services provided to 100,000 pre-trial and city sentenced inmates annually by 200 employees
- Focus: Public-funded and accredited education, school-aged inmates; contracts management

**Assistant Deputy Director**, Office of the Mayor, Coordinator of Criminal Justice

- Grants administration, federal and state funded systems reforms, \$189M annually
- Focus: Alternatives to detention, intermediate sanctions, policy analysis, applied research

## CONSULTING SERVICES

Dora B. Schriro Consulting Services, LLC (est. 2013)

## EDUCATION

St. Louis University, St. Louis, Missouri, Juris Doctorate, School of Law (2002)

Columbia University, New York, New York, Doctor of Education, Teachers College (1984)

University of Massachusetts at Boston, Massachusetts, Master of Education (1980)

Northeastern University, Boston, Massachusetts, Bachelor of Arts cum laude (1972)

## MANAGERIAL PROGRAMS

Council of State Governments, Toll Fellowship (2018)

Harvard University, JFK School of Government, Innovations in Governance (2005)

Harvard University, JFK School of Government, Strategic Public Sector Negotiations (1996)

Harvard University, JFK School of Government, Senior Executives in State and Local Government (1992)

Dora B. Schriro, Ed.D. J.D.  
Page 3

#### HONORS AND AWARDS, INNOVATIONS

Innovations in American Government, 2008 Winner, Getting Ready: Keeping Communities Safe  
Innovations in American Government, 2000 Semi-finalist, Correcting Corrections  
Innovations in American Government, 1999 Semi-finalist, Constituent Services  
Innovations in American Government, 1998 Semi-finalist, Pre-Promotional Training  
Innovations in American Government, 1997 Finalist, Constituent Services  
Council of State Governments, 1998 Innovations Award Winner, Waste Tire to Energy  
Council of State Governments, 1997 Innovations Award Regional Finalist, Pre-Promotional Training  
Council of State Governments, 1996 Innovations Award Finalist, Constituent Services

#### OTHER HONORS AND AWARDS

U.S. Department of Justice, Office for Victims of Crime, Allied Professional Award, 2012  
Florida Immigrant Advocacy Center, American Justice Award, 2011  
Hofstra University (Hempstead, New York) Presidential Medal, 2010  
National Governors Association, Distinguished Service to State Government Award, 2006  
Arizona Parents of Murdered Children, Filling Empty Shoes, 2006 Honoree  
Farmingdale Public Schools (Farmingdale, New York), Wall of Fame, 2001 Inductee  
St. Louis Forum, Trailblazer Award, 2000  
Association of Correctional Administrators, Michael Francke Award for Outstanding Leadership, 1999  
Jefferson City (Missouri) Ten Most Influential Women, 1998  
Missouri Governor Award for Quality and Productivity, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000  
Missouri Governor Torch of Excellence Gold Award, 1999  
Missouri Governor Torch of Excellence Award, 1997  
International Association of Correctional Training Personnel Award, Pre-Promotional Training, 1996  
Women's Self-Help Center, Twenty Distinguished Women, 1996  
St. Louis (Missouri) YWCA Special Leadership Award for a Government Official, 1995  
Jefferson City (Missouri) News Tribune Statesman of the Month, June 1995

#### PUBLICATIONS, IMMIGRATION DETENTION REFORM

*Weeping in the Playtime of Others: The Obama Administration's Failed Reform of ICE Family Detention Practices*, in *Journal on Migration and Human Security*, The Law that Begot the Modern U.S. immigration Enforcement System: IIRIRA 20 Years Later (December 2018)  
*Women and Children First: An Inside Look at the Impediments to Reforming Family Detention in the U.S.*, in *Challenging Immigration Detention*, ed. by Flynn and Flynn. Edward Elgar Publishing (September 2017)  
*Afterword, Intimate Economies, Anomie and Moral Ambiguity*, in *Intimate Economies of Immigration Detention: Critical Perspectives*, ed. by Conlon and Hiemstra. Routledge Publishers (2016)  
*Improving Conditions of Confinement for Immigrant Detainees: Guideposts toward a Civil System of Civil Detention in The New Deportation Delirium*, ed. by Kanstroom and Lykes. NYU Press (2015)  
*Family Immigration Detention: The Past Cannot be Prologue*, co-author, ABA Commission on Immigration (2015)  
*Envisioning a Civil System of Civil Detention: Our Opportunity, Our Challenge* (Foreword), in *Outside Justice*, ed. by Brotherton, Stageman and Leyro. Springer Press (2013)  
Improving Conditions of Confinement for Criminal Inmates and Immigrant Detainees, *American Criminal Law Review*, Georgetown University Law Center (Fall 2010)  
The 2009 Report on ICE Detention Policies and Practices: A Recommended Course of Action for Systems Reform, U.S. Department of Homeland Security (October 2009)  
Rethinking Civil Detention and Supervision, *Arizona Attorney* (July–August 2009)



