

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ADENIS ENRIQUE PRIETO REFUNJOL, MORY
KEITA, and SIDI NJIE,

Petitioner-Plaintiffs,

- vs. -

REBECCA ADDUCCI, in her official capacity as Detroit
District Director of U.S. Immigration & Customs
Enforcement; and U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Respondent-Defendants.

Case No. 20-cv-2099

**PETITIONER-PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER
AND REQUEST FOR IMMEDIATE HEARING**

Petitioner-Plaintiffs (Plaintiffs) Adenis Enrique Prieto Refunjol, Mory Keita, and Sidi Nije hereby move this Court, pursuant to Fed. R. Civ. P. 65, for a temporary restraining order, and respectfully request a hearing at the soonest time possible. Last night, a prisoner at the Morrow County Jail tested positive for COVID-19 after being held for 10 days in the general population there; days before, the same thing occurred at Butler County Jail. Plaintiffs are three vulnerable ICE detainees at the Butler and Morrow County Jails, who seek safe and immediate release based on their own risk of serious harm, and harm to the public, if they are exposed to the virus. The grounds for this Motion are set forth in the attached Memorandum in Support and accompanying declarations.

Dated: April 24, 2020

Respectfully submitted,

/s/ Elizabeth Bonham

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As a result of COVID-19 closures, reaching the ACLU of Ohio offices may cause delay. Because of the expedited nature of this Motion, if necessary please contact counsel at:

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**MEMORANDUM IN SUPPORT OF PETITIONER-PLAINTIFFS'
MOTION FOR TEMPORARY RESTRAINING ORDER**

INTRODUCTION

The COVID-19 pandemic is ravaging Ohio—particularly its prisons and jails—and last night the first positive case was confirmed at the Morrow County Jail. Just over a week before that, Butler County Jail confirmed its first positive case. In response to the pandemic, these jails have largely depopulated their citizen prisoners. In contrast, Defendant U.S. Immigration and Customs Enforcement (ICE) continues to confine its detainees in the two facilities. Moreover, ICE continues to transfer its detainees in between the two facilities, to transfer people there from the also-contaminated Franklin County Jail, and to commit new detainees from the public to the facilities—paying no regard to spreading the virus. Plaintiffs Adenis Enrique Prieto Refunjol, Mory Keita, and Sidi Njie (Plaintiffs) are people whom ICE is detaining at these jails. These men are in frail health, suffering from medical conditions that make them susceptible to grave illness or death if they contract COVID-19. And now that the virus has certainly entered the confined areas where they are jailed, they are at imminent risk of contracting it. This Motion seeks the Plaintiffs’ immediate release from the dangerous detention centers in which they are confined, to homes where they can safely quarantine and distance themselves from the virus’s spread.

Due to the confined, congregate nature of detention facilities, COVID-19 has already infected hundreds of both citizen and non-citizen detainees across Ohio and the country - and it will certainly infect far too many more. Tragically, the virus has already reached twenty-six ICE detention facilities—including the Butler County Jail as of mid-April, and now, as of yesterday, Morrow County Jail. COVID-19 has no vaccine, no treatment, and no cure. It can be transmitted by people who are pre-symptomatic or completely asymptomatic. By the time a person has tested positive, or even begun to feel early symptoms, they may have already infected countless other people with whom they have had contact. The only option to avoid contracting COVID-19 is to practice social distancing in addition to vigilant hygiene. At Butler and Morrow, because of the

enclosed, close quarters in which detainees are held, it is impossible to practice either measure. Now that there are positive tests in both facilities, Plaintiffs must be released as an emergency matter, so that they can escape transmission while there is still time.

Given the nature of this pandemic, there is no way to ensure that at-risk individuals such as Plaintiffs can avoid exposure to COVID-19 while they remain in detention. This near-certain exposure to a virulent, possibly deadly disease violates their constitutional rights. There is no way to protect them short of immediate release. Their release is also in the public interest because contagion among the detainee population and jail staff will deplete the Butler and Morrow County areas of limited resources, including ventilators and intensive care units. Moreover, because staff goes in and out of jails, if the facilities do not depopulate, they become incubators of disease and vectors of community spread to the surrounding areas. As Ohio Governor Mike DeWine recently said, “Timing is everything. Every day and every person matters.” Governor Mike DeWine (@GovMikeDeWine), Twitter (Mar. 16, 2020, 3:18PM), <https://twitter.com/GovMikeDeWine/status/1239632106717937664?s=20>.

The Court should grant Plaintiffs’ Motion and order their immediate release.

STATEMENT OF FACTS

Last night at about 9:00 p.m., Plaintiff Sidi Njie called his wife and told her that what he had feared for weeks had finally, inevitably occurred: a detainee at the Morrow County Jail where Mr. Njie is being held tested positive for COVID-19. Declaration of Brandy Jatta (Jatta Decl.) attached at ¶ 7. This person had been exhibiting symptoms - fever and weakness - while living in the general population for about 10 days. The Morrow corrections staff finally put the person into isolation, and last night told the other detainees, including Mr. Njie and Plaintiff Mory Keita, about the positive test. Since then, the staff has isolated this person’s also-febrile bunk-mate. They have taken no other precautionary steps.

Just ten days prior, the first detainee at the Butler County Jail, where ICE is holding Plaintiff Adenis Refunjol, tested positive for the virus. *See id.* The jail moved that person and his cellmate out of the facility—then took no additional precautions. ICE, in the meantime, continued to move its detainees between Butler and Morrow local jails; to incarcerate new people from the community in both facilities; and to move people into Butler and Morrow from the Franklin County Jail—another facility with positive tests—as well. Despite this, ICE has not provided further testing or taken any additional safety precautions at either facility.

The three Plaintiffs here are medically vulnerable people and are now at imminent risk of contracting this often-deadly virus. Mr. Keita suffers from asthma, for which he needs an inhaler. Declaration of Mory Keita (Keita Decl.), attached, at ¶ 6. Mr. Nije is in cancer recovery, and continues to require carcinoma treatments. *See* Jatta Decl. at ¶ 5; Declaration of Nazly Mamedova (Mamedova Decl.), attached, at ¶ 9. Mr. Refunjol suffers from coronary disease and asthma. Declaration of Karla Donado (Donado Decl.), attached, at ¶ 4. All of these health complications heighten the risk Plaintiffs face from COVID-19, and if they do contract the virus, they have a higher likelihood of serious illness or death. *See, e.g. CDC, People Who are at Higher Risk for Severe Illness* (updated Apr. 15, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (listing asthma, respiratory or lung disease, and coronary disease, among other issues, as risk factors for contracting COVID-19); *see also* CDC, *Coronavirus disease 2019 (COVID-19) Situation Report – 51* (Mar. 11, 2020), available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_4. Fortunately, each Plaintiff remains without symptoms at the time of this filing. But confined to the congregate detention environments, they are unable to

protect themselves from the known virus: they cannot socially distance or practice hygiene. They are trapped.

The number of confirmed cases of COVID-19 are rising, as is the death toll. *See* N.Y. Times, *Coronavirus in the U.S.: Latest Map and Case Count* (Apr. 23, 2020 at 9:17 p.m.) <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (865,252 U.S. cases and 44,300 deaths). The confirmed cases in Butler and Morrow Counties, surrounding the jails at issue here, increase daily; as of the time of this filing, Butler County had 201 confirmed cases and 4 deaths, and Morrow County had 25 confirmed cases. *See id.* And in settings like ICE detention the spread of COVID-19 can cause a “tinderbox” scenario—once the virus has entered a confinement setting like a jail, it spreads rapidly and mercilessly unless there is immediate depopulation and other precautions. *See, e.g.*, Catherine Shoichet, CNN, *Doctors warn of tinderbox scenario if coronavirus spreads in ICE detention* (Mar. 20, 2020, 8:21 pm.) <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>. This week Ohio’s prison system made national news when the Marion Correctional Institute revealed that 78% of its population tested positive shortly after the virus’s introduction—making that facility itself one of the largest hot zones in the country. *See, e.g.*, Josian Bates, *Ohio began mass testing incarcerated people for COVID-19. The results paint a bleak picture for the U.S. prison system*, Time (Apr. 22, 2020) available at <https://time.com/5825030/ohio-mass-testing-prisons-coronavirus-outbreaks/>.

In light of this, federal courts around the country have acted to release ICE and other detainees from dangerous detention environments, particularly those who are medically vulnerable or compromised in other ways. *See, e.g.*, Preliminary Injunction, *Kelvin Hernandez Roman, et al. v. Wolf, et al.*, W.D.C.A. No. edcv-20-786-jth (Apr. 23, 2020) (ordering ICE

detention center to reduce its population by May 4 including releasing medically vulnerable and non-criminal detainees); Order, *Wilson v. Williams*, N.D. Ohio No. 4:20-cv-00794 (Apr. 22, 2020) (requiring Elkton Federal Prison, after multiple positive tests and deaths from COVID-19, to identify and consider for release a class of medically vulnerable people); Order, *Amaya-Cruz v. ICE*, N.D. Ohio No. 1:20-cv-789 (Apr. 18, 2020); *Malam v. Adducci*, ___ F.Supp.2d ___, 2020 WL 1672662 (E.D. Mich. Apr. 5, 2020); *Thakker v. Doll*, ___ F.Supp.3d ___, 2020 WL1671563 (M.D. Pa. Mar. 31, 2020); *Basank v. Decker*, No. 20-cv-2517 (AT), --- F. Supp. 3d ----, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020); *Rafael L.O. v. Tsoukaris*, No. 2:20-cv-3481-JMV, 2020 WL 1808843 (D.N.J. Apr. 9, 2020); *Hope v. Doll*, No. 1:20-cv-562, Dkt. 12 (M.D. Pa. Apr. 7, 2020), *motion for reconsideration denied* (Apr. 10, 2020); *Bravo Castillo v. Barr*, No. 20-605-TJH (AFMx), --- F. Supp. 3d ----, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020); *John Doe v. Barr*, No. 3:20-cv-02141-LB (N.D. Cal. 2020); *see also Coronel v. Decker*, No. 20-cv-2472 (AJN), --- F. Supp. 3d ----, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020) (Detainee-petitioners’ “unmet medical needs” in general support argument that continued detention meets deliberate indifference standard).

