IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Maria Alejandra Celimen Savino, *et. al.*, Petitioners-Plaintiffs, v. THOMAS HODGSON, *et. al.*, Respondents-Defendants.	Civil Action No. 1:20-cv-10617-PBS

DECLARATION OF ALLEN S. KELLER, M.D.

I, Allen S. Keller, M.D., hereby declare under penalty of perjury, that the following is true and correct to the best of my knowledge.

RELEVANT BACKGROUND AND QUALIFICATIONS

1. I am an Associate Professor at New York University School of Medicine (NYUSoM) in the Departments of Medicine and Population Health, and a Medicine Attending Physician at Bellevue Hospital in New York City. In 1995, I co-founded Bellevue/NYU Program for Survivors of Torture (PSOT) in New York City and from 1995-December 2018 served as PSOT's Director. I am co-founder and Director of the NYU Center for Health and Human Rights (CHHR). I have over 25 years of experience evaluating and treating vulnerable populations including asylum seekers and victims of severe trauma such as torture.

2. I have over 25 years of experience evaluating prison conditions. From 2009 to 2016, I Co-Chair of the Immigration Detention Health Advisory Group for the U.S. Department of Homeland Security Immigration and Customs Enforcement NGO working group. In this role I also was part of several delegations visiting ICE detention facilities throughout the United States. I continue to conduct research on the conditions of detention and related health consequences. I am the author, coauthor and editor of nearly 100 scholarly publications on the evaluation and treatment of victims of trauma/human rights abuses; and prison conditions, including the health consequences of immigration detention.[1]
To date, I have visited over 20 immigration detention facilities throughout the United States.

3. I have served as a medical expert on various investigations of immigration detention facilities. In 2004, I was appointed as an expert by the U.S. Commission on International Religious Freedom (USCIRF) for their congressionally mandated study on the expedited removal process for asylum seekers, which examined all aspects of the process including

[1] *See e.g.*, Granski, Megan; Keller, Allen; Venters, Homer, Death Rates among Detained Immigrants in the United States. International journal of environmental research & public health. 2015 Nov 12; 12(11):14414-14419.

immigration detention.[2] In 2017, I served as a medical expert for a review conducted by Human Rights Watch on medical care and deaths of immigrants in detention entitled "Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention."[3]

4. In preparing this affidavit, I reviewed the following materials:
   - Letters by ICE Detainees at Bristol County House of Correction;
   - ICE's National Detention Standards (Revised 2019);
   - ICE Guidance on COVID-19[4];
   - ICE's Enforcement and Removal Operations, National Detainee Handbook; Custody Management (April 2016);
   - The President's Coronavirus Guidelines for America.[5]
   - Massachusetts Dept. of Health Coronavirus Infection Statistics

Dangerous Conditions of Confinement in Immigration Detention Related to COVID-19

5. It is my professional opinion that in the midst of the COVID-19 pandemic the conditions of confinement in immigration detention facilities such as Bristol County are unsafe and pose a danger to detained immigrants.

6. Immigration detention facilities, such as Bristol County, both in design and functioning, are typically comparable to maximum-security prisons. For example, immigration detention facilities are heavily guarded, secured with barbed wire and multiple security check points, including electronic bars. Detainees, who must wear jail uniforms, are constantly monitored by corrections officers. Immigration detainees are often subjected to restricted visitation and recreational time, restricted access to the law library, and the use of segregation for punitive reasons. Lockdowns are common, including when head counts are conducted. Bristol County House of Correction is well-known for the Sheriff there taking pride in "tough" conditions in his jail.

7. Detained immigrants are housed in small, confined bunk-like quarters commonly referred to as "pods." They often sleep with many detainees in close quarters. In recent letters from ICE Detainees, which I reviewed, Detainees repeatedly raised concerns about overcrowded conditions at Bristol. Meals are served in cafeterias to a large number of detainees at a time. Recreation typically occurs in central courtyards with large numbers of immigrant detainees at any given time.

8. These immigration detention practices occur in enclosed, prison-like facilities putting detainees in close contact around the clock. "Social Distancing COVID-19 Guidelines," as per the CDC and the White House COVID-19, cannot be effectively and safely

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[2] *Report on Asylum Seekers in Expedited Removal, available at* https://www.uscirf.gov/reports-briefs/special- reports/report-asylum-seekers-in-expedited-removal (accessed Mar. 23, 2020).

[3] *Available at* https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care- us-immigration-detention (accessed Mar. 23, 2020).