## PUBLICATIONS, CORRECTIONS REFORM

*Smart and Safe: Making the Most of Adolescents' Time in Detention, the Physical Plant, Our Workforce, and the "What Works" Literature*, in *The State of Criminal Justice*, American Bar Association (2013)

*Corrections: The Justice-Involved Mentally Ill, A Practitioner's Perspective*, in *The State of Criminal Justice*, American Bar Association (2012)

*Good Science, Good Sense: Making Meaningful Change Happen – A Practitioner's Perspective*, *Criminology & Public Policy*, Vol. 11, No. 1, Special Issue (February 2012)

*Is Good Time a Good Idea?* *Federal Sentencing Reporter*, Vol. 21, No. 3 (February 2009)

*Correcting Corrections: The Arizona Plan: Creating Conditions for Positive Change in Corrections*, *Confronting Confinement: A Report of the Commission on Safety and Abuse in American Prisons* (2006)

*Missouri's Parallel Universe: Blueprint for Effective Prison Management*, *Corrections Today* (April 2001)

*Correcting Corrections: Missouri's Parallel Universe*, *Papers from the Executive Sessions on Sentencing and Corrections*, U.S. Department of Justice, Office of Justice Programs (May 2000)

*Avoiding Inmate Litigation: The 'Show-Me' State Shows How*, *Sheriff's Magazine*, (March–April 1999)

*Best Practices: Excellence in Corrections*, American Correctional Association (August 1998)

*Reducing Inmate Litigation*, *Corrections Today* (August 1998)

*Corrections Management Quarterly*, Issue Editor, Aspen Publications (1997)

*Currents*, Leadership St. Louis, Danforth Foundation (1992)

*What Makes Correctional Education Educational*, *Journal of Correctional Education* (September 1986)

*Safe Schools, Sound Schools*, ERIC Clearinghouse on Urban Education (January 1985)

*What Works with Serious Juvenile Offenders: US Experience*, *Juvenile Delinquency in Australia* (1984)

*What Makes Correctional Education Educational: Ethnography of an Instructionally Effective School*, University Microfilm (1983)

## STANDARDS, SENTENCING AND RELATED CIVIL-CRIMINAL JUSTICE REFORM ACTIVITIES

Women's Refugee Commission, Commissioner (2012–2020)

American Bar Association, Commission on Immigration, Special Advisor (2019–2020)

American Bar Association, Commission on Immigration, Advisory Board Member (2017–2019)

American Bar Association, Commission on Immigration, Standards for the Custody, Placement and Care; Legal Representation, and Adjudication of Unaccompanied Alien Children in the United States (2018)

U.S. Dept. of Homeland Security, DHS Family Residential Ctr. Advisory Committee, member (2015–2016)

American Bar Association, Commission on Immigration, Commissioner (2014–2016)

American Bar Association, Commission on Immigration, Co-chair, Standing Subcommittee on Punitive Segregation, (2012–2014)

American Bar Association, Commission on Immigration, Civil Detention Standards Task Force (2011–2012)

American Bar Association, Criminal Justice Standards Subcommittee, ACA representative (2005–2008)

Arizona State University School of Law, Sentencing Policy Seminar (2004–2005)

Arizona Attorney General Sentencing Advisory Committee (2004–2008)

St. Louis University School of Law, Instructor, Sentencing Policy Seminar (2000–2002)

Missouri Sentencing Advisory Commission, Vice Chair (1994–2001)

U.S. Department of Justice Executive Sessions on Sentencing and Corrections, in conjunction with Harvard University JFK School of Government and University of Minnesota Law School (1997–2000)