So long as Plaintiffs are detained at Butler and Morrow, they cannot protect themselves; they simply cannot attain any social distance, which puts them at imminent risk of substantial bodily harm and death. Even basic hygiene products, which might help but would not resolve the grave risks, are not made available to them in these densely populated, congregate environments. Now that the virus has entered these facilities, the only way for these already health-compromised Plaintiffs to avoid serious harm is immediate release.

I. PLAINTIFFS ARE AT GRAVE RISK OF HARM FROM COVID-19.

Sidi Njie

Sidi Njie is a 34-year-old man detained in the Morrow County Jail. He was diagnosed with thyroid cancer in 2013, and had corrective surgery to remove both lobes of his thyroid in late 2014.¹ As a result of this, Mr. Njie requires regular papillary thyroid carcinoma treatments, ultrasound treatments, and may also require radioiodine ablation therapy. *See* Mamedova Decl. ¶ 9. He also needs to see an endocrinologist every three months and he must get his thyroid levels checked every six weeks, and must have his lymph nodes monitored also. He is particularly susceptible to infection or illness as a result of his surgery. He has not been able to receive adequate treatment while in ICE detention. *Id.*

Mr. Njie has been in ICE detention for almost one year. *Id.* He has lived in the United States since 2002, when he entered lawfully on a B2 tourist visa in 2002 from Gambia, and he has lived in Ohio since he moved here in 2013. He was detained in June 2019, after having initiated an asylum claim – ICE appeared at his home and detained him. His only criminal history in his 18 years residing in this country is a 2018 mayor’s court charge for possession of drug paraphernalia, for which he paid a fine. With the help of his counsel, he continues to press his immigration appeal, and desires to continue living in Ohio with his family.

In addition to his medical fragility, the available path for his safe release, and the emergent COVID-19 outbreak at his facility, Mr. Njie practices Islam, and with the beginning of Ramadan today, will fast according to his religion. Because the jail does not provide halal food at all, or provide any food during the hours required for this observance, Mr. Njie will become

¹ Plaintiffs intend to file a motion for leave to file additional confidential medical records under seal. Because of the highly expedited nature of this filing and the particularly sensitive but relevant content of these personal medical records, Plaintiffs have not yet attached this additional supportive evidence.

inadequately nourished, putting his immune system at risk. *See id.* at ¶12. Mr. Njie lives outside of Columbus with his wife and children, in their shared home. If he is released, he will be able to return to his home and quarantine for 14 days, and subsequently continue to follow Director Acton's stay home order to keep himself, his family, and his community safe.

While detained at Morrow, Mr. Njie has been in close proximity with multiple detainees exhibiting flu-like symptoms, including the men who were ultimately isolated after their COVID-19 positive tests. At one point, Mr. Njie had to help the COVID-positive man support himself because of his weakness. He and his wife fear for his health if he must remain there.

Adenis Enrique Prieto Refunjol

Adenis Refunjol is a 46-year-old man detained in the Butler County Jail. He suffers from bronchial asthma and hypertrophic hypertensive cardiopathy. *See Donado Decl.* ¶ 4. These illnesses put him at greater risk for serious health complications, including higher risk of death, if he contracts COVID-19. Mr. Refunjol has been in ICE detention for almost six months. When he was first detained, he did not receive his necessary medications for over a week. Since he has been at the jail, he has had bloating and intestinal pain, in addition to flare-ups of his preexisting conditions.

Mr. Refunjol first came to the United States in 2014 on a lawful B2 visa as a tourist, and returned lawfully many times since. His most recent visa entry was in July, 2018, after which he remained here, and met his now-fiancée in Florida. He is pursuing an immigration claim to remain in the US, and does not have a removal order. ICE detained him after an OVI stop in Warren County in November of 2019. His only other criminal history in the United States was a civil fine for trespass in Florida. He is represented by attorney Nazly Mamedova in his immigration case, and he wants to return to his U.S. citizen fiancée and brother. If he is released,

he will be able to stay with his fiancée where he lives. Because her elderly mother lives with her, his fiancée has arranged for Adenis to stay with a neighbor to quarantine for the first 14 days. He will also follow all other health directives. *Id.* ¶¶ 6-7.

While at Butler County, Mr. Refunjol has had to interact with people who are visibly ill, including sharing the same telephone, toilet area, and sometimes cell with them.

Mory Keita

Mory Keita is a 33-year-old man being held at Morrow County jail. Mr. Keita does not know his country of origin, but ICE tells him he is from Guinea. Keita Decl. ¶ 3. He suffers from asthma, and must use an inhaler; he was diagnosed with asthma in approximately 2012. Since he has been detained, ICE has refused to provide him an inhaler despite his repeated requests. He has experienced coughing, wheezing, and difficulty breathing. In addition, since he has been detained, he has suffered from anxiety and periodic cold symptoms.

Mr. Keita was brought to the United States by his parents at the age of 3, and has lived here ever since. ICE has detained Mr. Keita on two prior occasions. Most recently, ICE was forced to release him after 90 days in detention because they were unable to secure the travel documents necessary for his removal. Mr. Keita has been detained at Morrow since ICE once again detained him in February 2020, after he had completed serving time at the Pickaway County Jail. He has no violent criminal history. If he is released, he would be able to live at the home of his friend, Shanice Patterson, in Columbus, Ohio and quarantine for 14 days in her home, and continue to follow Ohio's stay home order and care for himself, while the pandemic persists.

Mr. Keita and the man who tested positive for COVID-19 at Morrow used to sleep in bunkbed rows next to each other. For days, as the now-quarantined man experienced serious

symptoms including a high fever, Mr. Keita was forced to sleep within a couple feet of him. Now, Mr. Keita fears for his life. He remains in close contact with approximately 80 other detainees, many of whom have also been closely exposed. He continues to sleep in the shared room, eat communally, and use shared appliances like the telephone and water fountain. He also continues to interact with corrections officers, who return home to their communities every day after their shifts. Mr. Keita is being denied the ability to socially distance himself from others, putting both himself, and possibly others, at greater risk of contracting the deadly virus.

II. DETENTION AT BUTLER AND MORROW PUTS PLAINTIFFS AT IMMINENT RISK OF SUBSTANTIAL BODILY HARM.

The danger of COVID-19 exposure to Plaintiffs is acute at Butler and Morrow: now that the virus has infiltrated these facilities, it will spread rapidly, and the structure of the facilities themselves makes them virtual incubators from which detainees cannot escape. Detainees in these facilities are confined in large groups and lack autonomy to distance themselves. They also cannot manage who they interact with: jail staff come in and out from the community, and ICE and the local jurisdictions continue to cycle detainees in and out—and between—these facilities, even after Butler County Jail confirmed positive tests of both detainees and staff. Infectious diseases like COVID-19, which are communicable by air and touch, are exponentially more likely to spread in congregate environments like these jails. Social distancing combined with vigilant hygiene, including frequent washing of hands with soap and water, is the only known effective measure for protecting vulnerable people from contracting COVID-19. Recent ICE guidance acknowledges the risks of COVID-19 to detainees.² However, even if the guidance were being followed in facilities such as Butler and Morrow—and it is not—it would be inadequate protection.

² *ICE Guidance on COVID-19* (“ICE Guidance”), U.S. Immigration & Customs Enforcement, www.ice.gov/covid19.

First, the physical structure of the Butler and Morrow facilities makes social distancing impossible. For example, in Morrow, Plaintiffs and other detained individuals are kept together in a group of up to eighty or more men. *E.g.* Mamedova Decl. ¶ 8. They sleep barely two feet apart, in bunkbeds, in a communal room in which they cannot avoid being well within six feet of each other either while eating, sleeping, or recreating. *Id.* For meals, they must stand in crowded lines, then sit all together in close proximity to one another to eat. *Id.* They also use one shared water fountain. At Butler, detainees sleep in small, often-shared cells, also in bunkbeds, and can have a revolving door of different cellmates. Donado Decl. ¶ 3. At both facilities, detainees have to use phones that are similarly close together, and are not disinfected between uses. All surfaces are shared. There are shared bathrooms and there are no disinfectants or sanitizers—only, at best, basic hand soap. The facilities are poorly ventilated, and many detainees have recently been febrile or coughing. Plaintiffs cannot physically escape them. Detainees are never allowed to go outside. The Butler facility is completely enclosed - it does not even have windows that open in any of the spaces where detainees are held. Since the COVID-19 pandemic, detainees at Butler are now only released from their cells 24 detainees at a time, instead of 46 detainees at a time. Few or no additional precautions have been taken at either facility.

Second, now that there are confirmed cases of the virus at both of these facilities, *every* detainee's serious risk of contracting it has become concrete. With a virulently contagious virus present in this environment, and no way for individual detainees to protect themselves from it, it will spread quickly. Moreover, ICE continues to transfer detainees and accept new detainees,

without testing or quarantining detainees or staff. As a result, ICE has further facilitated the spread of the virus.

