

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 20-21553-Civ-COOKE/GOODMAN

PATRICK GAYLE, et al.,

Petitioners-Plaintiffs, on behalf of
themselves and those similarly situated,

v.

MICHAEL W. MEADE, et al.,

Respondents-Defendants.

**PLAINTIFFS' PARTIAL OBJECTION TO
SPECIAL MASTER'S REPORT AND RECOMMENDATION**

Plaintiffs appreciate the Special Master's efforts in not only inspecting the facilities at issue here, but in also using data and blueprints provided by Defendants to drill down on the actual ability of the Class members to socially distance at Glades, BTC, and Krome. The Special Master was necessarily limited in his evaluation by the circumstances that he was able to personally observe during his inspections of the facilities. Thus, while the Special Master's observations about the availability of soap and cleaning materials at these facilities in late July and early August 2020 do not match the declarations provided earlier in the pandemic, Plaintiffs appreciate the Special Master acknowledging that conditions can change over time and that he could not refute declarations stating that soap and cleaning supplies were not consistently restocked earlier in the pandemic. *See* Special Master R&R at 18. Likewise, Plaintiffs appreciate that the Special Master does not purport to address the extent to which Defendants' conduct at the facilities changed during the course of the pandemic precisely because of the Court's intervention and its prior remonstrations.

Plaintiffs accept that the Special Master's findings were an accurate picture of what he observed when he visited the facilities—both where his findings support Plaintiffs' arguments and where they do not. Plaintiffs therefore do not challenge his Report and Recommendation on the issues it addresses concerning Plaintiffs' June 16, 2020 Emergency Motion to Compel

Compliance with the Court's June 6, 2020 Preliminary Injunction [ECF 163].¹ But Plaintiffs note that the Report and Recommendation does not address one issue that Plaintiffs identified in their Motion to Compel: cohorting practices that violated this Court's Preliminary Injunction [ECF 158]. Plaintiffs specifically complained that Defendants violated the Preliminary Injunction by cohorting people with confirmed COVID-19-positive tests alongside people who had not tested positive for COVID-19. [See ECF 163 at 1–2.]

Plaintiffs appreciate that the Special Master may have declined to address the cohorting issue because the COVID-19 outbreak that was raging at Glades in June had subsided by the time he inspected that facility on July 31. Nonetheless, the Report and Recommendation does not make this clear, and instead “recommends that the Court deny the motion to compel as to the issues surrounding the conditions of confinement except for those regarding social distancing.” See Special Master R&R at 21.

To the extent the Report and Recommendation is intended to not address the cohorting issue at all, Plaintiffs simply write to reaffirm their position that this violated the Court's Preliminary Injunction. To the extent the Report and Recommendation is read as recommending that the Court deny the Motion to Compel concerning the cohorting issue, Plaintiffs object. In either case, Plaintiffs note that in subsequent discovery responses, Defendants have admitted that after this Court entered its preliminary injunction they cohorted people at Glades with positive COVID-19 tests alongside people who had not tested positive for COVID-19. [See Respondents' Responses to Petr's First Set of Requests for Admission, Response to Request No. 22 (Ex. A).] The facts showing this violation of the Preliminary Injunction are therefore undisputed.

Plaintiffs leave the proper remedy for that violation to the Court's sound discretion.

¹ Of course, because the Special Master visited the facilities in July and August, not only could he not speak to conditions there in April, May, or June, but he also could not (and did not) speak to conditions such as the availability of hygiene supplies in those facilities since August.

Date: February 25, 2021

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of February, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

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EXHIBIT A

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**RESPONDENTS' RESPONSES TO PETITIONERS' FIRST
SET OF REQUESTS FOR ADMISSION**

Respondents-Defendants, by and through the undersigned counsel, pursuant to Fed.R.Civ.P.36, hereby serve their responses to Petitioners-Plaintiffs First Set of Requests for Admissions as follows:

RESPONSES TO FIRST SET OF ADMISSIONS

1. ICE is required to implement CDC Guidelines.

Response: Admit as to the Three Detention Facilities.

2. ICE is required to follow CDC Guidelines.

Response: Admit as to the Three Detention Facilities, to the extent that the CDC Guidelines do not conflict with the court orders in this case

3. ICE is required to comply with ICE's ERO COVID-19 Pandemic Response Requirements.

Response: Admit as to the Three Detention Facilities.