Partnership for Criminal Justice Workshop, Institute on Criminal Justice, University of Minnesota Law School, State Partner (1997–2000)

State Sentencing and Corrections Program, Vera Institute of Justice, National Associate (1999–2002)

U.S. Dept. of Justice, Bureau of Justice Assist., Discretionary Grant Program, Peer Reviewer (1994–2002)

Dora B. Schriro, Ed.D. J.D.  
Page 5

## PRE-DOCTORAL EMPLOYMENT, LECTURING AND RELATED EXPERIENCE

### Employment

- Executive Director, Planned Parenthood of Bergen County, Hackensack, New Jersey (1983–1984)
- Director, Correctional Education Consortium, Long Island City, New York (1982–1983)
- Supervising Social Worker, Franklin Public Schools, Franklin, Massachusetts (1978–1981)
- Director, Adult and Continuing Education, Franklin Public Schools, Franklin, MA (1978–1981)
- Director, Staff Development, Wrentham State School, Wrentham, Massachusetts (1977–1978)
- Program Administrator, Medfield-Norfolk Prison Project, Medfield, Massachusetts (1974–1976)

### Academic Experience

- Instructor, Arizona State University School of Law, Corrections Law Seminar (2005–2008)
- Instructor, St. Louis University School of Law, Sentencing Policy (2000–2002)
- Senior Policy Fellow, Public Policy Research Center, University of Missouri-St. Louis (2001)
- Visiting Lecturer, Strategic Planning, National Institute of Corrections (1998–2002)
- Adjunct Professor, Criminal Justice, University of Missouri-St. Louis (1990–1998)
- Adjunct Professor, Criminal Justice, Long Island University at CW Post (1986–1988)
- Instructor, Innovation, Open Center of New York City (1987)
- Teaching Assistant, Field Research Methodology, Administrative Intern to the School Superintendent, Franklin Public Schools, Franklin, Massachusetts (1979)
- Visiting Lecturer, Special Education, Framingham State College, Framingham, Massachusetts (1979)
- Adjunct Professor, Psychology, Fischer Junior College, Boston, Massachusetts (1978)

### Related Activities

- Institutional Research Board, St. Louis University (2002–2003)
- Institutional Research Board, University of Missouri-St. Louis (2001–2003)

### Contact information:

611 King Avenue  
City Island, NY 10464  
917-710-7029  
[dora.schriro@gmail.com](mailto:dora.schriro@gmail.com)

Professional References available upon request



# EXHIBIT I

# Law by Burlock, P.L.L.C.



John S. Burlock, Esq.  
Immigration with Dignity

April 2, 2020

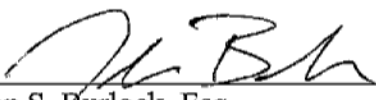
**AFFIDAVIT OF JOHN S. BURLOCK, ESQ. REGARDING THE TRANSPORT OF ICE  
DETAINEE FROM STRAFFORD COUNTY HOUSE OF CORRECTIONS TO THE  
BOSTON IMMIGRATION COURT DURING THE COVID-19 PANDEMIC**

I, John S. Burlock, Esq., hereby declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct to the best of my knowledge.

1. I am a member of the New Hampshire Bar and my bar number is 269628. I am additionally registered with the Executive Office for Immigration Review to represent individuals before the Immigration Court.
2. I represent Jairo Alberto Reyes (aka Ruben Hernandez-Hernandez, A 097 345 296, henceforth "Mr. Reyes"), an immigrant from El Salvador, in his immigration matters.
3. Mr. Reyes is currently detained by Immigration and Customs Enforcement (ICE) at Strafford County House of Corrections in Dover, New Hampshire.
4. On March 20, 2020, I represented Mr. Reyes in an individual hearing at the Boston Immigration Court. I filed a motion to appear telephonically due to the outbreak of the COVID-19 Pandemic. My motion was granted by IJ John Furlong.
5. Mr. Reyes was present in the courtroom at the Boston Immigration Court for the hearing, as was noted for the record by IJ Furlong.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 2nd day of March 2020, in Barrington, New Hampshire.

  
\_\_\_\_\_  
John S. Burlock, Esq.

