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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

11 STEPHENSON AWAH TENENG,
12 MARCEL NGWA, ANKUSH
KUMAR, GURJINDER SINGH,
13 ATINDER PAUL SINGH, NOE
MAURICIO GRANADOS AQUINO,
14 and all others similarly situated,

15 Plaintiffs,

16 v.

16 DONALD J. TRUMP, President of the
United States,
17 KIRSTJEN NIELSEN, Secretary
Department of Homeland Security;
18 RONALD D. VITIELLO, Acting
Director, Immigration and Customs
19 Enforcement;
20 DAVID MARIN, Field Office Director,
Los Angeles Field Office of
Immigration and Customs Enforcement;
21 JEFFERSON BEAUREGARD
SESSIONS, III, U.S. Attorney General;
22 HUGH J. HURWITZ, Acting Director,
Federal Bureau of Prisons,
23 DAVID SHINN, Warden, FCI
Victorville Medium Security Prison I/II,
24 in their official capacities only,

25 Defendants

Case No. 5:18-CV-01609

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

ORAL ARGUMENT REQUESTED

DATE: October 15, 2018
TIME: 9:00 AM
JUDGE: Hon. Jesus G. Bernal
CRTRM: 1

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26 Attorneys for Plaintiffs, on *behalf of*
27 *themselves and others similarly situated*

28

NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

1
2 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR
3 ATTORNEYS OF RECORD HEREIN:

4 NOTICE IS HEREBY GIVEN that on October 15, 2018 at 9:00 AM or as
5 soon thereafter as the matter may be heard by the above Court, located at Riverside,
6 California, Plaintiffs Stephenson Awah Teneng, Marcel Ngwa, Ankush Kumar,
7 Gurjinder Singh, Atinder Paul Singh, and Noe Mauricio Granados Aquino, on
8 behalf of themselves and all others similarly situated, move this Court to grant a
9 class-wide preliminary injunction¹ enjoining Defendants from:

- 10 (a) providing constitutionally inadequate health care to ICE detainees at FCI
11 Victorville;
- 12 (b) subjecting ICE detainees at FCI Victorville to conditions and practices
13 that amount to punishment; and
- 14 (c) transferring any additional ICE detainees to FCI Victorville.

15 On behalf of themselves and all others similarly situated, Plaintiffs Ngwa,
16 Gujinder Singh, Atinder Paul Singh, and Noe Mauricio Granados Aquino
17 additionally move this Court to grant a subclass-wide preliminary injunction,
18 enjoining Defendants from:

- 19 (a) restricting detainees' religious exercise or failing to accommodate
20 detainees' religious exercise in a manner that violates or is otherwise
21 inconsistent with ICE's Detention Standards; and
- 22 (b) transferring any additional ICE detainees who are religious to FCI
23 Victorville.

24 This Motion is based on this Notice of Motion, the accompanying
25

26 _____
27 ¹ Pursuant to Local Rule 7-3, Plaintiffs' counsel conferred with counsel for the
28 Defendants regarding this motion on September 5, 2018. *See* Doc. 42-1 ¶¶ 2-3.

1 Memorandum of Points and Authorities, the supporting declarations, all pleadings
2 and papers filed in this action, and such additional papers and arguments as may be
3 presented at or in connection with the hearing.

4
5 DATED: September 11, 2018 Respectfully submitted,

6
7
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By: /s/ Margot Mendelson

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs and members of the class they seek to represent² are immigrants
4 incarcerated at the Federal Correctional Institution Victorville Medium II (“FCI
5 Victorville”), a violent and understaffed medium-security federal prison in San
6 Bernardino County.

7 Since June 2018, as part of its “Zero Tolerance Policy,” the federal
8 government has imprisoned thousands of asylum seekers and other immigrants in
9 five federal prisons in the Western United States, including the FCI Victorville. The
10 consequences of Defendants’ decision to incarcerate immigrants in this federal
11 penitentiary are both predictable and devastating. ICE detainees at the prison live in
12 degrading and punitive conditions. They wear brown and orange jumpsuits and are
13 caged in locked cells for extended periods. They endure strip searching and
14 shackling. They are denied ready access to fresh air and sunlight and to adequate
15 food and nutrition. Even though many of these individuals entered the country to
16 seek asylum, they live day in and day out in harsh prison conditions, with no idea
17 when they will be released or where they will go next.

18 Many of these individuals are fleeing trauma and violence in their home
19 countries, yet Defendants fail to provide adequate psychological screening or mental
20 health treatment. Defendants also fail to provide detainees with adequate access to
21 medical care, even for urgent medical conditions. Nor do they provide language
22 interpretation when medical encounters do occur. Custody officers routinely
23 retaliate against detainees for seeking medical care and threaten to withhold
24 privileges if detainees request medical attention. As a consequence of these failures,
25 an atmosphere of desperation and fear pervades the prison.

26 _____
27 ² Plaintiffs filed a Motion for Class Certification on September 4, 2018 (Doc. 34).

1 As if these conditions were not appalling enough, Defendants have deprived
2 detainees of the ability to freely practice their religion—one of the few things that
3 might bring them some sense of comfort or peace of mind. Detainees are denied the
4 right to participate in congregate worship services and group prayer is restricted.
5 They are unable to obtain religious counseling or consult with clergy. Detainees’
6 ability to read and study holy texts, as well as their ability to wear religious headgear
7 and jewelry, are limited by Defendants’ confiscation of their personal religious
8 items and refusal to return or replace them in a timely manner, or at all.

9 Plaintiffs will move for expedited discovery in order to fully examine and
10 document the conditions of confinement for ICE detainees at FCI Victorville. Even
11 without benefit of discovery, however, it is evident that these conditions of
12 confinement fall below constitutional minima. Defendants’ denial of adequate health
13 care and employment of unnecessarily punitive and harmful custodial practices
14 violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
15 Defendants also violate the Free Exercise Clause of the First Amendment and the
16 Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* by restricting and
17 failing to accommodate detainees’ religious exercise. Although the named plaintiffs
18 in this action have been transferred out of FCI Victorville since the filing of the
19 complaint, the conditions of confinement imposed by Defendants continue to cause
20 irreparable harm to the class, as well as the subclass, they seek to represent. The
21 balance of hardships tips sharply in the Plaintiffs’ favor, and the public has no
22 interest in subjecting immigrants to punitive and degrading conditions of
23 confinement or in denying them the ability to practice their religion.

24 Pursuant to Federal Rule of Civil Procedure 65, the Court should enjoin
25 Defendants from the unlawful and unnecessary policies and practices that threaten
26 the physical, mental, and spiritual well-being of detainees at FCI Victorville. In
27 particular, the Court should enjoin Defendants from providing constitutionally
28

1 inadequate health care to ICE detainees at FCI Victorville, subjecting ICE detainees
2 at FCI Victorville to conditions and practices that amount to punishment, restricting
3 detainees' religious exercise or failing to accommodate detainees' religious exercise
4 in a manner that violates or is otherwise inconsistent with ICE's Detention
5 Standards, and transferring any additional ICE detainees to FCI Victorville.

6 **II. BACKGROUND**

7 **A. The Conditions for ICE Detainees at FCI Victorville Are Similar** 8 **to, or Worse than, Those of Criminal Prisoners**

9 Defendants know that prisons are inappropriate facilities for immigration
10 detainees. In 2009, ICE concluded that "the demeanor of the Immigration Detention
11 population is distinct from the Criminal Incarceration population." Specifically,
12 "the majority of the population is motivated by the desire for repatriation or relief,
13 and exercise exceptional restraint" so that "relatively few file grievances, fights are
14 infrequent, and assaults on staff are even rarer."³ ICE identified "important
15 distinctions" between "the administrative purpose" of immigration detention,
16 "which is to hold, process, and prepare individuals for removal—as compared to the
17 punitive purpose of the Criminal Incarceration system."⁴ Notwithstanding these
18 critical distinctions, ICE has elected to incarcerate immigration detainees in a
19 federal prison, a facility designed to punish the persons incarcerated there.

20 Both in policy and practice, the federal government flouts the distinction
21 between civil and criminal detention for the ICE detainees at FCI Victorville. The
22 ICE-BOP Inter-Agency Agreement that governs the incarceration of ICE detainees
23 at FCI Victorville expressly provides that the detainees will be subject to BOP's
24 policies for *pretrial criminal* inmates. *See* Doc. 35-1 at ¶ 4.D.3.a; *see also* Program

25 ³ Dora Schriro, U.S. Department of Homeland Security, *Immigration Detention*
26 *Overview and Recommendations* at 2, 21 (Oct. 6, 2009).

27 ⁴ *Id.*

1 Statement 7331.04, Federal Bureau of Prisons (hereinafter “BOP PS”), 1 (Jan. 31,
2 2003).⁵ With respect to medical care, mental health care and discipline, BOP policy
3 regards ICE detainees as indistinguishable from criminal prisoners at FCI
4 Victorville. *See id.* at 1, 14, 16.

5 Indeed, ICE detainees at FCI Victorville experience the same custodial
6 restrictions as criminal prisoners.⁶ ICE detainees, like criminal prisoners, are subject
7 to unclothed visual inspections. *See, e.g.*, Decl. of Yoni Santiago Gutierrez, attached
8 hereto as Exhibit 1 at ¶ 3 (“When we arrived . . . [w]e had to take off all of our
9 clothes and be searched. I also have been strip searched two other times after legal
10 visits.”); Decl. of Noel Siles, attached hereto as Exhibit 2 at ¶ 4 (“When I first got
11 here, I was strip searched. I had never exposed myself like that and I felt it was a
12 huge violation. I was told to hold my hands behind my head and turn around and
13 show my buttocks to an officer and cough.”).⁷ ICE detainees, like criminal
14 prisoners, are shackled—sometimes for hours on end—when they are transported to
15

16
17 ⁵ BOP Program Statements are available at
18 https://www.bop.gov/resources/policy_and_forms.jsp.

19 ⁶ Detainees have been told by prison officers that, although immigration detainees
20 are not prisoners, they are in prison and have to follow federal prison rules *see* Decl.
21 of Gabriel Manzanilla Pedron, attached hereto as Exhibit 3, at ¶ 17, and that these
22 rules are stricter than rules in jails. *See* Doc. 1-1 at ¶ 17.

23 ⁷ *See also* Doc. 1-6 at ¶ 7 (“I had to take off all of my clothes in front of an official
24 before I was given a brown jumpsuit.”); Decl. of Desmond Tenghe, attached hereto
25 as Exhibit 4, at ¶ 3 (“We were strip searched when we arrived. It was embarrassing.
26 I have also been strip searched after a legal visit.”); Supp. Decl. of Stephenson
27 Awah Teneng, attached hereto as Exhibit 5, at ¶ 16 (unclothed visual search upon
28 arrival at Victorville); Decl. of Alex Armando Villalobos Veliz, attached hereto as
Exhibit 6, at ¶ 5 (same). BOP conducts these searches despite its Pretrial Inmate
policy prohibiting visual searches without reasonable suspicion that an inmate is
concealing a weapon or contraband. *See* BOP PS 7331.04, 1, 6 (Jan. 31, 2003).

1 or from FCI Victorville.⁸ ICE detainees, like criminal prisoners, are also subjected
2 to extended lockdowns that restrict them to locked cells for days.⁹ ICE detainees,
3 like criminal prisoners, are required to stand for inmate count and follow the rules of
4 the prison.¹⁰ ICE detainees, like criminal prisoners, have severely restricted access
5 to fresh air and opportunities for socialization.¹¹

6 In many regards, conditions for ICE detainees at FCI Victorville fall well
7 below the standards that Defendant BOP sets for criminal prisoners. For example,
8 BOP policies require that criminal prisoners receive adequate nutrition and at least
9 20 minutes to eat their meals.¹² ICE detainees, by contrast, receive meals that are
10 small, inadequate, of poor nutritional value, and inedible.¹³ Officers allow less than

12 ⁸ See, e.g., Doc. 1-6 at ¶ 5 (Plaintiff shackled for four to five hours); Exhibit 6
13 (attached hereto) at ¶ 4 (shackled for five to six hours), Exhibit 4 (attached hereto) at
14 ¶ 2 (shackled for three hours), Doc. 1-3 at ¶¶ 7-8 (shackled and chained during trip
to hospital for urgent medical care).

15 ⁹ See, e.g., Doc. 1-5 at ¶ 7 (plaintiff kept in cell for first few days after he arrived in
16 July); Doc. 1-8 at ¶ 16 (locked down “for about four days without clean clothes or
17 showers”); Doc. 1-11 at ¶ 3 (constantly locked in cell the first three days after he
18 arrived); Doc. 1-17 at ¶ 7 (spent the first three or four days locked in his cell). See
also Exhibit 3 (attached hereto) at ¶ 14; Exhibit 6 (attached hereto) at ¶ 7.

19 ¹⁰ See, e.g., Exhibit 3 (attached hereto) at ¶ 18 (officer informed detainee “that we
20 are in a prison and we have to follow prison rules”); *id.* (“I saw a guard threaten to
hit somebody because he did not get up fast enough at 9:30” for count).

21 ¹¹ See, e.g., Doc. 1-6 at ¶ 14 (plaintiff’s unit locked down for seven hours due to a
22 fight in another building); Doc. 1-9 at ¶ 6 (extremely limited out of cell time); Doc.
23 1-10 at ¶ 15 (same); Doc. 1-11 at ¶ 3 (24-hour lockdowns on weekends); Doc. 1-19
24 at ¶ 12 (same). See also Exhibit 5 (attached hereto) at ¶ 17; Exhibit 6 (attached
hereto) at ¶ 9.

25 ¹² BOP PS P4700.06, 1, 61 (Sept. 13, 2011) (requiring nutritionally adequate meals
26 and dining spaces that afford “each inmate the opportunity to have at least 20
minutes of dining time for each meal”).

27 ¹³ See Doc. 1-8 at ¶¶ 15, 17 (weight loss due to lack of food; often served sour milk);
28 Doc. 1-9 at ¶ 10 (inadequate amount of food, has seen worms or maggots in the
(footnote continued)

1 five minutes for the detainees to eat their meals before demanding that they leave
2 the chow hall and throw away any uneaten food.¹⁴

3 BOP policies also require that all institutions offer various continuing
4 education, library, parenting, and other programs.¹⁵ No such programs are provided
5 for ICE detainees, who cannot even access books in languages they understand.¹⁶

6 Similarly, BOP policy requires that criminal prisoners “have access to
7 regularly scheduled congregate services [and] chaplains” and outlines various other
8 religious programs, services, and accommodations available to criminal prisoners.¹⁷
9 However, Defendants have not provided meaningful access to religious worship

10 _____
11 meat); Doc. 1-10 at ¶ 8 (inadequate amount of food, meat in the sandwiches is
12 sometimes expired); Doc. 1-14 at ¶ 11 (inadequate amount of food); Doc. 1-15 at ¶
13 21 (inadequate amount of food; sometimes served spoiled milk and sandwiches that
14 are just two pieces of bread); Doc. 1-20 at ¶ 5 (inadequate amount of food; often
feels hungry); Doc. 1-4 at ¶ 11 (7 kilograms lost due to inadequate food).