Third, Butler and Morrow cannot ensure adequate treatment of detainees once they do become infected. People who contract COVID-19, particularly those with pre-existing conditions, often need intensive medical assistance including hospitalization. Such an advanced level of supportive care requires specialized equipment including ventilators, as well as an entire team of providers, including nurses, respiratory therapists, and physicians, which these jails do not possess. If Plaintiffs are forced to stay in these environments and they do contract COVID-19, they will necessarily rely on local hospital facilities, making these jail environments a danger not only to Plaintiffs, but to the public.

Now that this virus has entered these jails—and before the window of Plaintiffs’ safety inevitably closes—Plaintiffs ask the Court to act. Plaintiffs are at risk of imminent, grave harm, and they must be released.

III. RELEASE FROM DETENTION IS THE ONLY WAY TO PROTECT PLAINTIFFS’ SAFETY AND THEIR DUE PROCESS RIGHTS.

In the current, unprecedented circumstances this pandemic presents—particularly given the new outbreaks at these two facilities—it has become impossible for Plaintiffs to remain safe while still detained at Butler and Morrow. Only their immediate release from detention can vindicate their Due Process rights and protect their lives.

A rapidly-growing consensus of health experts, doctors, courts, and prison administrators across the country have made clear that people kept in detention facilities, especially people with health complications, must be released for their own safety and for the safety of others. Ohio Chief Justice Maureen O’Connor has urged “judges to use their discretion and release people held in jail

and incarcerated individuals who are in a high-risk category for being infected with the virus.”³ Local jails across Ohio have made massive releases of their own detainees; for example, Cuyahoga County declared a state of emergency and expedited the release of over 900 inmates from county jail in March.⁴ Even ICE’s own subject matter experts have stressed that Defendants should depopulate their facilities to at least “75% of capacity,” and consider for release “all detainees in high risk medical groups, such as older people and those with chronic disease.” ICE Guidance Document, April 10, 2020, attached.⁵

ARGUMENT

This Court should grant a temporary restraining order allowing Plaintiffs’ release: (1) they are likely to succeed on the merits of their claims; (2) they are likely to suffer irreparable harm in the absence of relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *See Summit Cty. Democratic Ctrl. & Exec. Comm. v. Blackwell*, 388 F.3d 547, 552 (6th Cir. 2004). The Court may order immediate release under either 28 U.S.C. § 2241, or 28 U.S.C. § 1331.

IV. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

³ *Release Ohio Jail Inmates Vulnerable to Coronavirus, Chief Justice Urges*, WLWT5 (Mar. 19, 2020), <https://www.wlwt.com/article/release-ohio-jail-inmates-vulnerable-to-coronavirus-chief-justice-urges/31788560>,

⁴ *See Adam Ferrise, Coronavirus Got 900 Inmates Out of Cuyahoga County’s Troubled Jail When Inmate Deaths Didn’t. Some Say the Changes Should Stick*. (Apr. 1, 2020), <https://www.cleveland.com/court-justice/2020/04/coronavirus-got-900-inmates-out-of-cuyahoga-countys-troubled-jail-when-inmate-deaths-didnt-some-say-the-changes-should-stick.html>,

⁵ Former Acting Director of ICE John Sandweg has also publicly called on the agency to release “thousands” of people in order to prevent an outbreak amongst ICE facility staff and detainees. *See John Sandweg, I Used to Run ICE. We Need to Release the Nonviolent Detainees*, The Atlantic (Mar. 22, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>,

Plaintiffs are likely to establish that Defendants violated—and continue to violate—Plaintiffs’ constitutional rights by condemning them to confined, close quarters, where it is impossible to practice social distancing. Defendants *cannot* adequately remedy any potential harm suffered by Plaintiffs as a result of COVID-19. Accordingly, Plaintiffs’ continued detention violates their Fifth Amendment rights.

A. Plaintiffs’ Continued Detention at Butler and Morrow Violates the Fifth Amendment.

Defendants have violated, and continue to violate, Plaintiffs’ constitutional Due Process rights by detaining them in conditions that in no way “reasonably relate[] to a legitimate governmental purpose.” *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). As civil detainees, Plaintiffs’ detention is governed by the Fifth Amendment. *Id.* Under the Fifth Amendment, civil detention may not “amount to punishment of the detainee.” *Id.* at 535. Because of the imminent risk they face of contracting COVID-19 now that it has entered their detention facilities, and especially in light of their fragile medical statuses, Plaintiffs’ confinement is not “reasonably related to a legitimate governmental objective”; instead it is “arbitrary or purposeless[.]” *Id.* at 539; *see also J.H. v. Williamson Cty., Tenn.*, 951 F.3d 709, 717 (6th Cir. 2020) (applying *Bell* to pre-trial detainee’s conditions of confinement claim).⁶

⁶ Although Plaintiffs’ claims are governed by the Fifth Amendment, their continued detention would also violate the Eighth Amendment’s much more stringent “deliberate indifference” standard. The Supreme Court has recognized that the government is deliberately indifferent, and therefore violates the Eighth Amendment, when it “ignores a condition of confinement that is sure or very likely to cause serious illness” by crowding Plaintiffs into living quarters with others who have “infectious maladies . . . even though the possible infection might not affect all of those exposed.” *Helling v. McKinney*, 509 U.S. 25, 32–33 (1993) (upholding claim as to second hand smoke). Here, as explained in detail above, COVID-19 poses a serious risk to Plaintiffs, and that continued detention would amount to deliberate indifference under the circumstances. *See Bell*, 441 U.S. at 539. *Malam*, 2020 WL 1672662 at *12; *Thakker v. Doll*, 2020 WL 1671563, at *8 n.15 (M.D. Pa. Mar. 31, 2020). Moreover, the Supreme Court has clarified that the Eighth Amendment’s deliberate indifference standard does not apply to pre-trial detainees. In *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015), the Court held that a pretrial detainee’s

Plaintiffs' detention is not "reasonably related" to its objective because it creates a serious risk of imminent illness and possibly of death. *See Bell*, 441 U.S. at 539. This disease is deadly and causes lasting damage even for the youngest, healthiest people who contract it, and the particular risks associated with it are not yet known. For any kind of medically fragile person, the risk is even greater. This risk is urgent and imminent; on the other hand, continued detention is unrelated to any legitimate governmental goal, as many federal courts have already held. *See, e.g., Malam v. Adducci*, __ F. Supp. 3d __, 2020 WL 1672662 (E.D. Mich. Apr. 5, 2020) (holding that immigrant petitioner's continued detention in Michigan is both unrelated and contrary to the government purpose of carrying out her removal proceedings); *Xochihua-Jaimes v. Barr*, __ F. App'x __, No. 18-71460, 2020 WL 1429877 (9th Cir. Mar. 24, 2020) (*sua sponte* ordering immediate release of immigrant petitioner "[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers"); *Thakker v. Doll*, __ F. Supp. 3d __, 2020 WL 1671563, at *8 (M.D. Pa. Mar. 31, 2020) ("We can see no rational relationship between a legitimate government objective and keeping Petitioners detained in unsanitary, tightly-packed environments.").

Fourteenth Amendment excessive force claim need only meet the objective component of a deliberate indifference claim by showing that "the force purposely or knowingly used against him was objectively unreasonable." *Id.* As the Sixth Circuit has recognized, "this shift in Fourteenth Amendment deliberate indifference jurisprudence calls into serious doubt whether [a detainee] need even show that the individual defendant-officials were subjectively aware of [the detainee's] serious medical conditions and nonetheless wantonly disregarded them." *Richmond v. Huq*, 885 F.3d 928, 938 n.3 (6th Cir. 2018). *See also Griffith v. Franklin Cty., Ky.*, 2019 WL 1387691, at * 5 (E.D. Ky. 2019) (holding that after *Kingsley*, a pretrial detainee need not show subjective deliberate indifference). While Plaintiffs here satisfy either standard, there is no need for the Court to reach these issues. It can simply apply *Bell*, as recently reaffirmed by the Sixth Circuit in *J.H. v. Williamson Cty., Tenn.*, 951 F.3d 709 (6th Cir. 2020).

B. Plaintiffs' Release Is the Sole Effective Remedy for the Constitutional Violation at Issue.

Plaintiffs' immediate release is the sole effective remedy for the constitutional violation here. When the government fails to meet its obligations to provide adequate care, courts have a responsibility to remedy the constitutional violation using their broad powers to fashion equitable relief. *See Brown v. Plata*, 563 U.S. 493, 511 (2011) ("When necessary to ensure compliance with a constitutional mandate, courts may . . . plac[e] limits on a prison's population.").