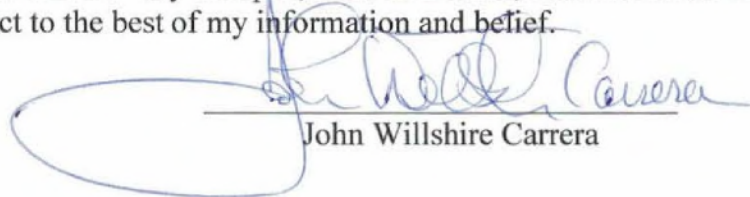
## EXHIBIT J

**AFFIDAVIT OF JOHN WILLSHIRE CARRERA**

I, John Willshire Carrera, hereby state and depose as follows:

1. My name is John Willshire Carrera.
2. I am Assistant Director of the Harvard Immigration and Refugee Clinic at Greater Boston Legal Services and represent Pedro Gonzalez Guarcas in his proceedings before the Department of Justice and the Department of Homeland Security. My work address is 197 Friend Street, Eighth Floor, Boston, MA 02114.
3. I am writing this statement to confirm that the attached statement was made by Mr. Pedro Gonzalez Guarcas who is presently self-quarantined in his apartment in New Bedford, Massachusetts. Mr. Gonzalez Guarcas is self-quarantined and not personally accessible per the conditions of release imposed on him by USICE when he was released from detention on Friday, April 10, 2020. Additionally, Mr. Gonzalez Guarcas has also expressed to me that he is also self-quarantining to protect his family and neighbors from the COVID19 given that he has just been released from detention and has concerns that he is contagious.
4. The attached statement is based on interviews I and Mr. Yong Ho Song, a HIRC clinical student, conducted of Mr. Pedro Gonzalez Guarcas telephonically while he remains self-quarantined in his apartment in New Bedford, Massachusetts. I conducted the interviews in Spanish as I am fluent in Spanish and Mr. Gonzalez Guarcas is conversant in Spanish. Mr. Yong Ho Song, in turn, drafted the statement from our notes of the interview. Nancy Kelly, also Assistant Director of the Harvard Immigration and Refugee Clinic, also reviewed the draft. The draft statement has subsequently been read and translated back to Mr. Gonzalez Guarcas in Spanish for content and accuracy. The attached statement is a finalized statement which Mr. Gonzalez Guarcas has authorized me to submit on his behalf with the full understanding that it is being made under the pains and penalties of perjury with the understanding that he will personally sign his statement upon coming out of self-quarantine.

I, John Willshire Carrera, state this 18<sup>th</sup> day of April, 2020 in Boston, Massachusetts that the above statement is true and correct to the best of my information and belief.



John Willshire Carrera



## STATEMENT OF MR. PEDRO GONZALEZ GUARCAS

I, Pedro Gonzalez Guarcas, state the following under penalty of perjury:

1. My name is Pedro Gonzalez Guarcas (A 087 711 592), and I am a national of Guatemala. I was recently released from the custody of the U.S. Immigration and Customs Enforcement (ICE) and allowed to return to my family to move forward with my claim with the requirement that I would social distance myself from others. I am making this statement to address the conditions of the detention facility in which I was detained.
2. I was detained by ICE based on my prior removal order, on or about February 28, 2020. I was first held in the Bristol County House of Correction in North Dartmouth, Massachusetts ("Bristol detention center") for a brief period of time, and subsequently transferred to the Strafford County House of Corrections in Dover, New Hampshire ("Strafford detention center") in early March. I was detained at this facility until my release on April 10, 2020. This statement is focused on my experience as it relates to my detention in the Strafford detention center.
3. On the day I was transferred to the Strafford detention center, nine other immigrant detainees and I were transported together in a white van. Five of us sat in a row on one side of the van, while the rest sat on the other side. Additionally, there were two officers who were in charge of our transportation sitting at the front of the van. Although we sat in very close proximity to each other, we were given neither personal masks nor hygiene products for our health and safety. Nor were the officers wearing any masks for their own safety. The officers also chained our hands and feet, using the same gloves on each of one of us detainees transported at time.
4. It was around 7 o'clock in the morning when I arrived at the Strafford detention center. We were immediately put into a very small waiting room with approximately 30 additional detained immigrants who also arrived at the facility that morning. In the waiting room, we were told to sit next to each other along the walls. The door was closed most of the time, and we were unable to walk around the room freely.
5. The unit where I was held—Unit J—housed a total of approximately 60 detainees on two floors. About half of us were put on the first floor, and the rest on the second. There were 16 bunk beds on each floor, and the beds were tightly clustered in the corners, with only a foot and a half apart between the beds. Between the two floors, there was a separate, small, confined dining area with some tables. Every meal time, all 60 of us were told to gather in that space to pick up our food and eat together side by side.
6. About three weeks in, there were 18 immigrant detainees left in our unit. It was around this time when the officers moved about 20 American prisoners from other units to our unit. The officers made them sleep downstairs, while they ordered every immigrant detainee in the unit, including myself, to move upstairs. After we moved, we each took one bunk bed in order to distance ourselves from each other as much as possible.