[4] Available at https://www.ice.gov/covid19 (accessed Mar. 23, 2020).

[5] See https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf (accessed Mar. 23, 2020).

implemented in immigration detention.

9. My review of allegations included in the letters submitted by immigration detainees at the Bristol County House of Corrections and reports regarding the facility leads me to conclude that the conditions at that facility are substantially similar to those of other immigration detention facilities I have visited and inspected.[6]

10. As such, the risk of COVID-19 infection and spread in immigration detention facilities, including Bristol County, is extremely high. Massachusetts Dept. of Health statistics about Coronavirus infections make this clear. On March 11, 2020, there were no confirmed Coronavirus infections in Bristol County and a total of 41 confirmed cases throughout the state. As of March 26, 2020 (2 weeks and 1 day later) there are 90 confirmed Coronavirus cases in Bristol County and 2,417 throughout the state. A significant number of individuals infected with the Coronavirus require admission to an intensive care unit. The total number of ICU beds in Bristol County is 96. Given the rapid increase of Coronavirus infections in the county, there is a substantial risk that the county will have inadequate ICU beds to care for all in need.

11. Furthermore, the routine practice of transferring immigrant detainees from one facility to another, and adding new prisoners each day throughout the nationwide immigration detention network, makes the likelihood of COVID-19 spread and infection far more likely, including at Bristol County. In a recent letter, Bristol County immigrant detainees noted that a new detainee was placed in an already overcrowded bunk before he was medically screened. Given such conditions and practices, one would be hard-pressed to think of a more effective means for the spread of COVID-19 infection than immigration detention.

12. The recent clustering of Coronavirus cases following a Biogen Employee meeting held in late February 2020 in Boston, which is attributed at least in part for the rapid rise of cases in Boston, is a sobering example of how a cluster of cases can rapidly multiply.

13. Plans for separating suspected COVID-19 exposed or infected individuals within a given facility or by transferring to specialized quarantine facilities is neither effective nor feasible as a response to the threat of infection or infectious spread within a detention facility. As per CDC guidelines, when individuals become symptomatic and considered "at risk" of being infected with/contagious to others for COVID-19, they are supposed to self-isolate, not isolate within groups. This prevents spread of COVID-19 from infected patients to those who are not infected, despite having similar symptoms. Putting both groups together, risks infecting the uninfected, symptomatic individuals. In other words, for individuals with symptoms who did not have COVID-19 before being placed in group isolation, many will likely contract COVID by being in contact with COVID infected patients.

14. This is exacerbated by substantial and increasing limitations on access to testing, even for those who have symptoms of COVID-19, because of a major shortage of testing materials. It would be unlikely that in these immigration detention facilities, all who are symptomatic

[6] *See e.g.*, WGBH Boston, Why is the suicide rate in Bristol County jails so high?, May 8, 2017 https://www.wgbh.org/news/2017/05/08/news/why-suicide-rate-bristol-county-jails-so-high; The Sun Chronicle, Jail Tales: A glimpse at life inside, April 12, 2019, https://www.thesunchronicle.com/news/local_news/jail-tales-a-glimpse-at-life-inside/article_cbe6a01c-36c3-5c8a-9b85-d3cdeb98d6f6.html.

could be tested prior to any form of group isolation.

15. Immigration detention staff, as well as contractors and vendors, are at risk of unknowingly spreading COVID-19 infection that was acquired in the community, given the daily back and forth routines of staff, contractors, and vendors, and the lack of available tests. In letters from Bristol County immigrant detainees, they raised concerns about guards who had to leave work because they had fevers.

16. All of the above risks of COVID-19 infection are further increased given the substantial period when individuals may be asymptomatic, but still shedding the virus and contagious.

17. It is my professional opinion that health care provided in immigration detention facilities such as Bristol County under normal conditions is often unsafe, and there are serious inadequacies in hygiene and sanitation. This conclusion is supported by numerous governmental,[7] non- governmental,[8] and investigative reports over the past decade which have found evidence of substandard medical care in immigration detention facilities, deficiencies in hygiene and sanitation, and a lack of oversight and accountability.