15 ¹⁴ See Doc. 1-6 at ¶¶ 20, 21 (less than 10 minutes to eat; official forced a detainee to
16 throw away bread he had put in his pocket when leaving the chow hall); Doc. 1-7 at
17 ¶ 6 (only 5 minutes to eat); Doc. 1-8 at ¶ 15 (only about 5 minutes to eat; not
18 allowed to take food from the chow hall, even an apple); Doc. 1-10 at ¶ 8 (only 3-5
minutes to eat); Doc. 1-17 at ¶¶ 12 (3-4 minutes to eat each meal; leftover food is
confiscated and thrown away); Doc. 1-20 at ¶ 5 (only 5 minutes to eat).

19 ¹⁵ BOP PS 5300.21 (Feb. 18, 2002); *see also* BOP PS P5370.11, 1 (June 25, 2008)
20 (BOP “encourages inmates to make constructive use of leisure time, and offers
21 movies, games, sports, social activities, arts and hobbycrafts, wellness, and other
group and individual activities”).

22 ¹⁶ Doc. 1-2 at ¶ 8 (told by ICE that he could not participate in classes listed on a
23 paper about the prison); Doc. 1-4 at ¶ 7 (only English books available); Doc. 1-9 at ¶
24 9 (no programs, education, or training available); Doc. 1-10 at ¶ 7 (no activities,
programs, jobs; books are only in English); Doc. 1-14 at ¶ 14 (books only in English,
25 no classes or programs); Doc. 1-15 at ¶¶ 14, 19 (no classes, programs, or groups
available); Doc. 1-17 at ¶ 15 (no known educational, recreational, or other
26 programs); Exhibit 5 at ¶ 14 (no access to school or other activities).

27 ¹⁷ BOP PS P5360.09, 1, 1 (Dec. 31, 2004).

1 services for detainees, and their ability to engage in informal congregate prayer and
2 religious study is limited. *See infra* II.D.

3 Finally, BOP policies governing patient care provide that criminal prisoners
4 receive physical and mental health assessments upon intake. The policies require
5 that medical staff assess patients when they express pain. They require that patients
6 have access to a variety of physical and mental health care services and treatments
7 while incarcerated.¹⁸ In practice, as detailed herein, Defendants routinely deny or
8 delay the provision of these health care services to ICE detainees at FCI Victorville.

9 Indeed, Defendants confine ICE detainees in conditions far more restrictive
10 than those to which Defendant BOP subjects convicted criminal prisoners in even its
11 minimum-security facilities. For example, according to BOP, minimum-security
12 facilities (also known as federal prison camps) “have dormitory housing, a relatively
13 low staff-to-inmate ratio, and limited or no perimeter fencing. These institutions are
14 work- and program-oriented.”¹⁹ Many of the housing units in federal prison camps
15 provide open access to microwave ovens, clothing irons, hairdryers, curling irons,
16 and other appliances.²⁰ Some individuals in BOP camps are permitted to possess a
17 radio or MP3 player,²¹ sleep in residential dorm-like buildings, and access gyms and

18
19 ¹⁸ BOP PS 6031.04, 1, 20 (June 3, 2014) (“patients who complain of pain, will be
20 assessed and treated if necessary”); *id.* at 5 (listing categories of medical treatment
21 available); *id.* at 23 (initial assessment to be conducted upon arrival at institution).

22 ¹⁹ *About Our Facilities*, Federal Bureau of Prisons, *available at*
https://www.bop.gov/about/facilities/federal_prisons.jsp.

23 ²⁰ *FPC Alderson Inmate Handbook*, Federal Bureau of Prisons, 1, 8 (June 2012),
24 https://www.bop.gov/locations/institutions/ald/ALD_aohandbook.pdf; *FPC Duluth*
25 *Inmate Admissions and Orientation Handbook*, Federal Bureau of Prisons 1, 12
(Feb. 2010), https://www.bop.gov/locations/institutions/dth/DTH_aohandbook.pdf.

26 ²¹ *FPC Bryan Inmate Admission and Orientation*, Federal Bureau of Prisons, 1, 7
27 (Jan. 22, 2016), *available at*
https://www.bop.gov/locations/institutions/bry/BRY_aohandbook.pdf.

1 movie theaters.²²

2 By contrast, Defendants confine ICE detainees at FCI Victorville in small,
3 locked cells. Defendants restrict their freedom of movement, and even keep
4 detainees locked in their cells on Saturdays and Sundays, while prisoners are
5 allowed out of their cells on the weekends. *See* Exhibit 6 (attached hereto) at ¶¶ 9-
6 10. Defendants confiscate detainees' personal property and prohibit them from
7 possessing entertainment devices like televisions and radios to help pass the time.
8 *See* Doc. 1-15 at ¶ 13 (housed alone in small cell), and at ¶14 (no television or radio
9 in cell); Exhibit 5 (attached hereto) at ¶ 13 (prisoners are permitted to have MP3
10 players, but ICE detainees are not). Defendants deny ICE detainees access to
11 educational and recreational programs and work opportunities.

12 **B. Defendants' Practices and Conditions of Confinement at FCI**
13 **Victorville Violate ICE's Detention Standards**

14 The government has developed standards for ICE detention that expressly
15 prohibit many of the practices and conditions of confinement present at FCI
16 Victorville.²³ ICE's 2008 and 2011 Performance-Based National Detention
17 Standards ("PBNDS") require, for example: (1) physical and mental health intake
18 assessments; (2) access to appropriate health care services; (3) provision of adequate
19 nutrition, and at least 20 minutes to eat meals; and (4) access to religious worship
20 services, clergy, and various religious items.²⁴ The fact that Defendant ICE

21 _____
22 ²² Esme Murphy, *Behind Bars: Denny Hecker's Life in Prison*, CBS Minnesota
(May 15, 2011) (describing the Federal Prison Camp in Duluth, Minnesota).

23 ²³ ICE's Performance-Based National Detention Standards ("PBNDS") govern
24 conditions in eleven immigration detention centers in the Ninth Circuit. *See* U.S.
25 Customs and Immigration Enforcement, Facility Inspections: Dedicated and Non-
Dedicated Facility List, <https://www.ice.gov/facility-inspections>.

26 ²⁴ PBNDS 2008 § 4.22(V)(I)(1); PBNDS 2011 § 4.3(II)(14) (intake assessments);
27 §§ 4.22(II)(15), 4.22(V)(B), (K), (N) & (O); PBNDS 2011 §§ 4.3(II)(2) & (4),
28 4.3(V)(A), (S) & (T) (health care services); PBNDS 2008 §§ 4.20(II)(1), (3) & (4),
(footnote continued)

1 developed and enforces these standards for ICE detainees demonstrates that the
2 deprivations at Victorville are not necessary to achieve a governmental objective.²⁵

3 **C. Defendants Deny Minimally Adequate Health Care to ICE**
4 **Detainees at FCI Victorville.**

5 In addition to subjecting ICE detainees to harmful and punitive conditions of
6 confinement at FCI Victorville, Defendants fail to provide for detainees' basic
7 medical and mental health needs. The prison lacks adequate health care staff to
8 provide a minimally adequate system of health care for individuals detained there.
9 On August 27, 2018, John Kostelnik, a case manager at FCI Victorville and
10 president of AFGE 3969, which represents BOP employees at FCI Victorville,
11 confirmed that there are just two doctors on staff to serve over 4,000 criminal
12 prisoners and ICE detainees at FCI Victorville, and one of them is largely occupied
13 with administrative tasks. *See* Decl. of Margot Mendelson ("Mendelson Decl."),
14 Exhibit 1, at p. 1, ln. 25, p. 2, ln. 1.²⁶ According to media reports, no additional staff
15 were hired to help attend to the 1,000 detainees that arrived around June 8, and
16 "[m]edical staff have become 'emotional' as they struggle to provide proper care"
17 for Victorville's thousands of charges.²⁷ Mr. Kostelnik's account is consistent with

18 4.20(V)(D)(1); PBNDS 2011 §§ 4.1(II)(1) & (3), 4.1(V)(D)(1) (adequate nutrition
19 and time to consume meals); §§ 5.30(II)(6), 5.30(V)(G); PBNDS 2011 §§
20 5.5(V)(D), (F) & (J). The 2008 and 2011 PBNDS standards are available at
21 <https://www.ice.gov/factsheets/facilities-pbnds>.

22 ²⁵ Plaintiffs do not concede that the ICE standards meet constitutional minima; many
23 are unduly restrictive. Nonetheless, even these excessively restrictive standards
24 provide for less punitive correctional practices and conditions of confinement than
25 those that exist at FCI Victorville.

26 ²⁶ *Accord* Lauren Gill, *As Immigrant Detainees Are Moved to Prisons, What Happens to the*
27 *Prisoners?*, Rolling Stone (July 3, 2018) (documents show that "there are just two
28 physicians, nine physician assistants or nurse practitioners, and one medical clerical
worker to care for the roughly 4,200 people" at FCI Victorville).

²⁷ Lauren Weber, *As Health Conditions Worsen at Prison Holding 1,000*
(footnote continued)

1 the U.S. Department of Justice Office of the Inspector General’s 2016 investigative
 2 findings, which documented systemic understaffing of medical professionals
 3 throughout the BOP, resulting in limitations on prisoners’ access to medical care.²⁸
 4 These deficiencies in medical staffing have led to a dangerous and life-threatening
 5 situation for ICE detainees at the prison, whose health care needs have been ignored.

6 **1. Defendants Fail to Provide Adequate Intake Health**
 7 **Screening.**

8 Defendants fail to conduct adequate intake health screenings of detainees
 9 when they are admitted to FCI Victorville. There is no consistent screening of
 10 detainees for medical, mental health, or dental problems upon intake. *See* Doc. 1-10
 11 at ¶ 12 (no dental screening despite painful toothache); Doc. 1-15 at ¶ 5 (no medical,
 12 dental, or mental health screening upon arrival). The minimal and inconsistent
 13 screening that does occur often involves no meaningful communication with the
 14 patient, leading to “treatment” without detainees’ informed consent. *See* Doc. 1-6 at
 15 ¶ 15 (“They didn’t tell us what was in the injection”); Doc. 1-2 at ¶ 13 (“screening”
 16 consisted of an injection of unknown contents).

17 Indeed, communication is, in many cases, rendered impossible by
 18 Defendants’ failure to provide language interpretation to detainees. For example, a
 19 nurse who examined Plaintiff Ankush Kumar regarding his kidney stones relied on
 20 another Punjabi-speaking detainee who is fluent in English and was compelled to
 21 interpret for other Punjabi speakers during medical encounters. Doc. 1-3 at ¶ 6.

22 _____
 23 *Detainees, Staff Fears A Riot*, Huffington Post (July 2, 2018); Gill, *supra* note
 24 26.

25 ²⁸ U.S. Dep’t of Justice, Office of Inspector General, *Review of the Federal Bureau*
 26 *of Prisons’ Medical Staffing Challenges*, (March 2016). Plaintiffs have requested
 27 discovery regarding staffing and vacancy levels for custody and health care staff at
 28 FCI Victorville. *See* Plaintiffs’ Motion for Expedited Discovery, filed herewith.
 Plaintiffs will supplement this filing once that discovery is obtained.

1 Plaintiff Ngwa is fluent in English and French, and acted as a translator for French-
2 speaking detainees. Doc. 1-2 at ¶ 16; *see also* Doc. 1-7 at ¶ 4 (detainee relies on
3 cellmate to translate to French); Doc. 1-9 at ¶ 16 (another detainee translated when
4 he saw a nurse regarding stomach pain). Some non-English speaking detainees are
5 treated without any interpretation at all. *See* Doc. 1-17 at ¶ 8 (received medical
6 treatment he did not understand; all services rendered in English).

7 These nonexistent or inadequate screenings have predictably had adverse
8 health effects on the detainee community at large, including outbreaks of
9 communicable diseases and prolonged quarantines.²⁹ According to Mr. Kostelnik’s
10 August 27, 2018 report, in fact, there have been at least 60 cases of scabies and 30
11 cases of chickenpox at the prison since the ICE detainees arrived in June 2018. *See*
12 Exhibit 1 to Mendelson Decl., at p. 2, ln. 5-10.

13 At FCI Victorville, Defendants have relied on a short, written survey
14 (available only in English and Spanish) for mental health screening. *See* Doc. 1-19
15 at ¶ 6 (describing questionnaire used in lieu of mental health screening).³⁰ Plaintiff
16 Granados Aquino was “never . . . asked about [his] mental health in person” after
17 arriving at FCI Victorville. Doc. 1-6 at ¶ 15. When he first arrived at the prison, he

18
19 ²⁹ *See* Roxana Kopetman, *Immigration detainees in Victorville prison get more*
20 *scabies, chicken pox; protesters to gather Saturday*, The Orange County Register
(June 29, 2018).

21 ³⁰ On August 10, 2018, U.S. District Judge Dolly M. Gee issued an order in the
22 *Franco-Gonzalez v. Nielsen* litigation finding that the initial mental health
23 screenings conducted for ICE detainees at some federal prisons, including FCI
24 Victorville, are “inadequate” and fail to meet the requirements of the injunction and
25 implementation plan in that case. Order, *Franco-Gonzalez v. Nielson*, Case No.
26 2:10-cv-02211-DMG-DTB, Doc. 1008 at 7, 11 (C.D. Cal. Aug. 10, 2018). On
27 August 17, 2018, the U.S. Department of Justice filed a status report representing
28 that ICE and BOP would “work together to . . . perform . . . 14-day mental health re-
screenings” to the 441 ICE detainees at FCI Victorville II by August 31, 2018. *See*
Defs.’ Status Report, *Franco-Gonzalez v. Nielsen*, Doc. 1009 at 2.

1 filled out a form, on which he indicated that he was depressed; however, Defendants
2 never followed up to conduct an assessment or offer him mental health services. *Id.*
3 at ¶ 16. This is consistent with the experiences of other Plaintiffs and detainees. *See*
4 Doc. 1-2 at ¶ 15 (“No one has asked me if I feel sad, depressed, or suicide [*sic*]. I
5 would tell them [yes] if they did.”); Doc. 1-18 at ¶¶ 4-5, 7 (no screening or ability to
6 request counseling for anxiety because staff does not speak French); Doc. 1-19 at
7 ¶ 6 (no face-to-face mental health screening).