7. With the American inmates came a change in our mealtime routines. The officers started making us bring our food upstairs and have our meals at our beds while they allowed the American inmates to use the dining space and the tables. In response, other immigrant detainees and I started refusing to eat food until the officers would let us use the dining area and the tables again. The American inmates also expressed their support for us. The officers gave in in the end and re-opened the space to everyone in the unit. As a result of this, the 40 inmates – the immigrant detainees and the American inmates – in our unit came together at the tables for every meal, with very little physical distance allowed between each other.
8. During my time at the detention center, I went to the ICE office in Burlington, MA twice to attend my Reasonable Fear Interview (RFI). On the first day, I was put in a van, which was of the similar size to the one that I was put in during my trip from the Bristol detention center to the Stafford detention center, with three other detainees. There were two officers sitting in the front seats. Before we departed, the officers put chains on our hands and feet; while the officers had gloves on at the time, they handled us with the same gloves and did not wear any masks. In the van, they ordered us to sit next to each other even though there were other empty seats. Moreover, we were not given any masks or gloves or hygiene products to protect our health and safety from the virus.
9. We arrived at the office around 8:30 in the morning. We were put in a small waiting room where we were made to sit about a foot apart from each other. While we were waiting, one of my fellow detainees started coughing and sneezing as if he had the flu. Even though the officers took notice, they did not take any further action to protect us or the patient. Moreover, there were no hygiene products in the waiting room.
10. After my interview in the morning, I was returned to the same waiting room and was held there until 3:00 in the afternoon. Later that afternoon, I was transported back to the Strafford detention center in the same van with the same people and handled the same way. When I arrived at the facility, this time the officers took my temperature before I was allowed to return to my unit.
11. A couple days later, I went to the ICE Office again to attend my Reasonable Fear Interview. Everything transpired in the same way as the first trip, except that there were two detained immigrants in the van this time, instead of three.
12. My experience in the Bristol detention center was very similar to the one that I had in the Strafford detention center.
13. In closing, I would like to emphasize that adequate social distancing was impossible in the Strafford detention center. Wherever we went, we were made to stay close to each other – we were told to sleep and eat next to each other. My fellow inmates and I got very concerned that one day one of us would contract the virus and get sick or even die. We got more and more afraid as the time went on because there was no reliable source inside the facility from which we could obtain most up-to-date information about the virus and how to protect ourselves from it. What we heard from our family members was

everything that we knew about the virus. Now that I am home, I fully understand their fears for me, themselves and everyone around us. I also remain very concerned for the health and safety of three immigrant detainees who were held with me in the Stafford detention center and remain detained there at this time. They became ill when I when we were detained together and a family member of one of these men has just recently informed me by phone that the three remain ill and detained. Furthermore, one of them is now also bleeding from his nose. The family member is worried for has life.

I hereby affirm that the above statement is true and correct to the best of my knowledge and belief.

/s/ Pedro Gonzalez Guarcas

4/18/20

**Mr. Pedro Gonzalez Guarcas**

**Date**

The above statement was taken telephonically by Mr. John Willshire Carrera, Esq. and Mr. Yong Ho Song. The interview was conducted in Spanish and was translated into English. After the statement was prepared, it was translated back into Spanish and read to Mr. Pedro Gonzalez Guarcas to certify its accuracy. Mr. Pedro Gonzalez Guarcas verbally confirmed its accuracy.



