

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

MARIA ALEJANDRA CELIMEN SAVINO,
JULIO CESAR MEDEIROS NEVES, and all those
similarly situated,

Petitioners-Plaintiffs,

v.

STEVEN J. SOUZA,

Respondent-Defendant.

Case No. 1:20-cv-10617 WGY

SUPPLEMENTAL 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.

1. I previously submitted a declaration in this matter on March 26, 2020. At the request of attorneys for the above noted case, I now supplement that declaration to opine on whether the Bristol County Detention Facility is now or can be made a safe environment for immigrant detainees in the context of the COVID-19 Pandemic. Specifically, I was asked to address the below statement from the Court as well as the Court's request for the views of physicians and public health professionals:

"The Court inquires whether given the number of cells and the common areas in the detention facility there is some number of detainees who might occupy the facility and yet be adequately spaced? Much like a nursing home or retirement facility. The views of physicians and public health professionals will be gratefully received. We shall discuss this matter at the hearing ordered for Thursday, April 9, 2020 at 2:00 PM. Said hearing shall be held remotely by video/telephone."

BASES OF OPINIONS STATED IN THIS AFFIDAVIT

2. This affidavit draws upon on my more than 20 years of first-hand knowledge and experience about immigration detention, including conditions of confinement, related physical and psychological sequelae and access to healthcare.

3. Throughout my career, when possible, I have engaged and worked with Immigration Naturalization Services (INS) and subsequently the U.S. Department of Homeland Security, including Immigration Customs Enforcement (ICE), to ensure safe and humane immigration detention policies and practices.
4. This affidavit also draws upon my work at Bellevue Hospital in New York City since 1982, first as a medical student, then resident and now attending physician in internal medicine. Bellevue is the oldest public hospital in the U.S. and cares for all patients from all walks of life. Bellevue now finds itself at the epicenter of the COVID-19 pandemic. As such, my knowledge and experience of COVID-19 are up-to-date and increasing each day.
5. Over the course of my more than 30 years practicing medicine I have worked on the medical “front-line” during health crises prior to the COVID-19 pandemic including the AIDS epidemic, the September 11, 2001 terrorist attacks, and Hurricane Sandy. The human suffering and public health challenges related to COVID-19 are unprecedented.
6. I respectfully state, at the beginning of this Declaration, it is my professional opinion that given the facility’s physical layout, staffing, and current population density, as well as the frequent asymptomatic transmission of COVID-19, all immigrant detainees held there, particularly those with underlying medical conditions recognized by the CDC, are at substantial risk of COVID-19 infection. The most effective means of preventing COVID-19 infection at Bristol County is to release as many detainees as possible, notably those that by any reasonable standard pose no danger to the community. Continuing to detain immigrants in light of these factors poses a grave danger to the health and safety of detained immigrants, facility staff and to public health and safety. Releasing immigrant detainees from the Bristol County House of Detention is a necessary and effective means of harm reduction in the face of the COVID-19 Pandemic. By definition, all of the immigrant detainees held at BCHOD are there under civil, ie. non-criminal detention. Continued detention of immigrants held at the Bristol County Facility is misguided, contrary to accepted bioethical principles and norms and will result in unnecessary and preventable morbidity and mortality.

RELEVANT BACKGROUND AND QUALIFICATIONS

7. I am an Associate Professor at New York University School of Medicine (NYUSoM) in the Departments of Medicine and Population Health, and an Attending Physician in the Bellevue Hospital Primary Care Medical Clinic, at the oldest public hospital in the United States.
8. I have over 30 years-experience with immigrant populations, including those who suffered severe trauma including violence, persecution and torture. I routinely conduct assessments of the physical, mental health and social problems of immigrant detainees as well as the veracity of allegations of trauma and related symptoms. I do so by reviewing relevant materials and when necessary conducting clinical examinations. Additionally, I routinely provide ongoing medical care to former immigrant detainees addressing their physical and psychological health and social service needs.
9. 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. PSOT is co-sponsored by Bellevue Hospital and NYUSoM. PSOT provides comprehensive, interdisciplinary medical, mental health and social services to immigrants who have suffered torture and other severe traumatic events. I am co-founder and Director of the NYU Center for Health and Human Rights (CHHR). Founded in 2000, CHHR conducts scholarly work and research on issues relating to health and human rights including torture

and related trauma, prison conditions and forced migration.