To vindicate detainees' Due Process rights in the face of the COVID-19 pandemic, federal and state courts across the country have ordered the release of detained individuals, including health-compromised people like Plaintiffs, and including those with similar or less severe medical conditions. *See, e.g., E.g., Malam v. Adducci*, No. 5:20-cv-10829, ECF. 22, 29 (E.D. Mich., Apr. 5 2020, Apr. 9, 2020) (ordering release of ICE detainees); *Thakker v. Doll*, ___ F.Supp.3d ___, 2020 WL1671563 (M.D. Pa. Mar. 31, 2020) (as to ICE detainees in Pennsylvania, ordering release of prisoners with conditions including high cholesterol and repeated flu symptoms); *Basank v. Decker*, No. 20-cv-2517 (AT), --- F. Supp. 3d ----, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020) (releasing asthmatic plaintiffs and others from facility with positive test cases for COVID-19); *Rafael L.O. v. Tsoukaris*, No. 2:20-cv-3481-JMV, 2020 WL 1808843 (D.N.J. Apr. 9, 2020) (same); *Hope v. Doll*, No. 1:20-cv-562, Dkt. 12 (M.D. Pa. Apr. 7, 2020), *motion for reconsideration denied* (Apr. 10, 2020)(releasing asthmatic plaintiffs and others with various health vulnerabilities); *Bravo Castillo v. Barr*, No. 20-605-TJH (AFMx), --- F. Supp. 3d ----, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020) (ordering release of prisoners with medical conditions including kidney stones and facial fracture).⁷

⁷ Additionally, this week at least two class action complaints have resulted in larger-scale release or control orders, where the virus had already entered the facility. *See Order, Wilson v. Williams*,

In this case, as in the many similar cases listed above, the Plaintiffs' immediate release from detention is the only effective remedy for the constitutional violation they are suffering. There is no known cure or treatment for COVID-19, no known vaccine, and no known natural immunity. Social distancing is essential to mitigate the spread of contagion. At Butler and Morrow, Plaintiffs cannot maintain the necessary distance from either their fellow detainees or the staff at the facility sufficient to protect their health. Because Plaintiffs have shown that their continued detention would cause an unacceptably high risk of grave injury, Plaintiffs are likely to succeed on the merits of their claim that their continued detention violates their rights under the Fifth Amendment, and that release from custody is the only permissible way to ensure their safety and the safety of others with whom they are forced to be in close and daily contact.

V. THE OTHER FACTORS REQUIRED FOR A TEMPORARY RESTRAINING ORDER TIP SHARPLY IN FAVOR OF RELEASING PLAINTIFFS.

A. Plaintiffs' Exposure to COVID-19 Constitutes Irreparable Harm.

"When constitutional rights are threatened or impaired, irreparable injury is presumed." *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *see also Wilson v. Gordon*, 822 F.3d 934, 958 (6th Cir. 2016) ("Courts routinely uphold preliminary injunctions where the alleged irreparable harm involves delay in or inability to obtain medical services."). Keeping Plaintiffs confined in a condensed, known viral environment with a dangerous disease is the definition of a threat to their constitutional rights, even under the most stringent standard.

B. The Public Interest and the Balance of Equities Weigh Heavily in Plaintiffs' Favor.

So long as they continue to be confined at Butler and Morrow, Plaintiffs' lives are in danger in violation of their Due Process rights. Releasing them from detention with the proper public

N.D. Ohio No. 4:20-cv-00794 (Apr. 22, 2020); *Hernandez Roman, et al. v. Wolf, et al.*, W.D.C.A. No. edcv-20-786-jth (Apr. 23, 2020).

health and safety precautions will protect their safety and remedy the continued violation of their constitutional rights, which is in the public interest. *Dodds v. U.S. Dep't of Educ.*, 845 F.3d 217, 222 (6th Cir. 2016) (protection of constitutional rights is “a purpose that is always in the public interest”). Plaintiffs’ release will also promote Defendants’ interest in ensuring the safety of the other detainees, facility staff, and community at large. Now that the virus has entered the facility, it is in the public interest to take emergency steps to mitigate its spread, beginning with the most medically vulnerable people like Plaintiffs. Uncontrolled spread will have dire consequences for all detainees and workers as well as the Butler and Morrow County areas, which would be drained of its limited medical resources, including intensive care unit beds and ventilators. In Ohio, the COVID-19 outbreak has already resulted in unprecedented public health measures and has strained the local health care system. Releasing vulnerable individuals will reduce the burden on the local community and health infrastructure and is clearly in the public interest. *See Calderon Jimenez*, No. 18-10225-MLW at 4.⁸

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs’ Motion for a Temporary Restraining Order and direct Plaintiffs’ immediate release. Plaintiffs respectfully request a hearing as soon as possible on their Motion. Because every hour they must spend in these contaminated facilities puts them at greater risk, time is of the essence.

⁸ As detained, indigent individuals, Plaintiffs request this Court to exercise its discretion to require no security in issuing this relief. *Urbain v. Knapp Bros. Mfg. Co.*, 217 F.2d 810, 815–16 (6th Cir. 1954) (“[T]he matter of requiring security in each case rests in the discretion of the District Judge.”).

Dated: April 24, 2020

Respectfully submitted,

/s/ Elizabeth Bonham

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* Application for admission *pro hac*
vice forthcoming

CERTIFICATE OF SERVICE

I certify that on April 24, 2020, I filed the foregoing using the Court's CM/ECF System, and that all counsel of record will receive notice through that system. I further certify that full copies of the foregoing and all attachments were emailed to the United States Attorney's office for the Southern District of Ohio.

/s/Elizabeth Bonham

Elizabeth Bonham (0093733)

DECLARATION OF BRANDY JATTA

I, Brandy Jatta, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. §1746.

1. My name is Brandy Jatta. Sidi Njie is my husband; I am a U.S. citizen.
2. I make these statements based upon my personal knowledge and conversations with Sidi before and during his civil immigration detention. He has been in Immigration and Customs Enforcement (“ICE”) detention since June of 2019. At first, he was detained in the Butler County Jail, then he was transferred to the Morrow County Jail in February 2020. I talk to him on the phone almost every single day.
3. Sidi and I have been together for over six years now, and married for five. We live together outside of Columbus with our children.
4. I am worried about Sidi’s safety, because he is a recent cancer survivor and has other health complications, and because I learned from him yesterday that there was a positive test for COVID-19 of a fellow detainee at Morrow.
5. Sidi is in recovery from thyroid cancer, and has had his thyroid completely removed. As a result, he needs to take medications that replace his thyroid function. If he does not have the correct dosage (which he often does not have at the jail) he experiences extreme fatigue and confusion, and can sometimes pass out. Additionally, he has not been deemed cancer-free, and still needs to go to his doctor regularly for scans, which he also has not been able to do for almost a year in detention. Since he has had such severe health

problems and not been able to follow up on his treatment, I am very worried about him getting sick.

6. At the Morrow County jail, Sidi is confined to one self-contained pod, currently with 79 other men. This is the only room for detainees in that jail. He sleeps in bunk beds, with a top and bottom bunk, that are approximately one foot apart from each other. There are several sets of bunk beds clustered together, with a total of about 100 beds. Everyone sleeps, eats, and spends all of their time in close proximity always within that same room, and everyone shares an attached bathroom and water fountain. They are not provided hygiene supplies other than watered-down handsoap, and nothing else is even available for me to buy Sidi from the commissary. Including Sidi, 51 of these men are ICE detainees, and the rest are U.S. citizens. The number of ICE detainees has not decreased since the pandemic began.
7. Since the COVID-19 pandemic began, Sidi and I knew that it was only a matter of time until there was a positive test at Morrow jail. Last night, Sidi called and told me there finally was a positive case at Morrow.
 - a. Since the outbreak of the pandemic, Morrow jail has not taken any steps to protect detainees from the virus (including increased hygiene, depopulation of ICE detainees, or social distancing). And the jail has continued to accept new detainees from the public, without quarantining them.
 - b. Further, detainees are frequently transferred between the Butler and Morrow County jails, and detainees are frequently introduced into Morrow from the Franklin County jail, all without quarantining them.

- c. About three weeks ago, corrections staff brought three people into Morrow—two U.S. Citizens who were arrested from the local community, and one ICE detainee who was transferred in from another facility—and put them in a quarantine room outside of Sidi's pod for only six days. After six days, the staff put them into the general population. They did not test anyone. Those people are still in the general pod.
- d. Then, early last week, a different ICE detainee in Sidi's pod appeared to have symptoms including a fever and coughing. That same day, ICE transferred that person from Morrow to the Butler County jail. Again, there were no tests administered.
- e. On April 11, the first positive test was reported at the Franklin County jail. On April 13, the first positive test was reported at the Butler County jail.
- f. Early last week, ICE transferred two detainees from Franklin into Morrow, and these people were put directly in the general population without any quarantine period. Within the first couple of days, they were exhibiting flu symptoms including fever. On Wednesday, April 22, Sidi called the corrections staff to examine one of the two, who was having trouble walking because of high fever and shortness of breath. That night, the corrections officers separated that person from the group, but still left his bunk-mate—who also had a fever—in the general pod. On Thursday, April 23, the staff finally quarantined the bunk mate.

- g. On Thursday night (last night) corrections staff came to inform Sidi and the rest of the detainees that one of these newly-quarantined people had tested positive for COVID-19, after more than one week of living amongst the general population.
 - h. Sidi asked the corrections staff whether they would test him and the other detainees, and he was told they would not. The staff provided basic surgical masks to the detainees, and took no other actions to protect them.
 - i. The corrections officers themselves told Sidi and others they felt afraid of the virus. That night, corrections officers had to dispense general medicine to the detainees, because the entire medical staff, whose job it is, had left early.
 - j. When Sidi called me to tell me this, we were both terrified. Although there are no other detainees showing symptoms, we know that there are many asymptomatic carriers, and that the virus spreads quickly.
8. If Sidi is released, he can return to our home near Columbus, where he can live safely with me and our children. There, we would ensure he is able to self-quarantine for a full 14 days, and subsequently he (like us all) will continue to follow the state's stay home order. I would help him comply with any reporting requirements that are necessary. And he would be able to get the medical care he needs, including his cancer screenings.