8 2. **Defendants Do Not Provide Emergency and Routine Health** 9 **Care.**

10 Plaintiffs and other detainees at FCI Victorville have experienced medical
11 emergencies that go unaddressed and result in gratuitous suffering and a risk of
12 permanent injury or death. While there is an emergency call button in each cell, calls
13 from detainees experiencing medical emergencies are often ignored. When he
14 experienced extreme pain from a kidney stone, for example, Plaintiff Kumar pushed
15 the emergency call button but was not provided medical attention until the next day,
16 when he was given medication and ultimately transported to the hospital. Doc. 1-3
17 at ¶ 5-7. In some cases, detainees have been instructed not to use the emergency call
18 button to notify staff of their health care needs. Prison staff instructed a detainee that
19 he “should not touch the call button in [his] cell unless [he is] dying,” Doc. 1-15 at
20 ¶ 24, and told another detainee never to push the button again. Doc. 1-11 at ¶¶ 7-8.

21 Defendants also lack a reliable system for detainees to access routine health
22 care. Detainees struggle to communicate their medical care needs to health care
23 staff. For example, forms to request access to medical services are not routinely
24 available, and in those cases where forms are provided, they are available only in
25 English and Spanish. *See* Doc. 1-2 at ¶ 11-12; Doc. 1-4 at ¶ 4; Doc. 1-9 at ¶ 15; Doc.
26 1-10 at ¶ 11; Doc. 1-11 at ¶ 6. Even those suffering severe and ongoing pain are
27 unable to convey their needs to medical staff. *See* Doc. 1-10 at ¶¶ 10-13 (detainee
28 unable to request medical care for his toothache); Doc. 1-20 at ¶ 7 (describing

1 detainee who requested medical care for toothache for eight days “but no one came
2 to see him”).

3 When detainees do manage to access medical staff, diagnosis and treatment is
4 often delayed or denied outright. In one case, a detainee who was suffering from a
5 fever, cough, and sore throat was told by staff that there “weren’t any medical
6 consultations unless it was really serious, so [he] could not have any help.” Doc. 1-
7 19 at ¶¶ 7–9. *See also* Doc. 1-2 at ¶ 13 (medical staff screening detainee for chicken
8 pox “did not want to talk to me about my pain”); Doc. 1-1 at ¶¶ 7-13; and at ¶¶ 19-
9 21 (no dental treatment or medication for Plaintiff Teneng’s severe toothache
10 despite complaining to custody and medical staff multiple times over multiple days);
11 Doc. 1-11 at ¶¶ 7-8 (told to wait until “mañana” for treatment for gastritis); Doc. 1-9
12 at ¶ 3, and at ¶¶ 13-16 (detainee unable to request medical services or to
13 communicate with officers about bloody stool, peeling skin, and rashes for weeks);
14 Doc. 1-18 at ¶ 6 (detainee requested X-ray due to pain in his shoulders, ribs, and leg,
15 but was not provided an exam.); Doc. 1-8 at ¶ 13 (detainee with nosebleed denied
16 access to medical staff, and instead told to “deal with it and cut out your bullshit”).

17 **3. Defendants Do Not Provide Minimally Adequate Mental** 18 **Health Care.**

19 Defendants fail to provide adequate meaningful mental health treatment, even
20 when detainees inform Defendants of serious, current mental health needs. Doc. 1-6
21 at ¶¶ 11, 15-16 (in response to urgent request for mental health treatment, officer
22 told detainee “I can’t help you right now. Maybe tomorrow.”); Doc. 1-15 at ¶¶ 16,
23 25 (detainee experiencing depression, loneliness, and desperation; unable to access
24 mental health services); Doc. 1-18 at ¶ 7 (detainee deeply anxious and unable to
25 access mental health services). One detainee learned, while in custody at FCI
26 Victorville, that his father had been killed in Honduras. Exhibit 1 (attached hereto)
27 at ¶ 5. Upon learning the news, he “yelled and began to cry and lost control.” *Id.* In
28 response, “some guards started laughing at me” and “put me in a little hallway all

1 alone.” *Id.* at ¶¶ 6-7. After an hour and a half, a psychologist arrived, but she didn't
2 speak Spanish and relied on another detainee to translate. *Id.* at ¶ 8. A few days
3 later, another mental health professional came to see him in the hallway of the
4 housing unit, “in front of all of my acquaintances.” *Id.* at ¶ 13. She also didn't speak
5 Spanish, and relied on another detainee to translate. *Id.* She told the man that “if I
6 keep asking for the psychologist, they were going to put me in isolation.” *Id.*

7 Defendants' failure to provide mental health care at the prison is particularly
8 problematic because the harsh and punitive conditions of confinement can cause
9 severe psychological distress. Detainees at FCI Victorville report experiencing
10 mounting depression and hopelessness, which is exacerbated by long periods of
11 enforced idleness and the denial of adequate opportunities for recreation, activity,
12 and socialization.³¹ They also report that they hear men weeping in their beds at
13 night and that they have seen men with fresh scars on their wrists from cutting
14 themselves.³² Media reports indicate that at least two detainees have attempted
15

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17 ³¹ See Doc. 1-2 at ¶ 10 (depression and difficulty sleeping due to enforced idleness);
18 Doc. 1-6 at ¶ 11 (cried in cell and became depressed due to isolation); Doc. 1-9 at ¶
19 12 (anxiety due to being locked in cell 20-21 hours a day with nothing to do); Doc.
20 1-10 at ¶ 10 (“As a result of spending so much time in my cell with nothing to do, I
21 am frustrated, worry, and get headaches”); Doc. 1-13 at ¶ 3 (“When we first arrived
22 at Victorville we were in our cells all of the time and it was very hard.”); Doc. 1-15,
23 at ¶ 16 (“I am having a very difficult time with the isolation and idleness. I feel very
24 depressed and lonely. At night, I cry.”); Doc. 1-18 at ¶ 3 (anxiety and difficulty
25 sleeping due to being locked in cell with nothing to do); Exhibit 2 (attached hereto)
26 at ¶ 5 (depression has worsened due to the conditions; has suicidal thoughts).

27 ³² Doc. 1-8 at ¶ 14 (“I saw an Ecuadorean man who took the blade out of his razor
28 and cut across his arms and cut a cross into the side of his wrist.”); Doc. 1-15 at ¶¶
17-18 (has heard men crying in their beds at night; has seen men with scars from
cutting themselves due to depression and desperation); Exhibit 5 (attached hereto) at
¶ 20 (heard a fellow detainee crying in his cell during quarantine); Exhibit 3
(attached hereto) at ¶ 9 (heard detainees crying, threatening suicide).

1 suicide or been placed on suicide watch.³³ By failing to provide adequate mental
2 health care, Defendants have placed Plaintiffs and the class they seek to represent at
3 serious risk of needless psychological harm, injury, and death by suicide.

4 **4. Defendants Do Not Provide Adequate Medication.**

5 Defendants also have failed to ensure that detainees receive necessary
6 medications. In one case, an asthmatic patient was denied an inhaler or other asthma
7 medicine upon arrival at FCI Victorville, despite informing staff of his condition.
8 *See* Doc. 1-15 at ¶¶ 3, 5. He suffered an asthma attack a week later and when he was
9 finally given an inhaler, it only had 15 doses left. *Id.* at ¶¶ 6-7. Once that inhaler ran
10 out, the detainee requested another but staff did not provide one. *Id.* at ¶¶ 7-8.

11 Another detainee, whose medication was thrown away by ICE officials when
12 he was apprehended, notified prison staff of his medical need when he arrived at
13 FCI Victorville but was denied because he could not remember the name of the
14 medicine. Doc. 1-8 at ¶¶ 7, 10. Medical staff did not attempt to determine his
15 diagnosis or provide an alternative medication. *Id.* at ¶ 11. A third detainee who was
16 seriously injured and hospitalized during his initial apprehension was not given any
17 pain medication following his initial treatment. *See* Doc. 1-20 at ¶ 2. Nor was he
18 provided instructions for refilling his gastritis medication. *Id.* at ¶¶ 8-9. The same is
19 true of another detainee suffering from gastritis, despite making multiple requests.
20 Doc. 1-7 at ¶¶ 7-12. Another detainee has been unable to obtain medicine for a
21 serious skin rash, causing his skin to peel. Doc. 1-9 at ¶ 13.

22
23 ³³ *See* Lauren Weber, *Detainee Attempts Suicide After Trump Administration*
24 *Jams Migrants Into Troubled Prison*, Huffington Post (Aug. 1, 2018) (“In the
25 last week, one detainee has tried to kill himself, saying he was terrified he would be
26 deported back to Cuba. Another was put on suicide watch after staffers noticed he
27 couldn’t stop crying”). *Cf.* Weber, *supra* n.27 (Congressman who toured
28 Victorville expressing concern that “the sense of hopelessness and depression could
cause some of them to take their own lives”).

1 **5. Custody Staff Use Threats and Retaliation to Improperly**
 2 **Interfere with Health Care.**

3 Custody staff at FCI Victorville routinely interfere with detainees’ access to
 4 health care with conduct that is perceived as retaliatory and has had a chilling effect
 5 on detainees’ willingness to report alarming symptoms or request health care. For
 6 example, Plaintiff Teneng was “locked in his cell for several hours while other
 7 detainees were allowed out in response to his asking medical staff to care for his
 8 tooth pain.” Doc. 1-1 at ¶¶ 13-18. *See* Doc. 1-13 at ¶ 3 (detainee was afraid to ask
 9 for medical care because of how custody staff respond to others who request care);
 10 Exhibit 3 (attached hereto) at ¶¶ 11-12 (same). Detainees have been intimidated into
 11 silence either through explicit threats or verbal abuse. Doc. 1-1 at ¶ 17 (Plaintiff
 12 threatened with pepper spray if he continued to complain about his toothache); Doc.
 13 1-11 at ¶¶ 7-8 (custody staff response to request for medical care was “don’t be a
 14 dumbass”); Doc. 1-8 at ¶ 13 (custody staff response to request for medical treatment
 15 was “deal with it and cut out your bullshit”); Doc. 1-15 at ¶ 24 (detainee warned he
 “should not touch the call button in [his] cell unless [he is] dying”).³⁴

16 **D. Defendants Have Severely Limited Detainees’ Religious Exercise.**

17 FCI Victorville detainees’ ability to exercise their religion is severely limited.
 18 For example, detainees are not permitted to attend religious worship services that
 19 may be held for other prisoners at the facility. *See, e.g.*, Doc. 1-2 at ¶ 9 (Plaintiff
 20 reporting no Presbyterian worship services); Doc. 1-7 at ¶ 13 (Catholic); Doc. 1-12
 21 at ¶ 7 (Sikh); Doc. 1-14 at ¶ 12 (Hindu); Doc. 1-18 at ¶ 2 (Islamic); Decl. of
 22 Dominic Tebit, attached hereto as Exhibit 7, at ¶ 8 (Presbyterian); Exhibit 3 at ¶ 21
 23 (Seventh Day Adventist not allowed to attend any religious services); Decl. of Fabio
 24 _____

25 ³⁴ The conditions at issue here do not comply with the ICE standards providing that
 26 “[b]ecause ICE exercises significant authority when it detains people, ICE must do
 27 so in the most humane manner possible with a focus on providing sound conditions
 28 and care.” PBNDS 2011 at i.

1 Serrano Solorzano, attached hereto as Exhibit 8, at ¶ 16 (Catholic); *see also* Doc. 1-
2 9 at ¶ 9; Doc. 1-16 at ¶ 8.

3 Detainees’ ability to gather informally outside of their cells to conduct group
4 prayer or religious study is also limited. *See* Doc. 1-6 at ¶ 23 (officers told Plaintiff
5 and other detainees that they could not gather in the day room to pray, sing songs,
6 and preach); Doc. 1-9 at ¶ 9 (officers told detainees who sought to pray in common
7 area they “did not have the right to assemble or to pray together”); Doc. 1-18 at ¶ 2
8 (Muslim detainee can only pray in his cell); Exhibit 3 at ¶ 22 (officer broke up
9 detainees’ Bible study and told them it was not allowed”); Exhibit 8 at ¶ 16
10 (detainees trying to pray and sing hymns told they could not gather as a group).

11 Further, detainees of faith have no ability to consult with clergy or obtain
12 religious counseling. *See, e.g.*, Doc. 1-2 at ¶ 9 (Presbyterian Plaintiff not able to see
13 clergy); Doc. 1-7 at ¶ 13 (detainee unable to see a priest since being detained at FCI
14 Victorville); Exhibit 7 at ¶ 16 (Catholic detainee has no access to pastor or priest).

15 Defendants also have restricted detainees’ access to various religious items,
16 including holy books and other religious texts, religious headwear, and religious
17 jewelry. For example, Plaintiff Granados Aquino’s Bible was seized at the border,
18 and Defendants denied his request for its return. Doc. 1-6 at ¶ 25. Another
19 detainee—a Seventh Day Adventist for whom reading the Bible in Spanish is an
20 “important part” of his religious practice—also had his Spanish-language Bible
21 confiscated by Defendants, who have refused to return it. Exhibit 3 at ¶ 23. Fifteen
22 detainees on his unit are forced to share three Bibles. *Id.*; *see* Doc. 1-15 at ¶ 15
23 (detainee made “multiple requests for a Bible but officers in [his] housing unit said
24 there are no bibles here”). Similarly, Muslim detainees have no access to the Quran
25 or other Islamic texts. Doc. 1-18 at ¶ 2.

26 One detainee reported that his rosary was confiscated at the border, and he
27 has no idea where it is. Doc. 1-20 at ¶ 10. An ICE officer told him it was in
28

1 Florence; another officer said his property had been lost. *Id.* Sikh detainees’ turbans
2 and karas (religious bracelets) have been confiscated as well. Defendants have not
3 returned them. *See, e.g.*, Doc. 1-4 at ¶ 9 (Plaintiff Atinder Paul Singh “asked
4 repeatedly if I could get my turban back, or wear a head covering” but “was told it is
5 not allowed); Doc. 1-5 at ¶ 6 (“Since I came to Victorville, I have asked for a turban
6 and my kara but was told they are in my personal property.”); Doc. 1-12 at ¶¶ 5, 8
7 (Sikh turban confiscated, never returned).

8 The prison has purported to make turbans available to purchase via the
9 commissary. *See* Doc. 1-4 at ¶ 10. However, in practice, many detainees continue to
10 suffer serious delays in obtaining a turban, if they receive one all.³⁵ The commissary
11 is only open on Mondays, and even then, commissary hours are often canceled
12 without notice. Decl. of Munmeeth Kaur Soni, attached hereto as Exhibit 9, at ¶ 10.
13 As a result, newly arriving detainees who need turbans are forced to go a week or
14 more without commissary access. *Id.* Moreover, many detainees cannot afford to
15 purchase turbans. *See id.* at ¶ 11; Doc 1-4 at ¶ 10.