18. For example, The U.S. Government Accountability Office in 2016 reported that ICE lacked the tools to monitor the medical care in detention facilities. Human Rights Watch, in a 2017 report, documented deaths in detention resulting at least in part from substandard care. The DHS Office of the Inspector General has documented unclean and unsanitary detention facilities which do not meet ICE standards. In its 2019 review, the California Department of Justice found that, across the immigration detention facilities in the state, there were failures in medical record- keeping, "nurses practicing outside their legal scope of practice, superficial medical examinations, delayed or inadequate medical care, inadequate mental health staffing and services, and unsafe suicide watch and disciplinary

[7] California Department of Justice, "Immigration Detention in California," Feb. 2019, https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf (accessed May 21, 2020); DHS Office of the Inspector General, "Concerns About ICE Detainee Treatment and Care at Four Detention Facilities," June 3, 2019, https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf (accessed May 21, 2020); US Government Accountability Office, "Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care," February 2016, http://gao.gov/products/GAO- 16-231. http://www.gao.gov/assets/680/675484.pdf (accessed May 21, 2020); US Department of Homeland Security, Office of Inspector General, "Management Alert on Issues Requiring Immediate Action on Theo Lacy Facility in Orange, California," March 6, 2017, https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-43- MA-030617.pdf (accessed March 21, 2020).

[8] Human Rights Watch, "Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention," May 2017, https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard- medical-care-us-immigration-detention (accessed May 20, 2020); Human Rights Watch, "Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention," June 2018, https://www.hrw.org/sites/default/files/report_pdf/us0618_immigration_web2.pdf (accessed May 20, 2020); New York Lawyers for the Public Interest, "Health in Immigration Detention," February 2016, http://www.nylpi.org/wp- content/uploads/2017/02/HJ-Health-in-Immigration-Detention-Report_2017.pdf (accessed May 20, 2020); Southern Poverty Law Center, "Shadow Prisons: Immigrant Detention in the South," November 2016, https://www.splcenter.org/news/2016/11/21/new-splc-report-uncovers-abuse-and-neglect-immigrant-detention- centers-south (accessed May 20, 2020); American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center, "Fatal Neglect: How ICE Ignores Deaths in Detention," February 2016, https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention (accessed May 21, 2020).

isolation (solitary confinement) practices."

19. In numerous ICE facilities, the medical care is provided largely by low-level medical professionals unqualified or underqualified for the care they are responsible to provide. This may include licensed vocational nurses (or licensed practical nurses), certified medical assistants, and registered nurses, often with very limited experience. Many of these health care professionals are asked to make decisions that are beyond their areas of expertise or skill level. There is also typically high turnover among health professionals in immigration detention facilities.

20. Access to healthcare for chronic conditions including HIV, hypertension and other illnesses can be challenging in immigration detention facilities including Bristol County. This in part is because the jail-like facilities where immigrants are held are intended for short-term rather than prolonged detention. As a result, they are often geared to providing temporary, short-term acute care rather than longer-term care and management of chronic health disorders. Thus, health conditions that may have been well-controlled outside of detention, such as diabetes and hypertension, are likely not only to be exacerbated by detention, but also to be inadequately treated. Facilities may have inadequate health staff and difficulty recruiting local health providers to provide care for their detainees.

21. The Public Health Service through the ICE Health Service Corps (IHSC) has some role governing the health care provided at detention centers even where it is not the health care provider. It is my professional opinion, however, where IHSC is not providing direct health care, as is the case in Bristol County House of Correction, there is typically some discontinuity of care and insufficient oversight of the work of private health care providers.

22. It is my professional opinion that IHSC also lacks the resources to monitor the quality of health care delivered to ICE detainees at any facility. IHSC lacks the appropriate clinical, non-clinical and monitoring staff to both provide and oversee the health care of immigration detainees. Instead, ICE often relies on contracts with non-governmental for-profit vendors to conduct formal monitoring, and this has been inadequate.

23. ICE has established national detention standards which govern the facilities the agency operates.[9] However, for its county contractors and private detention providers, ICE has rarely held detention contractors accountable when they fail to meet the performance standards, even where their failures resulted in severe harm to detainees.[10]

24. The healthcare capacity in immigration detention facilities will be easily overwhelmed by the COVID-19 pandemic. Furthermore, many ICE detention facilities are located in remote, isolated areas, with limited health system capacity as well, which will easily be overwhelmed.

Vulnerability of Plaintiffs to Severe Effects of COVID-19

[9] ICE detention center contracts establish the governing standards: the 2000 National Detention Standards (NDS) or 2008 and 2011 Performance Based National Detention Standards.

[10] See DHS Office of the Inspector General, "ICE Does Not Fully Use Contracting Tools To Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards," Jan. 29, 2019, https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf (accessed March 21, 2020).