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

Executed on the 24th day of April, 2020.

/s/ Brandy Jatta

DECLARATION OF ATTORNEY NAZLY MAMEDOVA

I, Nazly Mamedova, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. §1746.

1. My name is Nazly Mamedova. I make these statements based upon my personal knowledge.
2. I am an attorney that primarily represents noncitizens in immigration proceedings in Ohio. My practice is limited to Immigration and Naturalization law.
3. I represent Sidi Njie, a 34 year-old Gambian national, who has been detained at Morrow County Jail in Mt. Gilead, Ohio since January 2020. From June 26, 2019 to January 2019, he was detained at Butler County Jail in Butler County, Ohio. Mr. Njie has been in immigration detention for over six months.
4. Mr. Njie was born in Gambia, and initially came to the United States in 2002 lawfully under a B2 visa. He lived in New York from 2002 until 2012, and then lived in Georgia until the summer of 2013. Mr. Njie has lived in Ohio since the summer of 2013. He has not departed the United States since his B2 entrance in 2002.
5. Mr. Njie has a U.S. citizen spouse and 8 U.S. citizen children.
6. In 2018, Mr. Njie was charged with possession of drug paraphernalia by a local mayor's court. Mr. Njie pleaded guilty and paid a fine. He has no other criminal history in the 18 years that he has been in the U.S.

7. Mr. Njie was detained at his house in Blacklick, Ohio in June 2019, after being erroneously told by ICE that a judge had denied his immigration claim. At that time, Mr. Sidi had a pending claim, with a hearing scheduled for 2021; no judge had denied his claim. However, once in detention, Mr. Sidi's application was denied in 2020. He has appealed with my assistance, and his case is now before the Board of Immigration Appeals, but there is no briefing schedule at this time.
8. Through my communications with Mr. Njie and his spouse since he has been in ICE detention, I have learned the following about the general conditions at Morrow County Jail:
 - a. Mr. Njie is housed in a pod with at least 80 people in the same pod. Detainees sleep in bunk beds that are each separated by only one foot. Mr. Njie is not able to maintain the recommended six feet of social distancing at any time, and he is unable to leave the pod.
 - b. The phones at Morrow County Jail are in very close proximity to each other and are not disinfected in between uses.
 - c. The jail continues to admit people. On Thursday, April 2, eleven people were transferred in from Butler County Jail, and the next day, ten more people were admitted from the public. Jail staff administered no quarantine procedures for any of these new people, or put in place additional precautionary measures to guard against infection. Since that time, additional intakes have happened, with no quarantine.

- d. For meals, detainees at Morrow County Jail must wait in crowded lines, and they eat in a general seating area in close proximity with others, frequently in large groups. There is only one water fountain that detainees use, and the only other source of water is in the communal bathroom. Uniforms are not washed properly, and Mr. Njie has seen on multiple occasions that food still remains on the uniforms after washing.
- e. Until recently Morrow did not provide soap to the detainees, they had to purchase any soap through the facility's commissary. While detainees have access to soap now due to COVID19, it is watered down to the point that it does not lather when Mr. Njie washes his hands. Mr. Njie has not been provided with any alcohol-based sanitizers, and jail staff do not disinfect. The only update has been the provision of basic soap.
- f. The jail provides no COVID-19 testing to detainees or staff, and Mr. Njie has no way of knowing whether he has been exposed to COVID-19. About two weeks ago, three people were brought in from another facility in which a sheriff had tested positive for COVID-19 on March 30th. They were placed into isolation, but there is only one ventilation system in the jail, and they were released back into the general population less than one week later. Quarantine of new people is either ad hoc, or does not happen at all.
- g. Mr. Njie has witnessed multiple people coughing in the jail and is aware of multiple detainees who recently had fevers. There are two more detainees that arrived to

Morrow about 10 days ago and have exhibited high fevers as recently as yesterday. Currently, only one of them is isolated.

- h. The corrections officers at the jail do not wear masks or gloves, and all supplies of those items have run out. One corrections officer with an underlying heart condition confided to some of the detainees that he is worried about the lack of proper procedures in the jail. In addition, multiple corrections officers have stopped coming in to work.
 - i. After allegations surfaced that doctors were using the same alcohol pad to clean multiple thermometers, doctors began to “take” detainees’ temperatures merely by touching the detainees’ skin using their fingers, and making a guess about whether someone was febrile. Generally, detainees must wait for a long period of time to be treated for any reason.
 - j. On the evening of April 24, 2020, I learned through Mr. Nije’s wife that there had finally been one positive test of a detainee in this facility. This person had been in the general population, alongside Mr. Nije, for at least ten days, exhibiting symptoms of COVID-19.
9. Mr. Njie suffers from a compromised immune system due to thyroid cancer. He was diagnosed in 2013 and underwent surgery to remove both lobes of his thyroid in December 2014. In 2018, he was treated at the Wexner Medical Center at Ohio State University, where he was told by a doctor that he requires regular monitoring. He needs to see a thyroid cancer specialist every three to six months. Mr. Njie requires regular papillary thyroid carcinoma treatments, ultrasound treatments and possible radioiodine ablation therapy. He

also needs to see an endocrinologist every three months and he must get his thyroid levels checked every six weeks. Mr. Njie was also told that he was more susceptible to infection or illness as a result of his surgery, and that he would need to have his lymph nodes checked as well.

10. In detention, Mr. Njie has not had his blood levels tested, which is critical in determining whether his medication should be adjusted. He takes Synthroid, a synthetic thyroid compound, and his hormones need to be monitored through regular blood draws, which the facility does not provide. Mr. Njie has also not had any cancer treatment while in detention.

11. Based on the fact that social distancing is impossible in this facility, and his inability to access adequate medical care, the detention center is failing to protect Mr. Njie from contracting COVID-19.

12. Additionally, Mr. Njie practices Islam. Ramadan is staring tomorrow, and Mr. Njie will be fasting. This will compromise his immune system even further if he remains in jail.

13. If Mr. Njie is released, he can be reunited with his wife, Brandy Jatta, and his eight children. At home, he will be able to get medical treatment for his conditions while maintaining a safe distance from others and/or quarantining, as necessary. He would be able to live safely with his family and comply with the Governor's stay-home order and any other reasonable conditions and health precautions.

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

Executed on the 24thday of April 2020.

/s/ Nazly Mamedova

Nazly Mamedova
11260 Chester Road #310
Cincinnati, OH 45246

**DECLARATION OF KARLA DONADO IN FURTHER SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Karla Donado, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. §1746.

1. My name is Karla Donado. I make these statements based upon my personal knowledge, and through conversations with my fiancé, Adenis Prieto Refujol.
2. Adenis has been detained by Immigration and Customs Enforcement (“ICE”) since November of last year. He was detained by ICE after being stopped for speeding and charged with an OVI. His only other criminal history is a trespass charge, for which he paid a fine.
3. Adenis is detained at Butler County Jail (“Butler Jail”).
 - a. Adenis sleeps in a small cell that holds two people. They both sleep on a shared bunkbed. Since Adenis was brought to Butler Jail, he has had so many cellmates I have lost count. It feels like a revolving door of different cellmates. To my knowledge, he still has a cellmate.
 - b. According to Adenis, there are individuals in the general population at Butler Jail who are feeling sick and have symptoms including high fevers and headaches.
 - c. Since the outbreak of COVID-19, Adenis reports that Butler Jail has not increased the number of times per week detainees are able to do laundry to clean their clothes, sheets, and towels. He has basic soap, but not disinfectants.
 - d. The detainees at Butler Jail continue to use the same telephone. No precautions have been taken to disinfect the phone between uses. Adenis tries to wipe it off with his shirt before he uses it, but he knows that is insufficient, and then he just has to continue wearing the shirt for days.

4. Adenis has hypertension, asthma, and acid reflux that causes him stomach pain. He reports that he has had testing done while detained at Butler Jail, but that they never share his test results with him. He's not sure if it is because he only speaks Spanish, or if they are just keeping the information from him. He takes medication for hypertension and acid reflux at Butler Jail. He is often confused and scared because they will not update him about his health.
5. Adenis is currently afraid for his life. He knows that asthma and hypertension make him more vulnerable to COVID-19 and he is deeply worried.
6. If Adenis is released, his brother can pick him up from Butler Jail and drive him to Broward County, Florida, where he will be reunited with me. I live with my elderly mother, but our neighbor has agreed to let Adenis stay with her for his first 14 days so that he can adequately quarantine without potentially exposing my mother. After that, he will live with us. We are being vigilant about the stay at home order, and Adenis would be able to follow all health directives at home with me.
7. Adenis intends to stay in the United States. He has established a family and community here.

I declare under penalty of perjury that the foregoing is true and correct.

Executed April 24, 2020.

/s/ Karla Donado
Karla Donado
714 NE 10th St
Apt. 106
Hallandale Beach, FL 33009

**DECLARATION OF MORY KEITA IN FURTHER SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Mory Keita, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. §1746.