10. 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.
11. 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 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

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

12. It is my professional opinion that given Bristol County’s Detention Facility’s design and functioning, particularly in light of asymptomatic transmission of COVID-19, detained immigrants at Bristol County are at substantial risk of COVID-19 infection, including severe complications and death. Given the number of prisons and jails in Massachusetts which have had COVID-19 infections among detainees, it is more likely a matter of when rather than if COVID-19 infections among detained immigrants will occur, and potentially in large number.
13. Social Distancing is a necessary and effective means of preventing spread of the COVID-19 Pandemic. Throughout the United States it is not only being implemented whenever possible but is being required. Social Distancing at the Bristol County Facility by any reasonable standard, cannot be meaningfully nor effectively implemented.
14. The Bristol County Detention Facility is an enclosed, overcrowded prison environment where immigrant detainees are in close contact around the clock. As noted in Court Documents:

“The Detainees assert that they “find it impossible to maintain the recommended distance of 6 feet from others” and they “must also share or touch objects used by others.” Pet. ¶ 67. They specifically allege that their beds “are situated only 3 feet apart” and that “[m]eals are inadequate and eaten in close quarters.” Pet. ¶ 68. Indeed, the government has provided the Court with photos of the sleeping quarters in the facility and this appears to be an accurate description.⁴ In one unit the “cell

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.

² Report on Asylum Seekers in Expedited Removal, available at <https://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal>.

³ Available at <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>

size” is listed as 30 feet by 10 feet (300 square feet), and the photo shows three bunk beds (sleeping six people) lining the wall. Other images supplied include a photo labeled “Bunk Area” that shows a large room packed with rows of bunk beds. None appears to enjoy anything close to six feet of isolation. ”

15. Detained immigrants at the Bristol County Detention Facility are housed in small, confined bunk-like quarters. They 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 with substantial numbers of detainees in in close proximity to one another. Detainees report that even minimal personal protective practices are being implemented to prevent respiratory spread or contact spread (ie. multiple detainees touching the same, un-sanitized objects. Masks are generally unavailable and access to hand sanitizer is woefully inadequate.
16. Given such conditions, the likelihood of COVID-19 infection and spread among detained immigrants held at the Bristol County facility is extremely high.
17. 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 United States. Two weeks later, there were 90 confirmed COVID cases in Bristol County and 2,417 nationally. As of April 8, 2020, there are 835 confirmed COVID-19 cases in Bristol County causing 6 deaths and nearly half a million confirmed cases nationwide causing nearly 17,000 deaths.
18. Bristol County Detention Facility’s leadership appears to be inappropriately overconfident in their ability to address the COVID-19 Pandemic based on their experiences with prior pandemics including the SARS Virus epidemic, and the 2009 H1N1 Pandemic,

Sheriff Hodgson states in his affidavit submitted to the court:

BCSO has successfully managed inmates with kidney failure, cancer, infectious disease issues and inmates who have chronic illnesses...

For over the twenty-three years that I have been Sheriff, the BCSO has safely and efficiently managed several pandemics including the H1N1 and SARS viruses as well as the HIV and Hepatitis C explosion in the community.

Nurse Jezard, who oversees clinical services at Bristol County states in her affidavit submitted to the Court:

...I have responded to several “droplet” viruses which are similar to COVID-19 in this regard, including SARS, H1N1, and the flu. COVID-19 presents similar, but uniquely different challenges to the medical community in general, and correctional facilities at large.