16 **III. ARGUMENT**

17 Plaintiffs are entitled to a preliminary injunction prohibiting the
18 unconstitutional and punitive policies and practices in effect at FCI Victorville
19 because: (1) Plaintiffs are likely to succeed on the merits; (2) Plaintiffs are likely to
20 suffer irreparable harm absent preliminary relief; (3) the balance of equities tips in
21 Plaintiffs’ favor, and (4) an injunction is in the public interest. *Winter v. Nat’l Res.*
22 *Def. Council*, 555 U.S. 7, 20 (2008). Plaintiffs also are entitled to preliminary relief
23 under the “sliding scale” approach, the Ninth Circuit’s “alternate formulation” of the
24

25 ³⁵ According to Plaintiff Atinder Paul Singh, an ICE agent told detainees that they
26 could obtain a “small cover like a patka,” a type of turban, if they paid \$10. Doc 1-4
27 at ¶ 10. But the patka was never received, even though Singh’s prison account had
28 enough money, thanks to his family in the United States. *Id.*

1 *Winter* standard. *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012). Under this
2 approach, as long as the *Winter* factors regarding irreparable harm and public
3 interest are met, courts will issue an injunction where movants raise: (1) “serious
4 questions going to the merits,” and (2) the balance of equities “tips sharply towards
5 the [movants].” *Id.* (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
6 1127, 1135 (9th Cir. 2011)).³⁶

7 **A. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**
8 **OF THEIR FIFTH AMENDMENT CLAIM REGARDING**
9 **EXCESSIVELY PUNITIVE CONDITIONS OF CONFINEMENT.**

10 Immigration detainees are civil detainees, *Zadvydas v. Davis*, 533 U.S. 678,
11 690 (2001), and “the government’s discretion to incarcerate [them] is always
12 constrained by the requirements of due process.” *Hernandez v. Sessions*, 872 F.3d
13 976, 981, 1000-01 (9th Cir. 2017). The due process clause of the Fifth Amendment
14 prohibits Defendants from confining ICE detainees in conditions that constitute
15 punishment. *Jones v. Blanas*, 393 F.3d 918, 932, 934 (9th Cir. 2004) (“With respect
16 to an individual confined awaiting adjudication under civil process, a presumption
17 of punitive conditions arises where the individual is detained under conditions
18 identical to, similar to, or more restrictive than those under which pretrial criminal

19 ³⁶ Plaintiffs seek a prohibitory injunction to “prevent future constitutional
20 violations” of the class’s and subclass’s constitutional rights. *Hernandez v. Sessions*,
21 872 F.3d 976, 998 (9th Cir. 2017) (an injunction that “prevents future constitutional
22 violations [is a] a classic form of prohibitory injunction”). Insofar as the relief
23 sought could be characterized as requiring a mandatory injunction, however,
24 Plaintiffs also meet this heightened standard. In the instant case, the merits of the
25 case are not “doubtful,” and the failure to issue an injunction will lead to “extreme
26 or very serious damage” that will not be “capable of compensation in damages.” *Id.*
27 at 999 (citations omitted). As the Ninth Circuit recently held in a lawsuit challenging
28 immigration detention practices, “unlawful detention certainly constitutes ‘extreme
or very serious’ damage, and that damage is not compensable in damages.” *Id.* at
999. Moreover, as in *Hernandez*, the merits of Plaintiffs’ case “follow[] directly”
from established precedent. *Id.*

1 detainees are held”); *see also Bell v. Wolfish*, 441 U.S. 520, 536 (1979) (for pretrial
2 criminal detainees, the conditions and restrictions of detention cannot “amount to
3 punishment”).³⁷ Here, by design and in practice, the conditions of confinement for
4 ICE detainees at FCI Victorville plainly amount to punishment.

5 Because the conditions for immigration detainees at FCI Victorville are
6 presumptively unconstitutional, and because it is unlikely that Defendants will rebut
7 this presumption, Plaintiffs are likely to succeed on the merits of their claim.

8 **1. Incarcerating ICE Detainees at FCI Victorville Is Inherently**
9 **Punitive.**

10 Incarcerating ICE detainees at a medium-security federal prison is inherently
11 punitive. Courts have recognized that the conditions of confinement in prisons are
12 “designed to punish” criminals. *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982).
13 At FCI Victorville in particular, the physical plant layout and correctional practices
14 are designed to confine medium-security criminal prisoners in a manner appropriate
15 to the heightened security threat they pose, within “strengthened perimeters (often
16 double fences with electronic detention systems),” locked in “cell-type housing,”
17 and subjected to heightened “internal controls.”³⁸ By incarcerating ICE detainees at
18 FCI Victorville, Defendants subject them to a regime of punishment and control
19 wholly inappropriate for civil detainees.

20 Exposing civil immigration detainees to punitive conditions of confinement is
21 consistent with Defendants’ broader policy of punishing immigrants who enter the
22 country in an effort to deter future migrants. Indeed, Defendants have conceded that

23 ³⁷ The Fifth Amendment due process clause applies here, but decisions construing
24 the Fourteenth Amendment are instructive because the due process clauses of the
25 Fifth and Fourteenth Amendments “are coextensive.” *United States v. Navarro-*
Vargas, 408 F.3d 1184, 1189 (9th Cir. 2005).

26 ³⁸ *About Our Facilities*, *supra* n. 19 (prisons “operated at five different security
27 levels in order to confine offenders in an appropriate manner.”).

1 they began sending immigrants to FCI Victorville, in part, due to a spike in the
2 demand for detention space resulting from their so-called “Zero Tolerance Policy”
3 toward unauthorized border crossings.³⁹ In a recent filing before this court, the
4 Department of Homeland Security argued that detaining immigrants is justifiable
5 because it “deters others from unlawfully coming to the United States.” *See* Defs.’
6 Memorandum Of Points And Authorities In Support Of Ex Parte Application for
7 Relief from the *Flores* Settlement Agreement, *Flores v. Sessions*, Case No. 2:85-cv-
8 04544-DMG-AGR, Doc. 425-1 at 13 (C.D. Cal. June 21, 2018) (internal quotations
9 and citation omitted). In essence, Defendants choose to lock Plaintiffs in a medium-
10 security federal prison to send a message to foreign nationals that they will face a
11 similar fate if they seek asylum or cross the border without authorization.

12 Courts have long held that general deterrence is an impermissible justification
13 for any form of civil detention. *See, e.g., Kansas v. Crane*, 534 U.S. 407, 412 (2002)
14 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 373 (1997) (Kennedy, J., concurring))
15 (explaining that civil detention cannot be a “mechanism for retribution or general
16 deterrence’ – functions properly those of criminal law”); *accord Hendricks*, 521
17 U.S. at 373 (“retribution and general deterrence are reserved for the criminal system
18 alone”). A general-deterrence scheme is particularly objectionable in the
19 immigration context because “neither those being detained nor those being deterred
20 are certain wrongdoers, but rather individuals who may have legitimate claims to
21 asylum in this country.” *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 189 (D.D.C. 2015).

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25 ³⁹ *See, e.g.,* Kate Morrissey, *ICE is sending 1,000 immigrant detainees to Victorville*
26 *prison*, San Diego Union-Tribune (Jun. 7, 2018) (ICE spokesperson said “the
27 agency needed the extra bed space because of . . . the Department of Justice’s
28 recently implemented zero-tolerance policy on illegal crossings”).

28

1 **2. The Conditions at FCI Victorville Are Unconstitutional**
 2 **Because They Are Excessive in Relation to the Government**
 3 **Objective and Because Detainees Are Subjected to Similar,**
 4 **or Worse, Conditions Than Convicted Prisoners.**

5 As civil detainees, Plaintiffs and the class they seek to represent are entitled to
 6 greater protections than post-conviction criminal detainees. *Jones*, 393 F.3d 918,
 7 931-32 (9th Cir. 2004) (“an individual detained awaiting civil commitment
 8 proceedings is entitled to protections at least as great as those afforded to a civilly
 9 committed individual and at least as great as those afforded to an individual accused
 10 but not convicted of a crime”); *see also Castro v. Cnty. of Los Angeles*, 833 F.3d
 11 1060, 1069-70 (9th Cir. 2016) (recognizing distinction between the Eighth
 12 Amendment protections afforded to persons with criminal convictions and the due
 13 process protections afforded to pretrial detainees). Civil detainees are
 14 constitutionally entitled to “more considerate treatment and conditions of
 15 confinement” than criminal prisoners. *Sharp v. Weston*, 233 F.3d 1166, 1172 (9th
 16 Cir. 2000).

17 Conditions for civil detainees amount to punishment: “(1) where the
 18 challenged restrictions are expressly intended to punish, or (2) where the challenged
 19 restrictions serve an alternative, non-punitive purpose but are nonetheless ‘excessive
 20 in relation to the alternative purpose’” *Jones, supra*, 393 F.3d at 932 (internal
 21 citations omitted). The court makes an objective assessment whether there is a
 22 reasonable relationship between the government’s conduct and a legitimate purpose.
 23 *Unknown Parties v. Johnson*, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016),
 24 *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017).

25 Moreover, if civil detainees are confined under conditions that are “identical
 26 to, similar to, or more restrictive than” those of criminal prisoners, a presumption
 27 arises that the conditions are punitive and thus unconstitutional. *King v. Cnty. of Los*
 28 *Angeles*, 885 F.3d 548, 557 (9th Cir. 2018). A defendant can rebut the presumption
 of unconstitutionality by showing “legitimate, non-punitive interests justifying the

1 conditions of [the detainee’s] confinement,” and that the restrictions imposed are not
2 “excessive in relation to these interests.” *Id.* at 558 (quoting *Jones*, 393 F.3d at 933).
3 However, “[e]ven if legitimate, non-punitive interests are identified, conditions of
4 confinement may still be ‘excessive’ if they are ‘employed to achieve objectives that
5 could be accomplished in so many alternative and less harsh methods.’” *Id.* (internal
6 citations and quotation marks omitted).

7 The highly restrictive conditions of confinement at FCI Victorville are plainly
8 excessive in relation to the government’s interest. Here, the governmental objective
9 is to detain immigration detainees pending their removal proceedings.⁴⁰ Defendants
10 themselves have developed standards that prohibit many of the conditions present at
11 FCI Victorville, including with respect to physical and mental health screenings,
12 access to health care, nutrition, and exercise of religion. *See supra* II.A- D.
13 Defendants have no legitimate governmental interest in conditions that violate their
14 own minimum standards for conditions of confinement.

15 Moreover, Defendants confine ICE detainees at FCI Victorville in conditions
16 similar to—and, in many respects worse than—criminal prisoners, and are therefore
17 presumed to be punitive. *See Jones*, 393 F.3d at 934 (“a presumption of punitiveness
18 arises” because plaintiff experienced “significant limitations on, or total denials” of
19 access to recreation, religious services, phone calls, and visitation). As set forth
20 above, *supra* II.A, ICE detainees are subject to the same BOP policies as criminal
21 prisoners, including policies covering health care and discipline. Detainees are
22 subject to many of the same correctional practices as criminal prisoners, such as
23 extended lockdowns, unclothed visual searches, and shackling during transport.
24 Detainees are, in fact, treated worse than criminal prisoners with respect to such

25
26 ⁴⁰ “Congress has authorized immigration officials to detain some classes of aliens
27 during the course of certain immigration proceedings.” *Jennings v. Rodriguez*, --
28 U.S. --, 138 S. Ct. 830, 836 (2018).

1 crucial conditions of confinement as access to health care, nutrition, recreation and
2 other programs, as well as the ability to exercise their religious beliefs.

3 Indeed, Defendants employ far more restrictive conditions and correctional
4 practices toward ICE detainees at FCI Victorville than criminal prisoners at BOP
5 minimum-security facilities. *See supra* II.A. Because the confinement conditions of
6 ICE detainees at FCI Victorville are similar to, or worse than, the confinement
7 conditions of criminal prisoners at FCI Victorville and at BOP’s minimum-security
8 facilities, they are presumptively punitive and unconstitutional.

9 Defendants are unlikely to rebut this presumption. To the extent Defendants
10 claim that they shackle and strip search ICE detainees, restrict their access to fresh
11 air and opportunities for socialization, deny them sufficient time to consume their
12 food, provide them with inadequate mental health care and medical care, and
13 severely limit their religious exercise in order to ensure their presence at their
14 removal proceedings, the objective plainly “could be accomplished in so many
15 alternative and less harsh methods.” *King*, 885 F.3d at 558 (citations omitted).
16 Defendants must pursue those alternative methods, even if doing so would create
17 additional financial obligations: “Lack of resources is not a defense to a claim for
18 prospective relief because prison officials may be compelled to expand the pool of
19 existing resources in order to remedy continuing . . . [constitutional] violations.”
20 *Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014) (en banc).

21 **B. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**
22 **OF THEIR FIFTH AMENDMENT CLAIM REGARDING**
23 **DENIAL OF ADEQUATE HEALTH CARE.**

24 “There is no question that [ICE] detainees are entitled to ‘adequate medical
25 care.’” *Doe*, 878 F.3d 710 at 722 (citations omitted). The constitutional standard
26 governing civil detainees’ entitlement to adequate health care “differs significantly
27 from the standard for convicted prisoners, who may be subject to punishment that
28 does not violate the Eighth Amendment’s ban on cruel and unusual punishment.”

1 *Pierce v. Cnty. of Orange*, 526 F.3d 1190 (9th Cir. 2008), *opinion amended and*
 2 *superseded on denial of reh’g*, 519 F.3d 985 (9th Cir. 2008). While a convicted
 3 prisoner must show subjective deliberate indifference to establish a violation of the
 4 Eighth Amendment, the analysis differs for pretrial detainees seeking to establish
 5 that a denial of medical care violates the Fourteenth Amendment.

6 [T]he elements of a pretrial detainee’s medical care claim against an
 7 individual defendant under the due process clause of the Fourteenth
 8 Amendment are: (i) the defendant made an intentional decision with
 9 respect to the conditions under which the plaintiff was confined; (ii)
 10 those conditions put the plaintiff at substantial risk of suffering serious
 11 harm; (iii) the defendant did not take reasonable available measures to
 12 abate that risk, even though a reasonable official in the circumstances
 13 would have appreciated the high degree of risk involved—making the
 14 consequences of the defendant’s conduct obvious; and (iv) by not
 15 taking such measures, the defendant caused the plaintiff’s injuries.

16 *Gordon v. Cnty. Of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018).

17 As detailed above, Plaintiffs are entitled to greater protection than both
 18 convicted prisoners and criminal pretrial detainees. *See Jones*, 393 F.3d at 934;
 19 *King*, 885 F.3d at 557. Accordingly, deprivations of medical care that violate the
 20 rights of convicted prisoners or criminal pretrial detainees *a fortiori* violate the
 21 rights of civil immigration detainees like Plaintiffs. *See Unknown Parties*, 2016 WL
 22 8188563, at *4 (“Conditions of confinement that violate the Eighth Amendment
 23 necessarily violate the Fifth Amendment...”).⁴¹

24 1. Minimal Requirements of a Prison Health Care System.