1. My name is Mory Keita. I make these statements based upon my personal knowledge.
2. I am an Immigration and Customs Enforcement (“ICE”) detainee at Morrow County Correctional Facility (“Morrow Jail”).
3. I do not know my country of origin, because I was brought to the United States when I was three years old. ICE has told me that my country of origin is Guinea. I have a four-year-old daughter who is a U.S. citizen.
4. I have the following felony criminal convictions: possession of controlled substances (felony 5), illegal processing of drug documents (felony 5), improperly handling firearms in a motor vehicle (felony 4), and federal credit card fraud charges, for which I have served my time. These are my only felony convictions.
5. I have been in ICE custody multiple times. The first time, I was released from Butler Jail and put on probation. Although I was checking in with probation, I was not notified of my court date. I later learned the judge had issued a removal order due to my failure to appear. I was subsequently picked up by ICE directly from detention in Alabama where I was serving federal time for the credit card fraud charges. ICE released me after 90 days because they could not secure my travel documents. I was picked up by ICE again on February 6, 2020 and brought from Pickaway Jail, where I was serving time for the improper handling of a gun charge and the drug charges, and brought to Morrow Jail where I remain.

6. I have asthma, depression, and anxiety. Throughout my time at Morrow Jail, I have been denied access to an inhaler. I had an inhaler at Pickaway Jail, where ICE took me into custody, but my inhaler was not transferred with me. While at Morrow Jail I have had trouble breathing and have asked for an inhaler, but have not been provided with one. I have asked for an inhaler on four different occasions. On one occasion I was told by ICE Agent Murphy that I would not be provided with one.
7. At Morrow Jail, I live in a pod with around 80 other individuals. We sleep in bunkbeds that are about a foot away from each other. It is not possible to maintain the recommended six feet of distance from another individual at any time. We even share the same telephones which are not cleaned, to my knowledge, in between uses and the same single water fountain. We also still eat communally and are required to stand in a line to get our food. As of April 24, 2020, we are still lining up for food and eating communally.
8. As recently as this week about five or six new people joined our pod. One of these individuals was from the community and the others were from other detention facilities including Butler Jail. To my knowledge, they were not quarantined before they joined us in our shared pod.
9. About three or four days ago a man in my pod was complaining that he was very sick. He slept in a bed in the row next to mine about three feet away from my bed. I could look him in the eye and could tell he was really sick. After a few days, I told him that he needed to ask for help to see how high his fever is. When they took his temperature his fever was 104 degrees. The nurse came and I heard him ask her to be tested for COVID-19 because he was afraid. The nurse responded by saying he just had a fever and could sleep it off. I personally heard her telling him that and I could not believe it. Later, after

shift change, a new nurse came and the man asked again to be tested for COVID-19. His fever was around 102 when they took it again. He was then removed from the pod.

10. On April 23, 2020, at approximately six o'clock in the evening, correctional officers wearing masks came into the pod and told us that the man who had been removed from our pod had tested positive for coronavirus. They then handed out masks to the detainees for the first time. This seemed weird to me that we were only getting the masks after we had been exposed. They did not give us any further information and they have changed no other protocols other than correction officers are now using masks and detainees now have the option to wear masks.
11. After the announcement, another man on my pod got his temperature taken and it was over 100 degrees. He was then moved off the pod within a couple hours.
12. Right now, I am worried about my health. I am worrying all the time. I have a daughter who is four years old and I want to get to know her. I am afraid that if I get sick I will not get proper treatment. I can't do anything to distance myself. I have not been given an inhaler, and I am worried that my asthma will make me sicker if I contract the coronavirus.
13. If released, I will stay with my friend Shanice Patterson who lives alone in a house in Columbus, Ohio. She will be able to pick me up from Morrow Jail and bring me to her home, where I would quarantine for 14 days and follow all other orders in place by Doctor Acton.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Mory Keita (by consent)
Mory Keita

I, Claire Chevrier, certify that I reviewed the information contained in this declaration with Mory Keita by telephone on April 24, 2020 and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 24, 2020.

/s/ Claire Chevrier

Claire Chevrier, Esq.*

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ERO

U.S. Immigration and Customs Enforcement Enforcement and Removal Operations

COVID-19 Pandemic Response Requirements



**U.S. Immigration
and Customs
Enforcement**

ERO COVID-19 Pandemic Response Requirements (Version 1.0, April 10, 2020)

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PURPOSE AND SCOPE

The U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Coronavirus Disease 2019 (COVID-19) Pandemic Response Requirements (PRR) sets forth expectations and assists ICE detention facility operators to sustain detention operations, while mitigating risk to the safety and well-being of detainees, staff, contractors, visitors, and stakeholders due to COVID-19. Consistent with ICE's overall adjustments to its immigration enforcement posture,¹ the ERO PRR builds upon previously issued guidance and sets forth specific mandatory requirements expected to be adopted by all detention facilities housing ICE detainees, as well as best practices for such facilities, to ensure that detainees are appropriately housed and that available mitigation measures are implemented during this unprecedented public health crisis. The ERO PRR has been developed in consultation with the Centers for Disease Control and Prevention (CDC) and is a dynamic document that will be updated as additional/revised information and best practices become available.

INTRODUCTION

As the CDC has explained:

COVID-19 is a communicable disease caused by a novel (new) coronavirus, SARS-CoV-2, that was first identified as the cause of an outbreak of respiratory illness that began in Wuhan Hubei Province, People's Republic of China (China).

COVID-19 appears to spread easily and sustainably within communities. The virus is thought to transfer primarily by person-to-person contact through respiratory droplets produced when an infected person coughs or sneezes; it may transfer through contact with surfaces or objects contaminated with these droplets. There is also evidence of asymptomatic transmission, in which an individual infected with COVID-19 is capable of spreading the virus to others before exhibiting symptoms. The ease of transmission presents a risk of a surge in hospitalizations for COVID-19, which would reduce available hospital capacity. Such a surge has been identified as a likely contributing factor to the high mortality rate for COVID-19 cases in Italy and China.

Symptoms include fever, cough, and shortness of breath, and typically appear 2-14 days after exposure. Manifestations of severe disease include severe pneumonia, acute respiratory distress syndrome (ARDS), septic shock, and multi-organ failure. According to the [World Health Organization], approximately 3.4% of reported COVID-19 cases have resulted in death globally. This mortality rate is higher among older adults or those with compromised immune systems. Older adults and people who have severe chronic medical conditions like heart, lung or kidney disease are also at higher risk for more serious COVID-19 illness. Early data suggest older people are twice as likely to have serious COVID-19 illness.

¹ See, e.g., Attachment A, U.S. Immigration and Customs Enforcement, *Updated ICE statement on COVID-19* (Mar. 18, 2020), <https://www.ice.gov/news/releases/updated-ice-statement-covid-19>.

Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17060 (Mar. 26, 2020) (internal citations omitted).

Given the seriousness and pervasiveness of COVID-19, ICE is taking necessary and prompt measures in response. ICE is providing guidance on the minimum measures required for facilities housing ICE detainees to implement to ensure consistent practices throughout its detention operations and the provision of medical care across the full spectrum of detention facilities to mitigate the spread of COVID-19. The ICE detention standards applicable to all facilities used to house ICE detainees have long required that each such facility have written plans that address the management of infectious and communicable diseases, including, but not limited to, testing, isolation, prevention, treatment, and education. Those requirements include reporting and collaboration with local or state health departments in accordance with state and local laws and recommendations.² The measures set forth in the PRR, allow ICE personnel and detention providers to properly discharge their obligations under those standards in light of the unique challenges posed by COVID-19.

OBJECTIVES

The ERO PRR is designed to establish consistency across ICE detention facilities by establishing mandatory requirements and best practices all detention facilities housing ICE detainees are expected to follow during the COVID-19 pandemic. Consistent with ICE detention standards, all facilities housing ICE detainees are required to have a COVID-19 mitigation plan that meets the following four objectives:

- To protect employees, contractors, detainees, visitors to the facility, and stakeholders from exposure to the virus;
- To maintain essential functions and services at the facility throughout the pendency of the pandemic;
- To reduce movement and limit interaction of detainees with others outside their assigned housing units, as well as staff and others, and to promote social distancing within housing units; and
- To establish means to monitor, cohort, quarantine, and isolate the sick from the well.³

² See, e.g., Attachment B, ICE National Detention Standards 2019, Standard 4.3, Medical Care, at II.D.2 (p. 114), https://www.ice.gov/doclib/detention-standards/2019/4_3.pdf; Attachment C, 2011 ICE Performance-Based National Detention Standards (PBNDS), Revised 2016, Standard 4.3, Part V.C.1 (p. 261), <https://www.ice.gov/doclib/detention-standards/2011/4-3.pdf>; Attachment D, 2008 ICE PBNDS, Standard 4-22, Medical Care, V.C.1 (pp. 5-6), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.

³ A *cohort* is a group of persons with a similar condition grouped or housed together for observation over a period of time. Isolation and quarantine are public health practices used to protect the public from exposure to individuals who have or may have a contagious disease. For purposes of this document, and as defined by the CDC, *quarantine* as the separation of a person or group of people reasonably believed to have been exposed to a communicable disease but not yet symptomatic, from others who have not been

CONCEPT OF OPERATIONS

The ERO PRR is intended for use across ICE's entire detention network, applying to all facilities housing ICE detainees, including ICE-owned Service Processing Centers, facilities operated by private vendors, and facilities operated by local government agencies that have mixed populations of which ICE detainees comprise only a small fraction.