25. People over the age of 50 years old and people with underlying medical conditions are at greater risk of harm from COVID-19 and developing more serious illnesses and dying should they become infected with coronavirus. Underlying medical conditions which increase the risk of harm from COVID-19 infection include individuals who are immunosuppressed or HIV+, or who have hypertension, diabetes, coronary artery disease, chronic pulmonary conditions including Chronic Obstructive Pulmonary Disease (COPD) and asthma.[11]

26. Individuals in ICE custody at the Bristol County House of Corrections are at risk of harm from COVID-19. The CDC reported that 38% of individuals that were hospitalized between February 12 and March 16 as a result of complications arising from COVID-19 were between the ages of 20 and 54.[12]

27. New information regarding COVID-19 risk factors is coming out daily. Other individual plaintiffs not named here may have conditions that predispose them to complications from COVID-19, but are not yet identified by the medical literature. For example, the CDC published a new list on March 22, 2020 which expanded the previously identified groups of individuals vulnerable to the virus.

28. In addition, individuals who are "immunocompromised" are at high risk of severe illness, and this could include a large number of individuals, depending on the medication they are taking, their past drug/alcohol abuse,[13] and other medical conditions. My conclusions above rest on currently available information, and do not discount the possibility that other factors may increase the severity of COVID-19.

29. For instance, as a result of profound stress and helplessness, immigrant detainees are at risk of having suppressed immune systems putting them at higher risk than the general population of contracting and potentially having more serious infections. Stress and its link to immunosuppression are well documented in the medical literature.[14]

Harmful Psychological Impact of COVID-19 on Immigrant Detainees

30. It is my professional opinion that physical and mental health and well-being of detained immigrants, independent of age or underlying conditions, is worsened and severely harmed by continued immigration detention during the COVID-19 pandemic. All immigrant detainees are at high risk of developing severe, disabling psychological symptoms and distress as a result of their continued immigration detention during the COVID-19 pandemic.

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[11] Coronavirus-19. People who are at higher risk for severe illness. Centers for Disease Control, National Center for Immunization and Respiratory Diseases. March 22, 2020

[12] Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020, March 26, 2020, https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm

[13] https://www.ncbi.nlm.nih.gov/pubmed/19630706.

[14] Glaser R and Kiecolt-Glaser JK. 2005. Stress-induced immune dysfunction: implications for health. *Nat Rev Immunol* 5: 243-251; Segerstrom SC and Miller GE. 2004. Psychological stress and the human immune system: a meta-analytic study of 30 years of inquiry. *Psychol Bull* 130: 601-630; Johnson JD, Campisi J, Sharkey CM, Kennedy SL, Nickerson M, Greenwood BN and Fleshner M. 2005. Catecholamines mediate stress-induced increases in peripheral and central inflammatory cytokines. *Neuroscience* 135: 1295-1307.

31. Based on my over 20 years of evaluating and examining the impact of immigration on psychological symptoms, the vast majority of immigrant detainees suffer from psychological symptoms, including depression and anxiety, caused by their immigration detention. These individuals already suffering from psychological symptoms related to their immigration detention will likely experience substantial worsening of these symptoms in the context of a devastating pandemic. Furthermore, it is likely that even those immigrant detainees who did not have psychological symptoms before Coronavirus will develop such symptoms as a result of profound fear and helplessness. It is worth noting, that prior reports have documented that Bristol County Jail even before the Coronavirus infection has had an unusual high number of suicides compared to other county jails in the state.

32. Individuals with chronic medical conditions are at a particularly high risk of developing (if they did not have previously) significant symptoms of psychological distress, including anxiety, sleep disorders and depression. It is likely and predictable that such individuals with chronic health conditions are appropriately frightened of increased risk of harm by remaining in detention, which will, in turn, result in symptoms of anxiety and depression.

33. It is my professional opinion that individuals with underlying mental health conditions are at a high risk of harm from coronavirus. Individuals suffering from mental health conditions including depression, anxiety, schizophrenia and posttraumatic stress disorder (PTSD) are at particularly high risk of worsening of their symptoms as a result of being detained amid the coronavirus pandemic. Such exacerbation of psychological symptoms can result in severe harm. For example, individuals with depression are at increased risk of suicidality.

34. It is my professional opinion that as a result of the COVID-19 pandemic, immigration detention facilities are unsafe environments for immigrant detainees and continued detention in these facilities poses an immediate risk and danger to their health and well-being and to the community.

Date: March 26, 2020

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Allen S. Keller, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2020, the above-captioned document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

/s/ Oren M. Sellstrom