25 In the prison context, the Ninth Circuit has set forth the elements of a
 26 minimally adequate health care system:

27 The Eighth Amendment requires that prison officials provide a system
 28 of ready access to adequate medical care. Prison officials show
 deliberate indifference to serious medical needs if prisoners are unable
 to make their medical problems known to the medical staff. Access to

⁴¹ Because of the relative dearth of cases involving the health care rights of civil detainees, this brief relies primarily on cases involving criminal pretrial detainees and convicted prisoners.

1 the medical staff has no meaning if the medical staff is not competent
 2 to deal with the prisoners' problems. The medical staff must be
 3 competent to examine prisoners and diagnose illnesses. It must be able
 4 to treat medical problems or to refer prisoners to others who can. ...
 5 [T]he prison must provide an adequate system for responding to
 6 emergencies. If outside facilities are too remote or too inaccessible to
 7 handle emergencies promptly and adequately, then the prison must
 8 provide adequate facilities and staff to handle emergencies within the
 9 prison. These requirements apply to physical, dental and mental health.

10 *Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982) (citation omitted), *overruled*
 11 *on other grounds by Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293 (1995); *see*
 12 *also Brown v. Plata*, 563 U.S. 493, 510-11 (2011) (“Just as a prisoner may starve if
 13 not fed, he or she may suffer or die if not provided adequate medical care. A prison
 14 that deprives prisoners of basic sustenance, including adequate care, is incompatible
 15 with the concept of human dignity and has no place in civilized society.”).

16 “That the Eighth Amendment protects against future harm to inmates is not a
 17 novel proposition.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). In an injunctive
 18 case, the plaintiff need not show actual physical injury; rather, the Constitution is
 19 violated by an unreasonable *risk* of harm. *Id.* at 33, 34 (noting that it “would be odd
 20 to deny an injunction to inmates who plainly proved an unsafe, life-threatening
 21 condition in their prison on the ground that nothing yet had happened to them”); *see*
 22 *also Brown*, 563 U.S. at 531-32 (“[A]ll prisoners in California are at risk so long as
 23 the State continues to provide inadequate care. . . . [P]risoners who are not sick or
 24 mentally ill . . . [are] in no sense [] remote bystanders in California’s medical care
 25 system. They are that system’s next potential victims.”).

26 **2. Defendants’ Failure to Provide Adequate Intake Health 27 Screening Violates the Constitution.**

28 Defendants’ failure to conduct adequate physical and mental health
 screenings of detainees when they are admitted to FCI Victorville subjects detainees
 to an unnecessary risk of serious harm. It is well established that correctional
 institutions must conduct adequate medical and mental health screenings in order to
 identify individuals’ health needs and risk factors. *Plata v. Schwarzenegger*, Case

1 No. C01-1351-TEH, 2005 WL 2932253, at *12 (N.D. Cal. 2005) (“An adequate
2 intake exam should take fifteen to twenty minutes for a young healthy prisoner and
3 thirty to forty minutes for prisoners with more complicated health problems.”). By
4 failing to do so, Defendants violate the Constitution. *See Madrid v. Gomez*, 889 F.
5 Supp. 1146, 1205 (N.D. Cal. 1995) (citing “grossly inadequate” intake physical
6 health screenings); *Coleman v. Wilson*, 912 F. Supp. 1282, 1298 n.10 (E.D. Cal.
7 1995) (obligations include “a systematic program for screening and evaluating
8 inmates to identify those in need of mental health care” and “a basic program to
9 identify, treat, and supervise inmates at risk for suicide”). Defendants’ failure to
10 provide meaningful mental health screenings is particularly reckless in light of the
11 fact that many ICE detainees are known to be fleeing traumatic and violent
12 circumstances in their home countries. *See, e.g.*, Exhibit 4 (attached hereto) at ¶ 4
13 (detainee was locked up and tortured with electrical shocks in his home country);
14 Doc. 1-6 at ¶¶ 11, 14 (“I got really depressed. [. . .] I began thinking about . . . the
15 horrible things that had happened to us that caused us to come to the U.S.”).

16 Defendants’ failure to provide adequate medical and mental health screening
17 reflects the shortage of health care professionals to meet the basic needs of detainees
18 at FCI Victorville. Courts have held that prison facilities must have adequate
19 staffing levels to deliver medical and mental health services to prisoners. *Plata*,
20 2005 WL 2932253, at *5-12; *Madrid*, 889 F.Supp. at 1257. Prison systems also
21 must ensure that medical care is performed by qualified personnel. *Plata*, 2005 WL
22 2932253, at *5; *see also Casey v. Lewis*, 834 F.Supp. 1477, 1545 (D. Ariz. 1993).

23 Defendants’ failure to provide adequate health screening to ICE detainees at
24 FCI Victorville also violates BOP and ICE health care policies. *See* BOP PS
25 6031.04, 1, 23 (June 3, 2014) (initial screening “will be done within 14 days of
26 admission”); BOP PS P6340.04 (Jan. 15, 2005); *see also* PBNDS 2011 §§ 4.3 II(14)
27 (detainees “shall receive a comprehensive medical, dental and mental health intake
28

1 screening as soon as possible, but no later than 12 hours after arrival at each
2 detention facility”); II(15) (requiring “comprehensive health assessment, including a
3 physical examination and mental health screening, by a qualified, licensed health
4 care professional no later than 14 days after entering into ICE custody or arrival at
5 facility”); *id.* at §§ 4.3 V(A)(1), (J) (requiring communicable disease screening).

6 **3. Defendants’ Failure to Provide Access to Emergency and**
7 **Routine Health Care Violates the Constitution.**

8 Defendants’ failure to provide a functional system to respond to the routine
9 and emergent health care needs of ICE detainees in their custody violates their due
10 process rights. *See Hoptowit*, 682 F.2d at 1253; *Madrid*, 889 F. Supp. at 1257. As
11 set forth above, ICE detainees at Victorville report that Defendants do not respond
12 to their requests for urgent medical attention, and even instruct them not to press the
13 emergency call buttons in their cells unless they are “dying.” Doc. 1-11 at ¶¶ 7-8.

14 Nor do defendants provide a reliable system for detainees to access routine
15 health care. Detention facilities must “provide a system of ready access to adequate
16 medical care,” *Hoptowit*, 682 F.2d at 1253. Such a system must obviously include a
17 means for detainees “to make their medical problems known to the medical staff.”
18 *Id.* At FCI Victorville, however, Plaintiffs report being unable to access medical
19 attention, even when they are in significant pain and distress.

20 These failures are compounded by Defendants’ denial of consistent language
21 interpretation services during medical encounters for detainees who do not speak
22 English. *See Anderson v. Cnty. of Kern*, 45 F.3d 1310, 1316-17 (9th Cir. 1995),
23 *opinion amended on denial of reh’g*, 75 F.3d 448 (9th Cir. 1995) (affirming
24 injunction requiring provision of non-detainee translators for medical encounters).
25 Defendants’ inappropriate reliance on other detainees to serve as translators,
26 including for sensitive medical encounters, violates the Constitution as well as state
27 and federal health privacy laws and ICE’s own detention standards. *See id.*, 45 F.3d
28 at 1317 (“The testimony was undisputed that inmate translation was inappropriate

1 and potentially inaccurate”); *see also* PBNDS 2011 § 4.3 III (25) (“Medical and
 2 mental health interviews, screenings, appraisals, examinations, procedures and
 3 administration of medication shall be conducted in settings that respect detainees’
 4 privacy”); *id.* § V(E) (“Where appropriate staff interpretation is not available,
 5 facilities will make use of professional interpretation services. Detainees shall not be
 6 used for interpretation services during any medical or mental health service.”).

7 **4. Defendants’ Failure to Provide Adequate Mental Health** 8 **Care Violates the Constitution**

9 In a detention setting, “the requirements for mental health care are the same
 10 as those for physical health care needs.” *Doty v. Cnty. of Lassen*, 37 F.3d 540, 546
 11 (9th Cir. 1994). The Constitution requires Defendants to provide “a treatment
 12 program that involves more than segregation and close supervision of mentally ill
 13 inmates” and “employ[] ... a sufficient number of trained mental health
 14 professionals.” *Coleman*, 912 F. Supp. at 1298 n.10; *see also Balla v. Idaho State*
 15 *Bd. of Corr.*, 595 F. Supp. 1558, 1577 (D. Idaho 1984) (adequate “treatment requires
 16 the participation of trained mental health professionals, who must be employed in
 17 sufficient numbers to identify and treat in an individualized manner those treatable
 18 inmates suffering from serious mental disorders”) (citation omitted). Defendants’
 19 failure to provide meaningful assessment or treatment of Plaintiffs’ mental health
 20 needs violates their constitutional rights.

21 The failure to provide adequate mental health care also violates ICE and BOP
 22 standards. *See* PBNDS 2011 § 4.3 N(3) (requiring referral when detainee is
 23 exhibiting symptoms of serious mental health issues); BOP PS 5310.16 (May 1,
 24 2014) (BOP should “ensure that inmates with mental illness are identified and
 25 receive treatment”).

26 **5. Defendants’ Failure to Provide Adequate Medication** 27 **Violates the Constitution.**

28 Defendants’ failure to provide necessary medications to ICE detainees at FCI

1 Victorville also violates the Constitution. *See Arnett v. Webster*, 658 F.3d 742, 752
2 (7th Cir. 2011) (failure to provide prescribed medication); *Steele v. Shah*, 87 F.3d
3 1266, 1269-70 (11th Cir. 1996) (abrupt and unsupported discontinuation of
4 medications could support finding of Constitutional violation). In addition,
5 medication regimes must be supervised by qualified health care staff. *See Gates v.*
6 *Cook*, 376 F.3d 323, 342-43 (5th Cir. 2004) (monitoring and assessment of
7 psychotropic medication levels required); *Wellman v. Faulkner*, 715 F.2d 269, 272-
8 73 (7th Cir. 1983) (psychiatrist must supervise psychotropic medication); *Coleman*,
9 912 F. Supp. at 1309-10 (finding constitutional violation when “defendants’
10 supervision of the use of medication is completely inadequate; prescriptions are not
11 timely refilled, there is no adequate system to prevent hoarding of medication, there
12 is no adequate system to ensure continuity of medication, inmates on psychotropic
13 medication are not adequately monitored, and it appears that some very useful
14 medications are not available because there is not enough staff to do necessary post-
15 medication monitoring”).

16 **6. Custody Staff Violate the Constitution by Using Threats and**
17 **Retaliation to Improperly Interfere with Health Care.**

18 Custody staff violate the Constitution when they “intentionally deny[] or
19 delay[] access to medical care or intentionally interfer[e] with the treatment once
20 prescribed.” *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *see also Plata*, 2005
21 WL 2932253, at *15 (“custody staff present a determined and persistent
22 impediment” and have “a common lack of respect” for medical staff); *Madrid*, 889
23 F. Supp. at 1257-58 (prison officials may not prevent treatment that is medically
24 necessary in the judgment of the treating doctor); *Casey*, 834 F. Supp. at 1545
25 (same). By retaliating against Plaintiffs for requesting medical care and demanding
26 that they do not request medical assistance, custody officers at FCI Victorville have
27 obstructed Plaintiffs’ access to such care, in violation of the Constitution.

28

1 **C. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**
 2 **OF THEIR RFRA CLAIM.**

3 Under the Religious Freedom Restoration Act (“RFRA”), the government
 4 may substantially burden a person’s sincere exercise of religious beliefs *only if* the
 5 government can demonstrate that the challenged conduct is the least restrictive
 6 means of furthering a compelling governmental interest. 42 U.S.C. § 2000bb-1(b).
 7 RFRA applies this strict scrutiny standard to “all Federal law, and the
 8 implementation of that law, whether statutory or otherwise,” and it protects “any
 9 exercise of religion, whether or not compelled by, or central to, a system of religious
 10 belief.” 42 U.S.C. § 2000cc-5(7).

11 At FCI Victorville, civil immigrant detainees of faith are unable to attend
 12 religious services or engage in other congregate worship and are limited in their
 13 ability to participate in group prayer and religious study. They have no access to
 14 religious counseling and consultation with clergy or a spiritual adviser. And they are
 15 restricted in obtaining and possessing religious headwear, jewelry, texts, and other
 16 religiously significant items. Subjecting detainees to FCI Victorville’s restrictions,
 17 which prevent them from exercising their religious beliefs, violates RFRA.⁴²

18 **1. FCI Victorville’s Limitations on Religious Expression and**
 19 **Practices Substantially Burden Detainees’ Religious Exercise.**

20 “[G]overnment action places a substantial burden on an individual’s right to
 21 free exercise of religion when it tends to coerce the individual to forego her
 22 sincerely held religious beliefs or to engage in conduct that violates those beliefs.”
 23 *Jones v. Williams*, 791 F.3d 1023, 1033 (9th Cir. 2015) (forcing Muslim prisoner to

24 ⁴² RFRA provides “greater protection for religious exercise than is available under
 25 the First Amendment.” *Holt v. Hobbs*, 135 S. Ct. 853, 859-60 (2015). Thus,
 26 Plaintiffs need only establish a likelihood of success on their RFRA claim. *See*
 27 *Harbor Missionary Church Corp. v. City of San Buenaventura*, 642 F. App’x 726,
 28 728 (9th Cir. 2016). However, Plaintiffs are likely to succeed under the First
 Amendment as well because each of the four free-exercise factors considered by the
 Ninth Circuit in *Pierce*, 526 F.3d at 1209, weigh in Plaintiffs’ favor.

1 cook pork substantially burdened his religious exercise).⁴³ This coercion can take
2 various forms, including “an outright ban on a particular religious exercise,” *Greene*
3 *v. Solano Cnty. Jail*, 513 F.3d 982, 988 (9th Cir. 2008), indirect pressure that leads
4 to a change in religious practice, *Warsoldier v. Woodford*, 418 F.3d 989, 995 (9th
5 Cir. 2005), and the imposition of “alternatives [that] require substantial delay,
6 uncertainty, and expense,” *Nance v. Miser*, 700 F. App’x 629, 632 (9th Cir. 2017)
7 (internal quotation marks omitted). Defendants’ limitations on detainees’ ability to
8 exercise their sincerely held religious beliefs are the very sort of restrictions
9 recognized by courts as substantially burdening people of faith.

10 First, group worship is a core religious practice. *See Cutter v. Wilkinson*, 544
11 U.S. 709, 720 (2005) (“[T]he ‘exercise of religion’ often involves . . . physical acts
12 [such as] assembling with others for a worship service[.]”). Accordingly, the Ninth
13 Circuit has held that barring prisoners from participation in group worship, prayer,
14 or religious study substantially burdens the exercise of their religion. *See, e.g.,*
15 *Greene*, 513 F.3d at 988. Yet, despite their own policies providing for group
16 worship and prayer, *see supra* II.A., Defendants have denied detainees the ability to
17 exercise their faith in a congregate manner. They prohibit detainees from attending
18 whatever religious worship services may be provided to the inmate population; they
19 refuse to provide separate worship services for detainees; and they have restricted
20 efforts to gather informally for group prayer and worship. *See supra* II.D.