DEDICATED ICE DETENTION FACILITIES

All ICE dedicated detention facilities⁴ must:

- Comply with the provisions of their relevant ICE contract or service agreement.
- Comply with the ICE national detention standards applicable to the facility, generally the Performance-Based National Detention Standards 2011 (PBNDS 2011).
- Comply with the CDC's Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (Attachment E).
- Follow ICE's March 27, 2020 Memorandum to Detention Wardens and Superintendents on COVID-19 Action Plan Revision 1, and subsequent updates (Attachment F).
- Report all confirmed and suspected COVID-19 cases to the local ERO Field Office Director (or designee), Field Medical Coordinator, and local health department immediately.
- Notify both the local ERO Field Office Director (or designee) and the Field Medical Coordinator as soon as practicable, but in no case more than 12 hours after identifying any detainee who meets the CDC's identified populations potentially being at higher-risk for serious illness from COVID-19, including:
 - People aged 65 and older
 - People of all ages with underlying medical conditions, particularly if not well controlled, including:
 - People with chronic lung disease or moderate to severe asthma
 - People who have serious heart conditions
 - People who are immunocompromised

exposed, to prevent the possible spread of the communicable disease. For purposes of this document, and as defined by the CDC, *isolation* as the separation of a person or group of people known or reasonably believed to be infected with a communicable disease and potentially infectious from others to prevent the spread of the communicable disease.

⁴ Dedicated detention facilities are facilities that house only ICE detainees. Dedicated facilities may be ICE-owned Service Processing Centers, privately owned Contract Detention Facilities, or facilities operated by state or local governments that hold no other detention populations except ICE detainees.

- Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications
- People with severe obesity (body mass index [BMI] of 40 or higher)
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease

Notification shall be made via e-mail from the facility's Health Services Administrator (HSA) (or equivalent) and contain the following subject line for ease of identification: "Notification of COVID-19 High Risk Detainee (A-Number)." At a minimum the HSA will provide the following information:

- Detainee name
- Detention location
- Current medical issues as well as medications currently prescribed
- Facility medical Point of Contact (POC) and phone number

NON-DEDICATED ICE DETENTION FACILITIES

All non-dedicated detention facilities and local jails housing ICE detainees must:

- Comply with the provisions of their relevant ICE contract or service agreement.
- Comply with the ICE national detention standards applicable to the facility, generally PBNDs 2011.
- Comply with the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities.
- Report all confirmed and suspected COVID-19 cases to the local ERO Field Office Director (or designee), Field Medical Coordinator, and local health department immediately.
- Notify both the ERO Field Office Director (or designee) and Field Medical Coordinator as soon as practicable, but in no case more than 12 hours after identifying any detainee who meets the CDC's identified populations potentially being at higher-risk for serious illness from COVID-19, including:
 - People aged 65 and older
 - People of all ages with underlying medical conditions, particularly if not well controlled, including:
 - People with chronic lung disease or moderate to severe asthma
 - People who have serious heart conditions
 - People who are immunocompromised

- Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications
- People with severe obesity (body mass index [BMI] of 40 or higher)
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease

Notification should be made via e-mail from the facility's HSA (or equivalent) and should contain the following subject line for ease of identification: "Notification of COVID-19 High Risk Detainee (A-Number)." Other standardized means of communicating this information to ICE are acceptable. At a minimum the HSA will provide the following information:

- Detainee name
- Detention location
- Current medical issues as well as medications currently prescribed
- Facility medical POC and phone number

ALL FACILITIES HOUSING ICE DETAINEES

In addition to the specific measures listed above, all detention facilities housing ICE detainees must also comply with the following:

PREPAREDNESS

Administrators can plan and prepare for COVID-19 by ensuring that all persons in the facility know the symptoms of COVID-19 and how to respond if they develop symptoms. Other essential actions include developing contingency plans for reduced workforces due to absences, coordinating with public health and correctional partners, and communicating clearly with staff and detainees about these preparations and how they may temporarily alter daily life.

➤ **Develop information-sharing systems with partners.**

- Identify points of contact in relevant state, local, tribal, and/or territorial public health department before cases develop.
- Communicate with other correctional and detention facilities in the same geographic area to share information including disease surveillance and absenteeism patterns among staff.

➤ **Review existing pandemic, influenza, all-hazards, and disaster plans, and revise for COVID-19, and ensure that they meet the requirements of ICE's detention standards.**

➤ **Offer the seasonal influenza vaccine to all detained persons (existing populations and new intakes) and staff throughout the influenza season, where possible.**

➤ **Staffing**

- Review sick leave policies to ensure that staff can stay home when sick and determine which officials will have the authority to send symptomatic staff home. Staff who report for work with symptoms of COVID-19 must be sent home and advised to follow CDC-recommended steps for persons exhibiting COVID-19 symptoms.
- Staff who test positive for COVID-19 must inform their workplace and personal contacts immediately. If a staff member has a confirmed COVID-19 infection, the relevant employers will inform other staff of their possible exposure to COVID-19 in the workplace consistent with any legal limitations on the sharing of such information. Exposed employees must then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).
- Identify staff whose duties would allow them to work from home and allow them to work from home in order to promote social distancing and further reduce the risk of COVID-19 transmission.
- Determine minimum levels of staff in all categories required for the facility to function safely.
- Follow the Public Health Recommendations for Community-Related Exposure.⁵

➤ **Supplies**

- Ensure that sufficient stocks of hygiene supplies (soap, hand sanitizer, tissues), personal protective equipment (PPE) (to include facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls), and medical supplies (consistent with the healthcare capabilities of the facility) are on hand, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility.
- Note that shortages of N95 respirators are anticipated during the COVID-19 response. Based on local and regional situational analysis of PPE supplies, face masks should be used when the supply chain of N95 respirators cannot meet the demand.
- Follow COVID-19: Strategies for Optimizing the Supply of PPE.⁶
- Soiled PPE items should be disposed in leak-proof plastic bags that are tied at the top and not re-opened. Bags can be disposed of in the regular solid waste stream.

⁵ Attachment G, Centers of Disease Control and Prevention, *Public Health Recommendations for Community-Related Exposure*, <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html> (last visited Apr. 9, 2020).

⁶ Attachment H, Centers for Disease Control and Prevention, *Strategies to Optimize the Supply of PPE and Equipment*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/> (last visited Apr. 9, 2020).

- Cloth face coverings should be worn by detainees and staff (when PPE supply is limited) to help slow the spread of COVID-19. Cloth face masks should:
 - fit snugly but comfortably against the side of the face
 - be secured with ties or ear loops where possible or securely tied
 - include multiple layers of fabric
 - allow for breathing without restriction
 - be able to be laundered and machine dried without damage or change to shape.

➤ **Hygiene**

- Reinforce healthy hygiene practices and provide and restock hygiene supplies throughout the facility, including in bathrooms, food preparation and dining areas, intake areas, visitor entries and exits, visitation rooms, common areas, medical, and staff-restricted areas (e.g., break rooms).
- Require all persons within the facility to cover their mouth and nose with their elbow (or ideally with a tissue) rather than with their hand when they cough or sneeze, and to throw all tissues in the trash immediately after use. Provide detainees and staff no-cost access to tissues and no-touch receptacles for disposal.
- Require all persons within the facility to maintain good hand hygiene by regularly washing their hands with soap and water for at least 20 seconds, especially after coughing, sneezing, or blowing their nose; after using the bathroom; before eating or preparing food; before taking medication; and after touching garbage.
- Provide detainees and staff no-cost, unlimited access to supplies for hand cleansing, including liquid soap, running water, hand drying machines or disposable paper towels, and no-touch trash receptacles.
- Provide alcohol-based hand sanitizer with at least 60% alcohol where permissible based on security restrictions.
- Require all persons within the facility to avoid touching their eyes, nose, or mouth without cleaning their hands first.
- Post signage throughout the facility reminding detained persons and staff to practice good hand hygiene and cough etiquette (printable materials for community-based settings can be found on the [CDC website](#)). Signage must be in English and Spanish, as well as any other common languages for the detainee population at the facility.
- Prohibit sharing of eating utensils, dishes, and cups.
- Prohibit non-essential personal contact such as handshakes, hugs, and high-fives.

➤ **Cleaning/Disinfecting Practices**

- Adhere to CDC recommendations for cleaning and disinfection during the COVID-19 response.⁷
- Several times a day using household cleaners and Environmental Protection Agency-registered disinfectants, clean and disinfect surfaces and objects that are frequently touched, especially in common areas (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment). The Environmental Protection Agency's (EPA) list of certified cleaning products is located [here](#).
- Staff should clean shared equipment several times per day and on a conclusion of use basis (e.g., radios, service weapons, keys, handcuffs).
- Ensure that transport vehicles are thoroughly cleaned after carrying a confirmed or suspected COVID-19 case.
- Facility leadership will ensure that there is adequate oversight and supervision of all individuals responsible for cleaning and disinfecting these areas.

CDC Recommended Cleaning Tips

Hard (Non-porous) Surfaces

- If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
- For disinfection, most common EPA-registered household disinfectants should be effective.
 - A list of products that are EPA-approved for use against the virus that causes COVID-19 is available [here](#). Follow the manufacturer's instructions for all cleaning and disinfection products for concentration, application method and contact time, etc.
 - Additionally, diluted household bleach solutions (at least 1000ppm sodium hypochlorite) can be used if appropriate for the surface. Follow manufacturer's instructions for application, ensuring a contact time of at least 1 minute, and allowing proper ventilation during and after application. Check to ensure the product is not past its expiration date. Never mix household bleach with ammonia or any other cleanser. Unexpired household bleach will be effective against coronaviruses when properly diluted.
 - Prepare a bleach solution by mixing:
 - 5 tablespoons (1/3 cup) bleach per gallon of water or
 - 4 teaspoons bleach per quart of water

Soft (Porous) Surfaces

⁷ Attachment I, Centers for Disease Control and Prevention, *Cleaning and Disinfection for Community Facilities*, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html> (last visited Apr. 9, 2020).