4/18/20

**Mr. John Willshire Carrera**

**Date**

Attorney for Mr. Gonzalez Guaracs

HIRC at GBLS

197 Friend Street, 8th FL.

Boston, MA 02114



**Mr. Yong Ho Song**

**Date**

Clinical Student

HIRC at GBLS

197 Friend Street, 8th FL.

Boston, MA 02114



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

**ROBSON XAVIER GOMES, DARWIN  
ALIESKY CUESTA-ROJAS and JOSÉ  
NOLBERTO TACURI-TACURI**, on  
behalf of themselves and all those similarly  
situated,

Petitioners-Plaintiffs,

v.

**CHAD WOLF**, Acting Secretary of  
Department of Homeland Security,

**MARCOS CHARLES**, Immigration and  
Customs Enforcement, Enforcement and  
Removal Operations, Acting Field Office  
Director,

**CHRISTOPHER BRACKETT**,  
Superintendent of the Strafford County  
Department of Corrections,

Respondents-Defendants.

Civil Action No. 1:20-cv-00453-LM

**[PROPOSED] ORDER GRANTING PLAINTIFFS-PETITIONERS'  
MOTION FOR PRELIMINARY INJUNCTION AND  
MOTION FOR EXPEDITED DISCOVERY**

Upon consideration of Plaintiffs-Petitioners (“Plaintiffs”) Motion for Preliminary Injunction and Motion for Expedited Discovery (the “Motion”), and the parties’ briefs and arguments of counsel, this Court finds that Plaintiffs have demonstrated a need for injunctive relief in this case.

Accordingly, it is hereby ORDERED that:

1. Plaintiffs have met their burden for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 and the inherent equitable powers of this Court;
2. The conditions of confinement for individuals at the Strafford County Department of Corrections (“SCDOC”) currently are unconstitutional under the Fifth Amendment because they do not permit social distancing as necessary to minimize infection with COVID-19;
3. Defendants shall cease placing new detainees in SCDOC until all public health protocols designed to prevent the transmission of COVID-19 have been implemented;
4. The putative class is comprised of Plaintiffs and all similarly situated civil immigration detainees held at SCDOC.
5. Within 72 hours of the issuance of this Order, Defendants shall provide to Plaintiffs the following information about each class member:
  - a. biographical information, including name, country of citizenship, sex and age;
  - b. Alien registration number;
  - c. detention authority (*e.g.*, §§ 1225(b), 1226(a), 1226(c), 1231));
  - d. the detainees’ criminal history, including the outcome of any criminal proceedings (*e.g.*, conviction, pending, or dismissed);
  - e. whether a travel document was received by Defendants;
  - f. scheduled removal date (if any);
  - g. the detainees’ attorney(s) of record; and

- h. relevant medical information, including whether the detainee falls within a group at higher risk for severe illness as a result of COVID-19, as defined by the Centers for Disease Control and Prevention (“CDC”). *See* CDC, Groups at Higher Risk for Severe Illness, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>; and
6. Within 72 hours from the date of this Order, Defendants shall notify all putative class members of a phone number and e-mail address at which they can reach class counsel. Defendants further shall post the following notice in all units, as well as all rooms where telephones or computers are available for class members’ use, and ensure the availability of facilities for free and confidential telephone calls and e-mails between class members and class counsel:

NOTICE TO IMMIGRANT DETAINEES: On April 17, 2020, a law suit seeking the release of all civil immigration detainees at this facility was filed in the United States District Court for the District of New Hampshire. The Court has not yet made any final rulings. However, the Court has permitted Plaintiffs’ lawyers to post this notice so that you can contact them and discuss your rights.

Please contact SangYeob Kim, American Civil Liberties Union of New Hampshire, New Hampshire Immigrants’ Rights Project, Immigration Staff Attorney, (603) 333-2081, [sangyeob@aclu-nh.org](mailto:sangyeob@aclu-nh.org) for additional information.

SO ORDERED.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

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United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2020, I electronically filed the foregoing document with the United States District Court for the District of New Hampshire by using the CM/ECF system. I certify that the parties or their counsel of record registered as ECF Filers will be served by the CM/ECF system, and paper copies will be sent to those indicated as non-registered participants, if any.

/s/ Nathan P. Warecki