21 Second, detainees have no access to clergy or religious counseling. *See supra*
22 II.D. Instead, Defendants have left detainees to fend for themselves spiritually at a
23 time when many of them desperately need religious guidance and comfort. This also
24 substantially burdens detainees’ religious exercise. *See, e.g., Merrick v. Inmate*

25
26 ⁴³ RFRA and its sister statute, the Religious Land Use and Institutionalized Persons
27 Act (“RLUIPA”), 42 U.S.C. §§ 2000cc *et seq.*, apply identical legal standards. *Holt*,
28 135 S. Ct. at 860. Plaintiffs treat as interchangeable cases applying either statute.

1 *Legal Servs.*, 650 F. App'x 333, 335-36 (9th Cir. 2016) (plaintiff adequately pleaded
2 that “not allowing him to confess to clergy of his faith by way of unmonitored,
3 unrecorded phone calls substantially burdened his religious exercise”); *Pierce*, 526
4 F.3d at 1210 (upholding injunction where evidence did not support defendant’s
5 contention that it provides “opportunities for inmates to participate in religious
6 services and counseling”).

7 Finally, Defendants personal religious items, including religious texts,
8 headwear, and jewelry, are routinely confiscated by the government. *See supra* II.D.
9 Defendants refuse to return these items to detainees or provide adequate
10 replacements. *Id.* Depriving detainees of access to religious texts results in a
11 substantial burden on their religious exercise. *See, e.g., Harris v. Escamilla*, No. 17-
12 15230, 2018 WL 2355123, at *1 (9th Cir. May 24, 2018) (officer’s desecration of
13 prisoner’s Quran, so that prisoner was unable to read his required ten daily verses,
14 was a substantial burden on prisoner’s religious exercise); *cf. Sutton v. Rasheed*, 323
15 F.3d 236, 257 (3d Cir. 2003) (noting that a Christian “could [not] practice his faith,”
16 if “deprived of a Bible”). So too does Defendants’ interference with detainees’
17 ability to wear religious headgear and jewelry.⁴⁴ Defendants have purported to make
18 turbans available for purchase via the commissary. *See supra* II.D. However,
19 detainees still face substantial delays and hurdles in obtaining them and suffer
20 shame and spiritual harm in the meantime. Many detainees, moreover, cannot afford
21 to purchase turbans from the commissary, no matter the cost.

22 _____
23 ⁴⁴ *See, e.g., Ortiz v. Downey*, 561 F.3d 664, 669-70 (7th Cir. 2009) (prisoner
24 adequately stated claim showing substantial burden under RLUIPA where he
25 alleged denial of access to rosary and prayer booklet); *Singh v. Goord*, 520
26 F.Supp.2d 487, 503 (S.D.N.Y. 2007) (prohibiting Sikh prisoner from wearing his
27 turban during outside transports and limiting wear of kara to 30 minutes per day
28 substantially burdened his exercise of religious beliefs that required him to wear
both at all times).

1 **2. FCI Victorville’s Religious-Exercise Restrictions Are Not the**
2 **Least Restrictive Means Available to Defendants.**

3 Because FCI Victorville’s restrictions on detainees’ religious practices
4 substantially burden their exercise of sincerely held religious beliefs, the burden
5 shifts to Defendants to prove that subjecting Plaintiffs to these policies is the least
6 restrictive means of achieving a compelling governmental interest. *See Gartrell v.*
7 *Ashcroft*, 191 F. Supp. 2d 23, 38 (D.D.C. 2002). Defendants’ burden under RFRA is
8 heavy; courts may not give “unquestioning deference” to government officials. *Holt*
9 *v. Hobbs*, 135 S. Ct. 853, 864 (2015). In particular, “the least-restrictive-means
10 standard is exceptionally demanding, and it requires the government to sho[w] that
11 it lacks other means of achieving its desired goal without imposing a substantial
12 burden on the exercise of religion by the objecting part[y].” *Id.* (internal citation and
13 quotation marks omitted). Where a less restrictive means “is available for the
14 Government to achieve its goals, the Government must use it.” *Id.* (internal
15 quotation marks omitted).

16 Here, even if Defendants could identify a compelling interest that is furthered
17 by their limitations on detainees’ religious exercise, which they cannot, Defendants’
18 own policies make clear that FCI Victorville’s practices are not the least restrictive
19 means available to Defendants. Indeed, FCI Victorville, the BOP, and ICE all have
20 policies that explicitly allow prisoners to engage in the religious practices
21 Defendants have obstructed here. Those policies constitute strong evidence that
22 Defendants’ religious-practice restrictions violate RFRA.

23 The BOP’s Religious Beliefs and Practices Program Statement, for example,
24 provides that (i) “[a]uthorized congregate services will be made available for all
25 inmates weekly”; (ii) religious headwear allowed “throughout the institution”
26 includes, among other items, yarmulkes, Kufis, and turbans; (iii) religious texts,
27 magazines, and periodicals are permitted in accordance with the general rules
28 pertaining to personal property; and (iv) “[i]f requested by an inmate, the chaplain

1 shall facilitate arrangement for pastoral visits by a clergy person or representative of
2 the inmate's faith."⁴⁵

3 FCI Victorville's Inmate Handbook likewise touts the availability of religious
4 headwear, religious medallions and specialty items, religious literature, and pastoral
5 care and counseling. *See* FCC Victorville Inmate Handbook (2015) 25-28,
6 https://www.bop.gov/locations/institutions/she/SHE_fdc_aohandbook.pdf. The
7 Handbook further states that the prison "provides a variety of worship services,
8 study groups, and prayer/meditation meetings each week," as well as "special
9 activities such as seminars, liturgical meals, fasting periods, holidays, and other
10 events. *Id.* at 26. Purportedly, "[a]ll residents are welcome to attend any religious
11 programs without regard to their religion of record." *Id.* The welcoming picture
12 painted by the prison's Inmate Handbook stands in stark contrast to the reality of
13 detainees' day-to-day lives.

14 These BOP and FCI Victorville policies set forth less restrictive means that
15 Defendants easily could employ here. *See, e.g., Ware v. La. Dep't of Corr.*, 866 F.3d
16 263, 269 (5th Cir. 2017) ("[I]n the face of evidence of contrary policies, we may not
17 defer to prison officials' mere say-so that they could not accommodate [the
18 plaintiff's] request because these other policies indicate that a less restrictive means
19 may be available.") (internal quotation marks omitted), *cert. denied*, 138 S. Ct. 1181
20 (2018).

21 Even less restrictive than the BOP's religion policies are ICE's Detention
22 Standards. *See* PBNDS 2011 § 5.5 at 375 ("Detainees shall have regular
23 opportunities to participate in practices of their religious faiths, limited only by a
24 documented threat to the safety of persons involved in such activity itself or
25 disruption of order in the facility."). The ICE standards are—in several important

26

27 ⁴⁵ BOP PS P5360.09, at 1, 3-4, 9, 11-15, 16 (Dec. 31, 2004).

28

1 ways—more solicitous of religious practice than the BOP and Victorville policies.

2 For instance, in recognition of the many different countries and cultures from
3 which ICE detainees hail, the ICE detention standards affirmatively require officials
4 to ensure that non-English speakers are able to benefit from religious programs.⁴⁶
5 Yet those standards have not been implemented at FCI Victorville.⁴⁷ In addition,
6 although the BOP and ICE authorize the same type of head coverings to be worn,
7 ICE policy expressly mandates that “[r]eligious headwear and other religious
8 property shall be handled with respect at all times, including during the in-take
9 process.” PBNDS 2011 § 5.5 at 375. ICE detention standards also generally allow
10 detainees to retain their personal religious headwear if it meets the facility’s
11 standards; where “the detainee’s personal religious headwear does not conform to
12 the standard, the facility *must ensure* that detainees are provided conforming
13 religious headwear for free or at a de minimums [sic] cost.” *Id.* (emphasis added).
14 And ICE detention standards provide that the chaplain “will make documented
15 efforts to recruit external clergy or religious service providers to provide services to
16 adherents of faith traditions not directly represented” by chaplaincy staff—an
17 affirmative obligation not imposed under BOP policy. *Id.*

18 The ICE standards thus represent yet another, less restrictive alternative
19 available to Defendants. *See Holt*, 135 S. Ct. at 866 (“While not necessarily
20

21 ⁴⁶ *See, e.g.*, PBNDS 2011, at 376 (“Language services *shall* be provided to detainees
22 who have limited English proficiency to provide them *with meaningful access to*
23 *religious activities.*”) (emphasis added). *See also id.* at 375-78.

24 ⁴⁷ BOP policy is markedly less accommodating to the language needs of the detainee
25 Subclass. Unless the warden authorizes otherwise, “[s]ermons, original oratory
26 teachings and admonitions must be delivered in English.” BOP PS P5360.09, at 1,
27 3-4 (Dec. 31, 2004). Moreover, most detainees are not provided any information in
28 their native languages, including information about religious programming and
religious accommodations. *See, e.g.*, Doc. 1-18 at ¶5; Doc. 1-7 at ¶ 4.

1 controlling, the policies followed at other well-run institutions would be relevant to
2 a determination of the need for a particular type of restriction.’’) (quoting *Procurier*
3 *v. Martinez*, 416 U.S. 396, 414, n.14 (1974)); *Warsoldier*, 418 F.3d at 1000 (“[T]he
4 failure of a defendant to explain why another institution with the same compelling
5 interests was able to accommodate the same religious practices may constitute a
6 failure to establish that the defendant was using the least restrictive means.’’). At a
7 minimum, then, the Court should order Defendants to apply ICE’s own detention
8 standards to ICE detainees at FCI Victorville.

9 Finally, nothing requires Defendants to detain immigrants at FCI Victorville.
10 Victorville officials already have demonstrated that they have no compunction about
11 denying detainees the ability to engage in basic religious practices, even when doing
12 so violates BOP (and their own) policies. Ending placement of detainees at
13 Victorville is yet another less restrictive means available to Defendants, which
14 would ensure that no detainee is ever again subjected to the prison’s untenable
15 restrictions on religious exercise. *See Gartrell*, 191 F. Supp. 2d at 39-40 (holding
16 that BOP’s placement of federal prisoners at Virginia state prisons, where they
17 could not grow religiously mandated beards, was not the least restrictive means).

18 **D. THE REMAINING PRELIMINARY INJUNCTION FACTORS**
19 **WEIGH IN PLAINTIFFS’ FAVOR.**

20 The remaining equitable factors in the preliminary injunction analysis weigh
21 heavily in Plaintiffs’ favor. First, detainees suffer irreparable harm each day as a
22 result of the degrading and dangerous conditions of confinement at FCI Victorville.
23 As the Ninth Circuit recently held, “subpar medical and psychiatric care in ICE
24 detention facilities” constitute “irreparable harms imposed on anyone subject to
25 immigration detention.” *Hernandez*, 872 F.3d at 994-95 (quoting *Melendres v.*
26 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)) (holding constitutional violations
27 sufficient to show irreparable injury, but describing harms “in more concrete
28 terms”). Moreover, “the deprivation of constitutional rights ‘unquestionably

1 constitutes irreparable injury.” *Melendres*, 695 F.3d at 1002 (citation omitted),
2 because these violations “cannot be adequately remedied through damages,” *Am.*
3 *Trucking Ass’ns, Inc. v. City of L.A.*, 559 F.3d 1046, 1059 (9th Cir. 2009) (internal
4 quotation and citation omitted).⁴⁸

5 Second, enjoining unconstitutional conditions of confinement at FCI
6 Victorville, and violations of detainees’ religious-exercise rights is squarely in the
7 public interest. Indeed, “it is always in the public interest to prevent the violation of
8 a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002 (quoting *Sammartano*
9 *v. First Jud. Dist. Ct.*, 303 F.3d 959, 974 (9th Cir. 2002)).

10 Finally, the balance of hardship tips heavily in Plaintiffs’ favor. Under this
11 prong of the preliminary injunction analysis, courts “must balance the competing
12 claims of injury and must consider the effect on each party of the granting or
13 withholding of the requested relief.” *Winter*, 555 U.S. at 24 (internal quotation
14 marks omitted). The Ninth Circuit has held that the interest in protecting individuals
15 from physical harm outweighs monetary costs to government entities. *See Harris v.*
16 *Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004) (“[F]aced with [] a
17 conflict between financial concerns and preventable human suffering, [the court has]
18 little difficulty concluding that the balance of hardships tips decidedly in plaintiffs’
19 favor.”) (internal quotations omitted). Likewise, the Ninth Circuit has recognized
20 that, where “plaintiffs have ‘raise[d] serious First Amendment questions,’” it
21 “compels a finding that ... the balance of hardships tips sharply in [their] favor.”
22 *Davies v. Los Angeles Cnty. Bd. of Supervisors*, 177 F. Supp. 3d 1194, 1227 (C.D.
23 Cal. 2016) (quoting *Sammartano*, 303 F.3d at 973).

24 Here, ICE detainees at FCI Victorville suffer serious risks from Defendants’
25

26 ⁴⁸ Defendants’ violation of detainees’ RFRA rights also constitutes irreparable harm.
27 *See, e.g., Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996).

1 inadequate health care practices and the excessively punitive conditions to which
2 Defendants subject them. They also suffer the deprivation of one of our most
3 cherished rights—the right to freely practice one’s faith. By contrast, the
4 “government suffers no harm from an injunction that merely ends unconstitutional
5 practices and/or ensures that constitutional standards are implemented.” *Doe*, 878
6 F.3d at 718 (upholding preliminary injunction requiring constitutionally adequate
7 conditions in ICE temporary detention facilities in Arizona) (citation omitted).⁴⁹

8 **IV. CONCLUSION**

9 For the foregoing reasons, Plaintiffs respectfully request that this Court issue
10 the Proposed Order for Preliminary Injunction, filed herewith.

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23 ⁴⁹ Plaintiffs seek a waiver of the security requirement for preliminary injunctions.
24 Fed. R. Civ. P. 65(c). Security “is not required where plaintiffs are indigent or where
25 considerations of public policy make waiver of a bond appropriate.” *Miller v.*
26 *Carlson*, 768 F. Supp. 1331, 1340 (N.D. Cal. 1991). Plaintiffs are immigrants,
27 challenging their conditions of confinement, detained without income, and far from
28 their families and community resources. *See, Innovation Law Lab v. Nielsen*, 310 F.
Supp. 3d 1150, 1165 (D. Or. 2018) (“any security in this case would be unjust”).

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DATED: September 11, 2018

Respectfully submitted,

By: /s/ Margot Mendelson

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EXHIBIT 1

215.669.842 Gonzalez
BOP # 05975.461

I, Yoni Santiago Gutierrez Gonzalez, declare:

① I am detained in FCI Victorville II. I got here July 16, 2018.