19. The steps that Bristol County Detention Facility’s leadership claims to be taking, based on the CDC recommendations, do not, in any way, address the fact that COVID-19 infected individuals who are not yet showing symptoms, or who may remain asymptomatic, are nonetheless still highly contagious to

others. Simply being “on the lookout for symptoms” neither addresses nor prevents the transmission of COVID-19 by asymptomatic infected individuals.

20. The total viral load (ie. the amount of virus particles present) in the room increases the more infected individuals there are. But even with fewer individuals, if one or more of them has a higher viral load, then that particular individual is more infectious to all those near him as well. Thus, the common practice of isolating two individuals in the same cell, as is reported at both facilities, is another reason for concern. One individual in that cell may be infected and have a very high viral load even if they are asymptomatic. As such it only takes one immigrant detainee with a high viral load who is asymptomatic to unknowingly spread the virus to many other detainees. All of these means of spreading COVID-19 are norms in immigration detention facilities and substantially increases the likelihood of spreading COVID-19 infection almost certain.⁴
21. The risk of asymptomatic transmission at Bristol County Detention Facility is made even more likely given the very limited, if any, COVID-19 testing done at the facility. Not conducting tests, it does not know whether to follow the protocol for preventing COVID-19 or managing COVID-19, as it does not know whether it is at the prevention or management stage. Individuals may have the virus but be asymptomatic. Without thorough testing, there is no way to know the extent of the virus’s presence inside the facility. Even then, providing masks only to those who exhibit symptoms will not prevent spread of the virus, as asymptomatic infected individuals can still, easily spread infection through air and surfaces.
22. In its Memorandum in support of the Motion to Stay Releases, ECF No. 83, the government states:
“First, there is no guarantee that the detainees won’t encounter COVID-19 upon release.the risk of the detainees contracting COVID-19 upon release is far from zero.”
23. While there is no guarantee that detainees will neither encounter, nor contract COVID-19, upon release, there is a well-established and far greater risk of contracting COVID-19 in congregate living settings, including the Bristol County Jail. As such, whenever possible congregate living conditions are to be avoided, both for individual safety and also as an important means of controlling spread of COVID-19.
24. Later in the Memorandum, the government refers to the absence of known infections among detainees to date at Bristol: *“This is underscored by the fact that this litigation is now entering its third week and there are still no cases of COVID-19 in either the inmate or detainee population”*
25. In light of the unprecedented magnitude and severity of the COVID-19 pandemic, from a health perspective it is naïve and foolish to believe this in any way assures there will not be substantial infections in the future. From a health perspective, the Bristol County facility is a COVID-19 ticking bomb.

⁴ Geddes L. Does a high Viral Load or infectious dose make COVID 19 worse? *Health*. March 27, 2020. Available at: [Does a high https://www.newscientist.com/article/2238819-does-a-high-viral-load-or-infectious-dose-make-covid-19-worse/](https://www.newscientist.com/article/2238819-does-a-high-viral-load-or-infectious-dose-make-covid-19-worse/) (Accessed April 12