- For soft (porous) surfaces such as carpeted floor, rugs, and drapes, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces. After cleaning:
 - If the items can be laundered, launder items in accordance with the manufacturer's instructions using the warmest appropriate water setting for the items and then dry items completely.
 - Otherwise, use products that are EPA-approved for use against the virus that causes COVID-19 and that are suitable for porous surfaces.⁸

Electronics

- For electronics such as tablets, touch screens, keyboards, remote controls, and ATM machines, remove visible contamination if present.
 - Follow the manufacturer's instructions for all cleaning and disinfection products.
 - Consider use of wipeable covers for electronics.
 - If no manufacturer guidance is available, consider the use of alcohol-based wipes or sprays containing at least 70% alcohol to disinfect touch screens. Dry surfaces thoroughly to avoid pooling of liquids.

Linens, Clothing, and Other Items That Go in the Laundry

- In order to minimize the possibility of dispersing virus through the air, do not shake dirty laundry.
- Wash items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely. Dirty laundry that has been in contact with an ill person can be washed with other people's items.
- Clean and disinfect hampers or other carts for transporting laundry according to guidance above for hard or soft surfaces.

PREVENTION

Detention facilities can prevent introduction of COVID-19 from the community and reduce transmission if it is already inside by reinforcing good hygiene practices among incarcerated/detained persons, staff, and visitors (including increasing access to soap and paper towels), intensifying cleaning/disinfection practices, and implementing social distancing strategies.

Because many individuals infected with COVID-19 do not display symptoms, the virus could be present in facilities before cases are identified. Both good hygiene practices and social distancing are critical in preventing further transmission.

⁸ Attachment J, U.S. Environmental Protection Agency, *List N: Disinfectants for Use Against SARS-CoV-2*, <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2> (last visited Apr. 9, 2020).

➤ **Perform pre-intake screening for all staff and new entrants for symptoms of COVID-19.**

Screening should take place before staff and new intakes enter the facility or just inside the facility, where practicable. For new admissions, this should occur before beginning the intake process, in order to identify and immediately isolate any detainee with symptoms before the individual comes in contact with others or is placed in the general population. This should include temperature screening of all staff and new entrants, as well as a verbal symptoms check.

- Verbal screening for symptoms of COVID-19 and contact with COVID-19 cases should include the following questions based on Interim Guidance: Managing COVID-19 in Correctional/Detention Facilities:
 - Today or in the past 24 hours, have you had any of the following symptoms?
 - Fever, felt feverish, or had chills?
 - Cough?
 - Difficulty breathing?
 - In the past 14 days, have you had contact with a person known to be infected with COVID-19 where you were not wearing the recommended proper PPE?
- If staff have symptoms of COVID-19 (fever, cough, shortness of breath): they must be denied access to the facility.
- If any new intake has symptoms of COVID-19:
 - Require the individual to wear a face mask.
 - Ensure that staff interacting with the symptomatic individual wears recommended PPE.
 - Isolate the individual and refer to healthcare staff for further evaluation.
 - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective isolation and necessary medical care.
- If an individual is a close contact of a known COVID-19 case or has traveled to an affected area (but has no COVID-19 symptoms), quarantine the individual and monitor for symptoms two times per day for 14 days.

➤ **Visitation**

- During suspended (social) or modified (legal) visitation programs, provide access to virtual visitation options where available. When not possible, verbally screen all visitors on entry for symptoms of COVID-19 and perform temperature checks, when possible. ICE continues to explore opportunities to enhance attorney access while legal visits are being impacted. For facilities at which immigration hearings are conducted or where detainees are otherwise held who have cases pending immigration proceedings, this may include:

- Adding all immigration attorneys of record to the Talton Pro-bono platform.
- Requiring facilities to establish a process for detainees/immigration attorneys to schedule appointments and facilitate the calls.
- Leveraging technology (e.g., tablets, smartphones) to facilitate attorney/client communication.
- Working with the various detention contractors and telephone service providers to ensure that all detainees receive some number of free calls per week.
- Communicate with the public about any changes to facility operations, including visitation programs. Facilities are encouraged to prohibit or, at a minimum, significantly adopt restricted visitation programs, and to suspend all volunteer work assignments for detainees assigned to food service, and other assignments where applicable.
- **Where possible, restrict transfers of detained non-ICE populations to and from other jurisdictions and facilities unless necessary for medical evaluation, isolation/quarantine, clinical care, or extenuating security concerns.**
- **Consider suspending work release programs for inmates at shared facilities to reduce overall risk of introduction and transmission of COVID-19 into the facility.**
- **When feasible and consistent with security priorities, encourage staff to maintain a distance greater than six feet from an individual that appears feverish or ill and/or with respiratory symptoms while interviewing, escorting, or interacting in other ways, unless wearing PPE.**
- **Additional Measures to Facilitate Social Distancing**
 - Although strict social distancing may not be possible in congregate settings such as detention facilities, all facilities housing ICE detainees should implement the following measures to the extent practicable:
 - Efforts should be made to reduce the population to approximately 75% of capacity.
 - Where detainee populations are such that such cells are available, to the extent possible, house detainees in individual rooms.
 - Recommend that detainees sharing sleeping quarters sleep “head-to-foot.”
 - Extend recreation, law library, and meal hours and stagger detainee access to the same in order to limit the number of interactions between detainees from other housing units.
 - Staff and detainees should be directed to avoid congregating in groups of 10 or more, employing social distancing strategies at all times.

- Whenever possible, all staff and detainees should maintain a distance of six feet from one another.
- If practicable, beds in housing units should be rearranged to allow for sufficient separation during sleeping hours.

MANAGEMENT

If there has been a suspected COVID-19 case inside the facility (among incarcerated/detained persons, staff, or visitors who have recently been inside), begin implementing Management strategies while test results are pending. Essential Management strategies include placing cases and individuals with symptoms under medical isolation, quarantining their close contacts, and facilitating necessary medical care, while observing relevant infection control and environmental disinfection protocols and wearing recommended PPE.

ICE Custody Review for Potentially High-Risk Detainees

Upon being informed of a detainee who may potentially be at higher risk for serious illness from exposure to COVID-19, ERO will review the case to determine whether continued detention is appropriate.⁹ ICE will make such custody determinations on a case-by-case basis, pursuant to the applicable legal standards, with due consideration of the public health considerations implicated.

- **Considerable effort should be made to quarantine all new entrants for 14 days before they enter the general population.**
 - To do this, facilities should consider cohorting daily intakes; two days of new intakes, or multiple days on new intakes, in designated areas prior to placement into the general population. Given the significant variance in facility attributes and characteristics, cohorting options and capabilities will differ across the various detention facilities housing ICE detainees. ICE encourages all facilities to adopt the most effective cohorting methods practicable based on the individual facility characteristics taking into account the number new intakes anticipated per day.
- **For suspected or confirmed COVID-19 cases:**
 - Isolate the individual immediately in a separate environment from other individuals. Facilities should make every possible effort to isolate persons individually. Each isolated individual should be assigned his or her own housing space and bathroom where possible. Cohorting should only be practiced if there are no other available options. Only individuals who are laboratory-confirmed COVID-19 cases should be isolated as a cohort. Do not cohort confirmed cases with suspected cases or case contacts.
 - Ensure that the individual is always wearing a face mask (if it does not restrict breathing) when outside of the isolation space, and whenever another individual

⁹ Attachment K, Assistant Director Peter Berg, Enforcement and Removal Operations, *Updated Guidance: COVID-19 Detained Docket Review* (Apr. 4, 2020).

enters the isolation room. Masks should be changed at least daily, and when visibly soiled or wet.

- If the number of confirmed cases exceeds the number of individual isolation spaces available in the facility, then ICE must be promptly notified so that transfer to other facilities, transfers to hospitals, or release can be coordinated immediately. Until such time as transfer or release is arranged, the facility must be especially mindful of cases that are at higher risk of severe illness from COVID-19. Ideally, ill detainees should not be cohorted with other infected individuals. If cohorting of ill detainees is unavoidable, make all possible accommodations until transfer occurs to prevent transmission of other infectious diseases to the higher-risk individual (For example, allocate more space for a higher-risk individual within a shared isolation room).
- Review the CDC's preferred method of medically isolating COVID-19 cases here depending on the space available in a particular facility. In order of preference, individuals under medical isolation should be housed:
 - Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully.
 - Separately, in single cells with solid walls but without solid doors.
 - As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully. Employ social distancing strategies related to housing in the Prevention section above.
 - As a cohort, in a large, well-ventilated cell with solid walls but without a solid door. Employ social distancing strategies related to housing in the Prevention section above.
 - As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
 - As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section above.
- Maintain isolation until all the CDC criteria have been met:
 - The individual has been free from fever for 72 hours without the use of fever-reducing medications.
 - The individual's other symptoms have improved (e.g., cough, shortness of breath).
 - The individual has tested negative in at least two consecutive respiratory specimens collected at least 24 hours apart.

- At least 7 days have passed since the date of the individual's first positive COVID-19 test and he or she has had no subsequent illness.
- Meals should be provided to COVID-19 cases in their isolation rooms. Isolated cases should throw disposable food service items in the trash in their isolation room. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items must clean their hands after removing gloves.
- Laundry from a COVID-19 case can be washed with other individuals' laundry.
 - Individuals handling laundry from COVID-19 cases should wear disposable gloves, discard gloves after each use, and clean their hands after handling.
 - Do not shake dirty laundry. This will minimize the possibility of dispersing the virus through the air.
 - Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.
 - Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.