② I am seeking asylum in the U.S.

③ When we arrived at Victorville, we were shackled. We had to take off all of our clothes and be searched. I have also been strip searched two other times after legal visits.

④ I filled out a form when we first got here asking about my mental health. It was in Spanish. I put that I was depressed and wanted to see a psychologist. I was feeling depressed because of the awful things that had happened to me before I fled to the U.S. No one came to see me about my form.

⑤ About 11 days after I arrived, I was finally able to make a call to my mom. She gave me the bad news that my

DECL. OF Yoni Santiago Gutierrez Gonzalez

①

1
2 Father had been killed in Honduras.

3
4 ⑥ I reacted very strongly to the news. I
5 yelled and began to cry and lost control.
6 I couldn't really talk but my friend
7 heard what had happened. Some guards
8 started laughing at me.

9
10 ⑦ 5 officials surrounded me. My friend told
11 them that I had just gotten bad news.
12 They took me by the arms and we started
13 walking. I didn't know where we were
14 going.

15
16 ⑧ They put me in a little hallway all alone.
17 I was surrounded by 3 officials. About an
18 hour and a half later, a psychologist arrived.
19 She didn't speak Spanish, so she brought
20 along another detainee to translate. I felt
21 really depressed by that point.

22 ⑨ She asked me what I needed and if I
23 was going to hurt myself. I told her my
24 dad had been killed but I wasn't going
25 to hurt myself. &

26
27 ⑩ I asked her for aspirin for my heart.
28 I have a history of heart problems. My doctor

DECL. OF Yoni Gutierrez
Gonzalez.

1
2 in my country told me to avoid strong
3 emotions, because I feel like I am drowning
4 and can't breathe.

5
6 (11) No one asked me any questions about
7 my history of heart problems when I got
8 to Victorville and it was not one of
9 the questions on the form.

10
11 (12) The psychologist told me she didn't have
12 any ^{aspirin}. She promised me a call to my mom
13 that I haven't been able to make. She left
14 and I was left in the hall for another hour and a half.

15 (13) Three days later I had another appointment.
16 This was with a different woman. She also
17 didn't speak Spanish and another detainee
18 had to translate. This appointment took
19 place in the hallway of my housing
20 unit, A upper, in front of all of my
21 acquaintances. I felt like I had no privacy
22 and didn't answer her questions comfortably.
23 She told me that if I keep asking for the
24 psychologist they were going to put me
25 in isolation.

26
27 (14) I have written notes to ICE telling them
28 I don't feel well mentally because of my

DECL. OF Yoni Gutierrez
Gonzalez

1
2 father's death. I asked for more information
3 about my case. I have not gotten more
4 information.

5
6 (15) I also wrote a letter to the conditions
7 lawyers explaining what had happened
8 to me.

9
10 I, Yoni Santiago Gutierrez Gonzalez, declare
11 under penalty of perjury that the foregoing
12 is true and correct and this declaration
13 was completed and signed August 17, 2018 in
14 Victorville, California. This was read to me in Spanish.

15
16 Y.S.G.G.

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DECL. OF Yoni Gutierrez
Gonzalez.

I, Claudia Ceseña, declare:

1. I am fluent in Spanish and English.
2. On August 15, 2018, I provided interpretation services to Nancy Harris when she was meeting with detainees at FCI Victorville.
3. I provided interpretation services for Nancy Harris when she met Mr. Fabio Jose Serrano Solorzano, who speaks Spanish.
4. I communicated the contents of the Mr. Serrano Solorzano's declaration to him by accurately translating from English to Spanish.
5. On August 16, 2018, I provided interpretation services to Elizabeth Jordan when she was meeting with detainees at FCI Victorville.
6. I provided interpretation services for Elizabeth Jordan when she met with the following detainees, all of whom speak Spanish:
 - a. Yoni Santiago Gutierrez Gonzalez
 - b. Noe Siles
 - c. Gabriel Manzanilla Pedron
 - d. Alex Armando Villalobos Veliz
7. I communicated the contents of Mr. Gutierrez Gonzalez's declaration to him by accurately translating from English to Spanish.
8. I communicated the contents of Mr. Siles' declaration to him by accurately translating from English to Spanish.
9. I communicated the contents of Mr. Manzanilla Pedron's declaration to him by accurately translating from English to Spanish.
10. I communicated the contents of Mr. Villalobos Veliz's declaration to him by accurately translating from English to Spanish.

I declare under penalty of perjury of the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on September 5, 2018 in Oakland, California.



Claudia Ceseña

EXHIBIT 2

Declaration of Noel Siles

A#

BOP#

①. I, Noel Siles, am currently detained at FCI Victorville II.

②. I arrived at Victorville II on June 12, 2018.

③. I am seeking asylum in the U.S.

④. When I first got here I was strip searched. I had never exposed myself like that and I felt it was a huge violation. I was told to hold my hands behind my ~~self~~^{head} and turn around and show my buttocks to an officer and cough.

⑤. Since the day I got here I have been really depressed due to my experiences in my country and on the journey to the U.S. The conditions here have made it so much worse. My thoughts race and I think about my family

DECL. OF Noel Siles

1
2 I cry a lot. And at times I think
3 I want to die.

4
5 (6) NO ONE HAS spoken to me
6 about how I'm feeling.
7 I have never received a form
8 that asked how I was feeling.
9 If I would have been offered
10 a form to state that, or an
11 appointment would have told
12 them I was depressed.

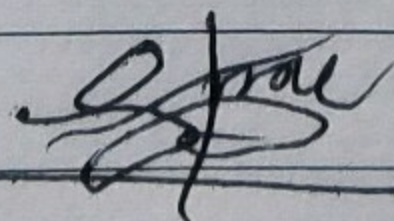
13
14 (7) I developed intense pain in
15 my shoulder for 2 days. I
16 asked a guard for help, he gave
17 me a form to fill out but no
18 one ever collected it. I asked
19 guards for 3 more days to help
20 me but I have not received
21 any response or follow up.
22 I still have pain in my shoulder
23 now. I've also filled out a form
24 requesting medicine and
25 no one has collected it.

26
27 (8) A detainee in the cell across
28 from me had several episodes

DECL. OF NOEL SILEY

where he would faint. He later said that it was because he was so depressed. Once he had an episode where he hit his head on the wall, guards came in, shackled him and took him away. When he returned he told me he didn't remember the episode. He kept telling the guards he didn't want to be here. And they threatened to put him in the hole because he drew a picture of his country on the wall.

I, NDOI siles, declare under penalty of perjury that the foregoing is true and correct and that the declaration was completed and signed on August 16, 2018 at Victorville, California.



I, Claudia Ceseña, declare:

1. I am fluent in Spanish and English.
2. On August 15, 2018, I provided interpretation services to Nancy Harris when she was meeting with detainees at FCI Victorville.
3. I provided interpretation services for Nancy Harris when she met Mr. Fabio Jose Serrano Solorzano, who speaks Spanish.
4. I communicated the contents of the Mr. Serrano Solorzano's declaration to him by accurately translating from English to Spanish.
5. On August 16, 2018, I provided interpretation services to Elizabeth Jordan when she was meeting with detainees at FCI Victorville.
6. I provided interpretation services for Elizabeth Jordan when she met with the following detainees, all of whom speak Spanish:
 - a. Yoni Santiago Gutierrez Gonzalez
 - b. Noe Siles
 - c. Gabriel Manzanilla Pedron
 - d. Alex Armando Villalobos Veliz
7. I communicated the contents of Mr. Gutierrez Gonzalez's declaration to him by accurately translating from English to Spanish.
8. I communicated the contents of Mr. Siles' declaration to him by accurately translating from English to Spanish.
9. I communicated the contents of Mr. Manzanilla Pedron's declaration to him by accurately translating from English to Spanish.
10. I communicated the contents of Mr. Villalobos Veliz's declaration to him by accurately translating from English to Spanish.

I declare under penalty of perjury of the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on September 5, 2018 in Oakland, California.



Claudia Ceseña

EXHIBIT 3

1 Declaration of Gabriel Antonio Manzanilla pedron

2 A#

3 BOP#

4
5 ① I, Gabriel Antonio Manzanilla pedron, am
6 currently detained at Fd Victorville II.

7
8 ② I arrived to FCI Victorville on July 20, 18.

9
10 ③ I am seeking asylum in the U.S.

11
12 ④ I am currently housed with one other
13 person in unit A. Before that I was
14 housed with someone I could not
15 communicate with because he did
16 not speak Spanish. Later I got a
17 Spanish speaking person in the
18 cell with me but he was transferred
19 a couple days later. I was alone for
20 2 weeks after that.

21
22 ⑤ when I first arrived I was stripped
23 searched and injected with something
24 that they did not tell me what it
25 was. I was given a questionnaire
26 that asked my current ^{mental} state and
27 I checked off that I was depressed.
28

Gabriel Antonio Manzanilla pedron

DECL. OF

(1)

1
2 I have not received any follow up
3 regarding the depression.
4

5 (6.) The first day I arrived to Victorville
6 I had a cough and quickly
7 developed a fever. I asked for
8 medication and to be seen by a
9 doctor and was told it was
10 nothing serious by a guard.
11 Another guard also told me a
12 cough was not severe and I would
13 not be seen.
14

15 (7) I currently suffer from anxiety,
16 phobia and depression. I no longer
17 ask for medical or mental health
18 because I've asked for medical help
19 and was denied. I am scared to
20 ask for help. I've heard others
21 have been mocked by guards for
22 asking for help or saying they
23 are depressed. One of the guards
24 threatens to lock you up for two
25 days if you claim you are
26 depressed. I've heard a guard
27 tell another detainee that
28

Gabriel Antonio Manzanilla Pedro

1
2 he should have thought about
3 being depressed before he got here.
4

5 (8) By phobia I mean that I hate
6 being locked in, or hearing
7 doors locked, it makes me jump,
8 it startles me.
9

10 (9) I've had a really hard time here
11 because my thoughts race and
12 I remember some of the horrible
13 things that I've escaped in
14 my country. This place looks
15 like the places I was fleeing.
16 I know its hard for other people
17 too. I've heard them crying. one
18 time I heard someone saying he
19 was going to kill himself.
20 I don't know what happened
21 to him.
22

23 (10) When people were being quarantined
24 due to chicken pox for 21 days at
25 a time, the detainee in the cell
26 in front of mine refused to
27 be quarantined for the second time.
28

Gabriel Antonio Manzanilla pedron
DECL. OF

1
2 He began to protest and shout
3 that it was a violation of his
4 human rights because he was wealthy.
5 He laid on the floor shouting
6 from underneath the door, guards
7 began to yell at him to sheet
8 up. Then they came into his
9 cell and pulled him out and
10 tased him. The detainee never
11 threatened the guards. I have
12 not seen him again.
13

14 (11) There are guards who say nasty
15 things to us. One time a guard
16 called a detainee "güerita" or
17 little blonde girl. Another
18 guard accused a detainee of
19 being a "barren" or gangster
20 which could be very dangerous
21 for him. ≠
22

23 (12) Because of all this I am
24 afraid to ask guards for any
25 help when I feel sad or sick.
26

27 (13) There are no forms to request
28

1
2 medical help. you just have to ask
3 the guards.
4

5 (14) when I first arrived to victorville
6 I was completely locked in the
7 cell for 4 days. during that
8 time we did not have access to
9 the showers or to a change of
10 clothes. All the food we were
11 given was frozen.
12

13 (15) they began to let us out a little
14 bit more. we got to go to the
15 draw hall but we were only
16 given 3-5 minutes to eat.
17 when we went outside it was
18 only for 30 minutes.
19

20 (16) now we go out for about 2
21 hours usually after lunch. there
22 is no written schedule.
23

24 (17) i've noticed prisoners get to go
25 out for 3 hours at a time. I
26 feel like we are being treated
27 worse than prisoners.
28

Gabriel Antonio Mazaida Pedron

1
2 (18) They do count for us at 10:00am,
3 ~~at~~ 4:00pm, and 9:30 right before
4 lights out. I asked a guard why
5 they count us and a guard
6 said that we are not prisoners
7 but we are in a prison and have
8 to follow prison rules. For count
9 we need to be standing in front
10 of the door. I saw a guard
11 threaten to hit somebody because
12 he did not get up fast enough
13 at 9:30 because he was
14 already in bed. The guards
15 also come by in the middle
16 of the night. Their flashlight
17 has woken me up.

18
19 (19) we recently started getting about
20 10 minutes to eat. And we just
21 got a few more sets of cards
22 to play with in the day room.
23 As well as a few novels. I have no radio.

24 (20) I am a practicing 7th day Adventist
25 Christian. I have practiced this faith
26 for over 20 years. My religious
27 beliefs are sincerely held.
28

Gabriel Antonio Manzanilla Pedron

DECL. OF

(6)

1
2 (21) going to church services and
3 participating in group prayer
4 or bible study is important part
5 of my religious exercise. At
6 victorville there have not been
7 any church services and we are
8 not allowed to attend any of
9 the prisoners services if they have
10 them.

11
12 (22) we have tried to meet as a group
13 informally for bible study and
14 an officer broke us up and
15 told us it was not allowed
16 without being able to go to a
17 group meeting or church I feel
18 sad. I told prison staff that wanted
19 to go to a church and he said
20 I was a prisoner and couldn't
21 go anywhere.

22
23 (23) my primary language is spanish.
24 Reading the bible in Spanish
25 is an important part of my
26 religion. when I first got here
27 there weren't any bibles. I told
28

1
2 the guard I travelled with one and
3 asked if he could get me mine
4 and he said no. When I first got
5 here there was one Spanish Bible
6 that another detainee had.
7 When he was transferred he gave it to
8 me. Just last week we got 2 more
9 Bibles. We now have a total of 3
10 Bibles for about 15 people.

11
12 (24) We are also not allowed to sing
13 hymns or prayer songs. This is an
14 important part of my religion
15 but we are not allowed. Last night
16 I heard the guards stop another
17 detainee from singing the songs
18 of his faith. He hit his door as he
19 shouted for him to be quiet.

20 (25) I've written a letter to complaint about
21 the conditions. We have also
22 considered a hunger strike.