26. Additionally, there is an important distinction between no cases of COVID 19 as the government states, and none identified. In other words, there may be a significant number of individuals infected there who have not yet been identified or not yet become symptomatic.
27. Also, it is unclear, based on information provided by the facility, what, if any, COVID-19 testing has been conducted at the Bristol Facility. As such, there may be unidentified COVID cases there.
28. On page 3 of their brief, the government states: “*the earliest guidance from the Centers for Disease Control (“CDC”) and many other health organizations, both a domestic and foreign, stressed washing hands with soap and water as the first line of defense.*”
29. While the government is correct that handwashing was among the earliest guidance and remains a crucial one, numerous additional measures have been taken across the country to prevent the spread of transmission.
30. In much of the remainder of their declaration the government describes the physical setting and housing policies at Bristol. Of note, there is **no** mention anywhere in the government’s declaration about COVID-19 transmission by asymptomatic individuals. The policies outlined by the government do virtually nothing to prevent this, and much to ensure that this will happen. The risk of asymptomatic transmission between individuals living in a congregate setting is far greater than for those living at home.
31. From an individual and public health perspective, BCSO’s reportedly successful management of illnesses cited by Sheriff Hodgson does not demonstrate preparedness for the unprecedented COVID-19 Pandemic.
32. Furthermore, comparisons both Sheriff Hodgson and Nurse Jezard make between COVID-19 and prior pandemics-including H1N1 and SARS- are not necessarily accurate.
33. COVID-19 is far more contagious and deadly than these 2 recent Pandemics. The H1N1 Pandemic over the course of one year caused a total of 12,500 deaths in the U.S. SARS caused 8 cases in the U.S. with no deaths.
34. By comparison, COVID-19 in its first 1 ½ months caused over 24,000 deaths in the U.S.⁵
35. Bristol County leadership also, inaccurately, conflate overcapacity and overcrowding. Sheriff Hodgson states in his affidavit submitted to the court:

Contrary to the allegations contained in the Plaintiff’s Petition and expert affidavits, the BCSO penal facilities are not over-capacity.

36. From an individual and public health perspective whether the facility is numerically under or over “capacity” is not the issue. Overcrowding is the primary concern. Sheriff Hodgson provides no

⁵ Johns Hopkins Coronavirus Resource Center. <https://coronavirus.jhu.edu/us-map> (Last Accessed, 4/15/20).

evidence to in his affidavit to counter the assertions by facility detainees of dangerously overcrowded conditions.

37. Sanitizing procedures implemented at Bristol County Detention Facility also appear to be substandard. Sheriff Hodgson states in his affidavit submitted to the court:

The housing areas for all ICE detainees are cleansed with disinfectant cleaners every shift which include Virex and 409/Lysol. Also, a hydrostatic spray cleaner on the third shift and as needed in high traffic area. Hand sanitizer units are outside the doors of each unit and detainees are permitted gloves and cleaner if they want to do extra cleaning in their own cells and bunks.

38. From an individual and public health perspective, these procedures will not adequately prevent COVID-19 spread. Given the large number of detainees housed in a small unit, spread through touching surfaces, in addition to respiratory spread, is inevitable. That detainees must go out the door of their unit to access hand sanitizer is also a matter of concern. Our knowledge about the ease with which COVID-19 can be spread continues to expand. For example, a recent study found that COVID-19 can be spread by shoes.⁶
39. It is also unclear what, if any, COVID-19 testing has occurred among immigrant the Bristol County Facility. In a letter recently released by Sheriff Hodgson in response to public comments by Senator Elizabeth Warren he states:

*“The most troubling part of your unsubstantiated argument is the insulting and outrageous suggestion that officials at the Bristol County Sheriff’s Office and ICE would intentionally not test for COVID-19 to avoid turning up positive results,”*⁷

Additionally, Bristol County Detention Facility’s Medical Director, Dr. Rencricca states in his affidavit to the court,

I am confident that we are doing all that we can to reduce the risk of a COVID-19 outbreak within BCHOC. Our rate of confirmed cases in the detainee/inmate population (zero to date) reflects that.

40. To date, however, Bristol County Detention Facility has released no information about what, if any testing, has occurred among detained immigrants there. This despite several detainees reporting symptomatic guards and fellow detainees coming into direct contact with other detainees. Whether the Bristol County Detention facility is intentionally not testing for COVID-19 to avoid identifying positive cases remains an open question.

⁶ Guo Z-D et al. Aerosol and surface distribution of severe acute respiratory syndrome coronavirus 2 in hospital wards, Wuhan, China, 2020. *Emerg Infect Dis.* 2020 Jul [date cited]. Original Publication Date, 4/10/20, Available at: <https://doi.org/10.3201/eid2607.200885> (Last Accessed, 4/15/20).