4. ICE is required to comply with the Performance Based National Detention Standards 2011, Rev. 2016.

Response: Admit as to BTC & Krome. Deny as to Glades.

5. ICE is required to comply with the Performance Based National Detention

Standards

2008.

Response: Deny as to the Three Detention Facilities.

6. ICE is required to comply with the 2019 National Detention Standards for Non-Dedicated Facilities.

Response: Admit as to Glades. Deny as to BTC & Krome.

7. There have been 28 or more detainees at Broward Transitional Center who tested positive for COVID-19 as of July 8, 2020.

Response: Admit.

8. There have been 112 or more detainees at Glades County Detention Center who have tested positive for COVID-19 as of July 8, 2020.

Response: Admit.

9. There have been 7 or more detainees at Krome North Service Processing Center who have tested positive for COVID-19 as of July 8, 2020.

Response: Admit.

10. You have not increased the area in which detainees are allowed to sleep at the Three Detention Centers in response to COVID-19.

Response: Admit as to the Three Detention Facilities.

11. You have not moved the bunk beds at the Three Detention Centers in response to COVID-19.

Response: Admit as to the Three Detention Facilities.

12. As of July 8, 2020, it is not possible for all men and women detained at the Three Detention Facilities to sleep more than 6 feet away from all other detainees.

Response: Admit as to the Three Detention Facilities.

13. You have not increased the area in which detainees are allowed to spend their time at the Three Detention Centers in response to COVID-19.

Response: Admit as to the Three Detention Facilities.

14. You have not provided additional tables where detainees can eat meals so all detainees are more than 6 feet apart.

Response: Admit as to the Three Detention Facilities.

15. At least two ICE detainees have died from COVID-19 while in custody as of July 8, 2020.

Response: Deny as to the Three Detention Facilities.

16. ICE did not change any policies as a result of the men who died from COVID- 19 while in ICE custody.

Response: Admit as to the Three Detention Facilities.

17. No staff member has been fired because of their failure to follow policies related to COVID-19 at any of the Three Detention Centers.

Response: Admit as to the Three Detention Facilities.

18. No staff member has been disciplined in any way because of their failure to follow policies related to COVID-19 at any of the Three Detention Centers.

Response: Admit as to the Three Detention Facilities.

19. None of the Three Detention Centers offer 24-hour access to healthcare to detainees every day of the week.

Response: Deny.

20. None of the Three Detention Centers has a doctor on-site 24 hours per day every day of the week.

Response: Admit as to the Three Detention Centers.

21. None of the Three Detention Centers has an Airborne Infection Isolation Room.

Response: Defendants object in that Airborne Infection Isolation Room is not defined by Plaintiffs. To the extent that an Airborne Infection Isolation Room is also known as a Negative Pressure Room, Defendants admit as to BTC and Glades, and deny as to Krome

22. Since June 6, 2020, ICE has cohorted or quarantined detainees who have not tested positive for COVID-19 with detainees who have tested positive for COVID-19 at one or more of the Three Detention Centers.

Response: Admit as to Glades. Deny as to Krome & BTC

23. ICE has decided not to release any no detainee ICE considers to be held under mandatory detention absent a court order due to COVID-19.

Response: Defendants object to this Request for Admission as vague and ambiguous, such that Defendants cannot discern its meaning. Defendants admit the allegation that ICE has not released any mandatory custody ICE detainee absent a court order due to COVID-19.

24. ICE has not released any mandatory detainee due to COVID-19 absent a court order requiring the release.

Response: Defendants object to this Request for Admission in that it is duplicative of Request No. 23. Subject to and without waiving the foregoing objection, Defendants admit.

25. ICE staff do not clean the living pods at Krome, Glades or BTC.

Response: Admit as to the Three Detention Facilities.

26. The only people who clean the living pods at Krome, Glades and BTC are the men and women under detention.

Response: Deny as to Krome. Admit as to Glades and BTC.

27. ICE's policy is that detainees are supposed to be provided access to cleaning supplies to clean the living pods at Krome, Glades and BTC no more than three times per day after meals.

Response: Deny as to the Three Detention Facilities.

28. Detainees at Krome, Glades and BTC have not been allowed access to disinfecting wipes.

Response: Deny as to Krome, admit as to Glades & BTC.

29. No detainee at Krome, Glades or BTC has been tested for COVID-19 more than once.

Response: Deny as to the Three Detention Facilities.

Respectfully submitted,

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