⁷ <https://www.masslive.com/coronavirus/2020/04/coronavirus-alarming-conditions-at-jail-arent-true-says-bristol-county-sheriff-thomas-hodgson-in-letter-telling-sen-elizabeth-warren-to-visit-it-herself.html> .

41. In his affidavit to the court, Sheriff Hodgson expresses confidence that Bristol County's health resources are sufficient. He states:

Bristol County is fortunate to have access to three well respected hospitals in the area, St. Luke's Hospital, Chariton Memorial Hospital and Morton Hospital, all within a few minutes distance by transport or ambulance

42. Similar to other healthcare delivery systems throughout the United States, it likely that Bristol County's healthcare resources, including ICU beds, will be overwhelmed by COVID-19.

43. In his affidavit to the court, Sheriff Hodgson describes the facility's ventilation system:

Fresh air is constantly circulated by opening windows and utilizing handler/vents throughout the day. Outside recreation is done as usual daily except that it is now done on split schedule to prevent close inmate-to inmate contact.

44. While such procedures were recommended early in the Pandemic for workplaces and other social gatherings, they were soon replaced by much more stringent guidelines including that all non-essential work personnel should remain at home, and public events should not occur either inside or outside.

45. In his declaration to the court, Dr. Rencricca states:

We are also taking steps to ensure that BCHOC staff does not inadvertently introduce COVID-19 into the facility by educating staff and screening them for raised temperatures or other signs of illness. Staff have been instructed not to work if they feel ill and to report any symptoms for follow up.

46. This is contradicted by reports from detainees who assert close contact with guards who are coughing.

47. In his affidavit to the court, Sheriff Hodgson describes the following procedure for new detainees:

Inmates who are admitted to custody are medically screened by CPS staff prior to being admitted to the general population with the intake area

48. This assertion is contradicted by a recent letter from Bristol County immigrant detainees that a new detainee was placed in an already overcrowded bunk before he was medically screened.

49. Even more problematic is the spread of COVID-19 through transfers of detainees from other Immigration Detention facilities. In his affidavit submitted to the court, Sheriff Hodgson states:

Our detainees do not come from the outside but rather from other ICE facilities so quarantine is not recommended.

50. From an individual and public health perspective, Immigration Customs Enforcement's (ICE) practice of transferring thousands of immigrant detainees each year throughout the nationwide immigration detention system is particularly dangerous. Such standard operating procedures which are still happening, are entirely inconsistent with accepted COVID-19 isolation norms implemented throughout

the U.S. Given the substantial number of asymptomatic but highly contagious COVID-19 infected individuals, the spread of COVID-19 infection from different immigration detention facilities is inevitable. Arguably, one would be hard-pressed to design a more effective means of spreading COVID-19 than the U.S. Immigration Detention system.

51. In his affidavit to the court, Dr. Rencricca describes the facility's standard healthcare planning for releasing detainees in light of the COVID-19 Pandemic:

If an incarcerated/detained individual who is a COVID-19 case is released from custody during their medical isolation period, staff is instructed to contact public health to arrange for safe transport and continuation of necessary medical care and medical isolation as part of release planning.

52. However, later in his affidavit, Dr. Rencricca contradicts himself by when he states:

In my opinion, releasing such persons without an adequate plan for alternative medical care could raise, rather than lower, the risk for those individuals.

53. In his affidavit to the court, Dr. Rencricca states:

I am well aware that certain medical conditions, or comorbidities, can make an individual more susceptible to becoming sick... We have taken extra precautions to monitor the health of any detainee or inmate known to have such a condition.

54. The well documented medical conditions and co-morbidities Dr. Rencricca refers to both increases the risk of COVID-19 infections as well as the danger that such individuals will develop particularly severe and potentially fatal COVID-19 infections. Standard strategies to protect such vulnerable populations from COVID-19 is to not only monitor for symptoms but more importantly to take any and all measure possible to prevent them from becoming infected in the first place.

55. In his affidavit to the court, Dr. Rencricca states:

Nursing staff have also been instructed to use any detainee/inmate interaction as a time to educate the detainee/inmate regarding COVID-19, including that all inmates need to wash their hands frequently, avoid crowds and stay apart at least 6 feet whenever possible, and to report any shortness of breath or concerns of fever immediately to either nursing or security.

56. While education is important, such guidelines as noted above cannot be implemented at Bristol County Jail given the structural limitations of the facility

57. In his affidavit submitted to the court, Sheriff Hodgson states:

The initiation of our COVID-19 [sic] preventative measures have been received well by the inmate population who have expressed their understanding as to the measures taken and have been cooperative.

58. This is directly contradicted by the complaints and fears that a large number of detainees have repeatedly stated.
59. In his affidavit submitted to the court, Sheriff Hodgson states that Bristol County detention facility is taking “*all prudent measures to prevent exposure to the COVID- 19 infection.*”
60. An important, “prudent measure,” endorsed by the CDC and numerous Correctional Health experts is whenever possible, to parole inmates to the community. A policy that Sheriff Hodgson has strongly resisted.
61. Furthermore, Sheriff Hodgson raises concerns that releasing inmates to the community prematurely without necessary re-entry planning will result in harmful consequences to the detainees and the community including homelessness, inadequate access to healthcare, and a risk of criminal recidivism.
62. Not only are many of these assertions documented to be wrong, but they demonstrate a lack of understanding or unwillingness to acknowledge important distinctions between detained immigrants-who are held under civil (ie. non-criminal) detention.
63. It is my professional opinion that health care provided in immigration detention facilities such as Bristol County, given that its current physical layout, staffing, and population is inadequate and there are serious inadequacies in hygiene and sanitation. This conclusion is supported by numerous governmental,⁸ non- governmental,⁹ 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.
64. 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

⁸ 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).

⁹ 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).

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 isolation (solitary confinement) practices.”

65. While ICE has established national detention standards which govern the facilities the agency operates.¹⁰ 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.¹¹
66. Since early in the COVID-19 pandemic, several risk factors for increased harm and death from COVID-19 infection were identified. This includes advanced age, conditions of confinement and underlying medical conditions including immunosuppression, cardiovascular disease, chronic respiratory conditions and lung diseases, chronic kidney disease, hypertension, and diabetes.^{12,13}
67. It is now well-established that any individual, regardless of their prior health, can contract and die from COVID-19 infection. For example, 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 54.¹⁴
68. It is my professional opinion that immigration detention at Bristol County 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.
69. 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.

¹⁰ ICE detention center contracts establish the governing standards: the 2000 National Detention Standards (NDS) or 2008 and 2011 Performance Based National Detention Standards.

¹¹ 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).

¹² See, e.g., Centers for Disease Control, “Management of Patients with Confirmed 2019-nCoV,” updated Apr. 3, 2020, at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

¹³ P Zhang et al., “Alcohol Abuse, Immunosuppression, and Pulmonary Infection,” *Current Drug Abuse Review*, Jan. 2008, at <https://www.ncbi.nlm.nih.gov/pubmed/19630706>.

¹⁴ 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>

CONCLUSIONS

70. It is my professional opinion that while immigrant detainees with underlying health conditions are at increased risk from COVID-19, immigrant detainees, regardless of their health cannot safely be detained at Bristol County Detention Facility.
71. Congregate facilities throughout the country (including nursing homes, jails and detention centers) are, when possible, being depopulated to minimize risk and increase both individual and public health.
72. It is my professional opinion that releasing detained immigrants at Bristol County is a matter of great urgency. Not to do so immediately unnecessarily endangers their health and undermines necessary public health efforts to take all steps possible to minimize the spread of COVID-19.
73. It is my professional opinion that as a result of the COVID-19 pandemic, the Bristol County Facility is particularly unsafe. Continued imprisonment of detained immigrants there an immediate risk and danger to their health and well-being and to the community.

Date: April 15, 2020



Allen S. Keller, M.D.