23
24 I, Gabriel Antonio Manzanilla Pedron, declare under
25 penalty of perjury that the foregoing is true
26 and correct and that this declaration was
27 completed and signed on ~~July~~ August 16, 2018
28 at Victorville, California
Gabriel Antonio Manzanilla Pedron

I, Claudia Ceseña, declare:

1. I am fluent in Spanish and English.
2. On August 15, 2018, I provided interpretation services to Nancy Harris when she was meeting with detainees at FCI Victorville.
3. I provided interpretation services for Nancy Harris when she met Mr. Fabio Jose Serrano Solorzano, who speaks Spanish.
4. I communicated the contents of the Mr. Serrano Solorzano's declaration to him by accurately translating from English to Spanish.
5. On August 16, 2018, I provided interpretation services to Elizabeth Jordan when she was meeting with detainees at FCI Victorville.
6. I provided interpretation services for Elizabeth Jordan when she met with the following detainees, all of whom speak Spanish:
 - a. Yoni Santiago Gutierrez Gonzalez
 - b. Noe Siles
 - c. Gabriel Manzanilla Pedron
 - d. Alex Armando Villalobos Veliz
7. I communicated the contents of Mr. Gutierrez Gonzalez's declaration to him by accurately translating from English to Spanish.
8. I communicated the contents of Mr. Siles' declaration to him by accurately translating from English to Spanish.
9. I communicated the contents of Mr. Manzanilla Pedron's declaration to him by accurately translating from English to Spanish.
10. I communicated the contents of Mr. Villalobos Veliz's declaration to him by accurately translating from English to Spanish.

I declare under penalty of perjury of the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on September 5, 2018 in Oakland, California.



Claudia Ceseña

EXHIBIT 4

Declaration of Desmond Tenghe
AFF 15-672-340
BOP# 06004-461

1
2 I, Desmond Tenghe, declare:

3
4 ① I am detained at FCI Victorville II. I have
5 been here since July 16, 2018. I am asking
6 for asylum in the U.S.
7

8 ② We were shackled for a three-hour bus
9 ride to the prison. The shackles were too
10 tight around my ankles and they hurt.
11 I told an officer and he said "yes I know"
12 but didn't loosen them.
13

14 ③ We were strip searched when we arrived.
15 It was embarrassing. I have also been strip
16 searched after a legal visit.
17

18 ④ In my country, I was locked up and
19 tortured with electrical shocks. I developed
20 an irregular heartbeat, head aches, and chest
21 and back pain.
22

23 ⑤ I have written two requests for medical
24 attention at Victorville. I got no response so
25 I wrote to ICE saying I needed medical
26 attention. ICE said I needed to request attention
27 through the medical complaint form, even
28

1
2 though I had already made two. I was
3 also told ~~that~~ contradictory things about
4 how to drop off my complaint.
5

6 ⑥ I made my complaint two days after I got
7 here. I finally saw a doctor almost 3 weeks
8 later. I also complained about constipation.
9 The doctor laughed at me, ^{he} said nothing wrong
10 with my heart. When I complained about
11 my digestion ~~he~~ said I don't even have money
12 in my account. ~~He~~ said ~~she'd~~ my to get
13 me some medicine. That was two weeks
14 ago. I haven't gotten any.
15

16 ⑦ I have twice been punished by being locked
17 in my cell for extended periods of time.
18

19 ⑧ The first time was the first day we were
20 here. It was around 3:30 pm and I was
21 lying on my bed. The speaker came on but
22 the announcement wasn't clear, even though
23 I speak English. A guard came by and killed
24 the door and then locked us in. We were
25 not let out until the next morning. Our
26 dinner was brought to us in our cell.
27 and cursed at us
28

1
2 (9) The next day the officer told us we had
3 to stand up for court. We said we were
4 new and didn't know the rules. He said,
5 "I don't fucking care."
6

7 (10) Two weeks ago that same guard locked
8 me and another detainee up for arm
9 wrestling. We were not fighting, just playing
10 a game. We were locked in from 6:30 pm
11 till the next morning.
12

13 (11) I was locked up and tortured at home.
14 I cannot believe I've been locked up
15 in the country I came to for safety.
16

17 I, Desmond Tenghe, declare under penalty
18 of perjury that the foregoing is true and
19 correct and I completed and signed this
20 declaration on August 17, 2018, in Victorville,
21 California.
22

23 ~~Desmond Tenghe~~
24 _____
25
26
27
28

EXHIBIT 5

1 Supplemental Declaration of
2 Stephenson Teneng
3 A# 215.668.621
4 BOP# 06615.461

5
6 (1) I, Stephenson Teneng, am currently
7 detained at FCI Victorville II.

8
9 (2) I have recently been released from
10 quarantine due to chicken pox.
11 I was quarantined for a total of
12 42 days (21 days each quarantine).

13
14 (3) During the first quarantine we
15 were locked in our cells 85%
16 of the time. For the second
17 quarantine we were allowed to
18 go into our main hall within
19 the unit for two hours twice
20 a day.

21
22 (4) During quarantine food was not
23 enough, and people often stayed
24 hungry after eating what they
25 provided us with.

26
27 (5) Some people had to go into their
28 third quarantine (another 21

DECL. OF Stephenson Teneng

(1)

1
2 days). One person from Cameroon
3 told the unit counselor that
4 if he were made to go into
5 quarantine again he would
6 rather take his life. Someone
7 came to see him a few hours
8 later.

9
10 (6.) Quarantine is hard because we
11 do not go out into the yard,
12 do not get fed enough,
13 and sometimes guards come
14 into the cells to search them,
15 and toss things about and
16 throw them away. ~~as they~~

17
18 (7.) I received my first haircut
19 since I arrived in June. An
20 inmate is the barber and I had
21 to sign a form allowing him
22 to cut my hair.

23
24 (8.) I am still interpreting for other
25 detainees during medical
26 consultations. I interpret for
27 Spanish and French speakers.
28

DECL. OF Stephenson Tereng

(2)

1
2 (9.) There is a medical request form
3 now. Many of us fill it out
4 stating our issue and our
5 pain level but we do not
6 often get any response.
7 Sometimes when we are seen
8 doctors say we need to purchase
9 medicine ~~using~~ ^{our} money from
10 ~~their~~ ^{our} own accounts.

11
12 (10.) We are now able to purchase
13 medicine. Sometimes they explain
14 what each medicine does.
15 We are able to buy pain
16 medications, and medicine for
17 stomach relief. We are only able
18 to purchase medicine from our
19 own money at the commissary
20

21 (11.) In order to know what the
22 medication available for
23 purchase is, we have to
24 find a medical staff person
25 to ask what the medicine is.

26
27 (12.) There is one doctor who works
28 in the medical unit. He is

DECL. OF Stephenson Torrey

1
2 the one who ordered me to
3 be locked in my cell. yesterday
4 when I accompanied a detainee
5 to translate for him, the doctor
6 informed him he could be
7 deported because of his
8 medical issues. I've heard
9 other detainees have been
10 told racist things by that
11 same doctor.

12
13 (13) In commissary we can only
14 buy food and medicine.
15 We have seen Nike shoes
16 and MP3 players but we
17 were told to get those we
18 have to become a prisoner
19 first. I have seen prisoners
20 wearing the Nike shoes and
21 using MP3 players.

22
23 (14) I know there is an educational
24 building. At times we hear
25 announcements for prisoners
26 to go to school and other
27 activities. We don't have access
28 to any of those activities.

DECL. OF Stephenson Tenong

(4)

1
2 If I had access to go to school
3 or other activities, I would go.

4
5 (15.) We don't have radios in our
6 cells. Only yesterday some
7 books and magazines were
8 brought in. We are not
9 allowed to bring food back
10 to our cells. I have seen
11 detainees get searched
12 when guards believe they
13 brought food back to their
14 cells.

15
16 (16.) When we first arrived to the
17 prison all of us detainees
18 had to take our clothes
19 off to be searched before
20 we were given our uniforms.

21
22 (17.) There is no written schedule
23 for outside recreation.
24 Sometimes we go out for
25 2 hours, sometimes 1 hour,
26 one time we went out
27 only for 15 minutes.
28 Once, a guard told me ~~of~~

DECL. OF Stephenson Tenery

1
2 couldn't go outside because
3 I was late.

4
5 (18.) I've seen guards lock people
6 up in their cells as punishment
7 during times when we were
8 supposed to be allowed out.

9
10 (19.) NO one came to check on ~~one~~
11 us while we were in
12 quarantine. I only recently
13 learned a lady I've seen
14 in the ~~door~~ chow hall
15 is a psychologist. I've
16 never had an appointment
17 with her.

18
19 (20.) There was a person in quarantine
20 with me who said he was
21 a minor. NO one came to
22 check on him. We could
23 hear him crying in his cell.
24 I am worried for him. We
25 tried to get the doctor who
26 was checking for chicken
27 pox to see the minor but
28 the doctor would not see him.

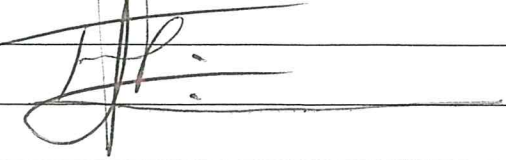
DECL. OF Stephenson Teneng

(6)

1
2 (21.) We are locked in our cells
3 every night from about
4 8:30 pm to 7:30 am the next
5 morning. We are also locked
6 down for count from 3:30
7 to 5:00 pm everyday. If you
8 decide not to go outside
9 for recreation you will be
10 locked in your cell.

11
12 (22.) ICE told us we were just
13 here because of housing
14 but they are using prison
15 procedures on us like
16 locking us down and
17 searching us. It feels
18 contradictory.

19
20 I, Stephenson Tenery, declare under
21 penalty of perjury that the
22 foregoing is true and correct and
23 that this declaration was completed
24 and signed on August 16, 2018
25 at Victorville, California.

26
27 

28 DECL. OF Stephenson Tenery

(23)

The commissary form is only in English. You fill the form out the day before commissary. We have commissary one day a week. Once an official tried to translate the form to other languages but it was very confusing. People who used the translated form did not get their order.

I, Stephenson Teneng, declare under penalty of perjury that the foregoing is true and correct and that the declaration was completed and signed on August 16, 2018 at Victorville, California.



DECL. OF Stephenson Teneng

(18)

EXHIBIT 6

1 Declaration of
2 Alex Armando Villalobos Veliz
3 A# 215-671-079
4 BOP# 06826-461

5
6 (1) I, Alex Armando Villalobos Veliz,
7 am currently detained at FCI
8 Victorville II.

9
10 (2) I arrived to FCI Victorville on
11 June 12, 2018.

12
13 (3) I am seeking asylum in the
14 U.S.

15
16 (4) When I was brought to Victorville,
17 it was a 5 or 6 hour bus ride.
18 I was shackled the whole time on
19 my hands, belly, and feet. The
20 shackles hurt me.

21
22 (5) When we arrived, we were strip
23 searched. That had never happened
24 to me and I felt bad.

25
26 (6) I traveled to the U.S. with my younger
27 brother. He is only 18 years old. They
28 won't put us in the same cell and

DECL. OF _____

1
2 we are both really suffering from
3 it. I have asked over and over to
4 be in the same cell with him
5 and the guards tell us no. One said
6 this isn't our house. I have told
7 them that he is suffering and
8 they still don't move us.

9
10 (7) When I first got here, conditions
11 were really bad. We didn't go
12 outside for weeks. We ate our
13 food in our cells.

14
15 (8) then we started to go out a little
16 bit, like 10 minutes at a time,
17 and go to the chow hall. They
18 rushed us really badly in the
19 chow hall. I'd say we had about
20 2 minutes to eat.

21
22 (9) About two weeks ago, they started
23 to give us a little more time outside
24 and to eat. Now we go outside
25 about two hours a day and
26 get 5 minutes to eat. We are still
27 locked in our cells all day on ^{Saturday} Sunday.

28 (10) I have noticed that the prisoners

A.A.V.V.
Saturday and

DECL. OF _____

1 get to go outside on Saturdays and
2 Sundays.

3
4 (11.) In 2011 I developed kidney problems in
5 my country. I took pills every day
6 that my doctor prescribed to me I
7 brought my pills to the U.S. with
8 me but they were taken away.

9
10 (12) When I arrived at Victorville someone
11 interviewed me about my medical
12 conditions. I told them about my
13 kidneys and my prescription. I have
14 not gotten my medication since I got
15 here and I can feel that I am missing
16 it in my kidneys.

17
18 (13) I have developed an allergic reaction
19 on my legs, I think from the laundry
20 detergent. I am afraid to tell medical
21 staff about it because I am afraid
22 they will put me in quarantine.
23 I saw this happen to another
24 detainee.

25
26 (14) I am also having issues with my
27 eyes, which have gotten red, and
28 with my right hand, which goes numb.

DECL. OF _____

1
2 I have not received any medical attention
3 for any of these issues. My brother
4 and a few other detainees also have
5 ~~their~~ problem with their hand.

6
7 (15) I have started getting nosebleeds
8 since I got in Victorville. I have had
9 cold symptoms and when I go to blow
10 my nose I see blood in the tissue. Another
11 detainee told me it might be from
12 the water.

13
14 (16) We were told by a guard that we can
15 only push the button in our cells for
16 medical help if we are dying. This
17 was about a month ago when my
18 cellmate was feeling sick. I spoke to
19 the guard to try to get him help.

20
21 (17) I moved housing units about a week
22 ago. I am now in Housing Unit A. I
23 noticed some forms to fill out in A
24 for the first time. They are to request
25 medication.

26
27 (18) I am a practicing Catholic. I have been
28 my whole life, although my dad is

DECL. OF _____

(4)

1
2 pastor for a different church. My religious
3 beliefs are sincerely held.
4

5 (19) I have been unable to freely practice my
6 religion since I got to Victorville on June 12,
7 2018.

8
9 (20) Attending church and doing group prayer
10 and Bible study is a required part of
11 my religion. I have not been able to go
12 to church services for Catholics here
13 in Victorville. We are not allowed to
14 go to church services for prisoners. For
15 the first month and a half here we
16 couldn't do group study. Now we occasionally
17 meet in a cell to read the Bible but
18 we have to get permission first.

19
20 (21) My primary language is Spanish.
21 I was unable to read the Bible in
22 Spanish for several weeks. At first when
23 we got Bibles, there were just a few
24 in English and a little bit of Spanish.

25
26 (22) I was able to get my own Bible in
27 Spanish when I moved to A a week ago.
28

DECL. OF _____

1
2 (23) Not having access to church makes
3 me feel completely locked up. It was
4 even worse when I didn't have a bible.
5 I still feel bad because I haven't been
6 able to do any learning about my
7 faith, which is an important part
8 of going to Catholic Mass.

9
10 (24) I was in process of ~~not~~ getting baptized
11 when I had to flee to the United
12 States. The process involved consulting
13 with a priest. I feel very distressed not
14 being able to continue this process because
15 getting baptized is a requirement of
16 my religion to conform with God.

17
18 (25) I also need religious counseling with
19 a priest and to confess. This is an important
20 part of my religion. I would also like
21 counseling due to my situation and
22 all that I went through to come to
23 the United States. I feel stuck and alone
24 without access to a priest.

25
26
27
28
DECL. OF _____

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28

I, Alex Armandos Villalobos Veliz,
declare under penalty of perjury that
the foregoing is true and correct and
that this declaration was completed
and signed on August 16, 2018 at
Victorville, California.

~~AVV~~

DECL. OF _____

I, Claudia Ceseña, declare:

1. I am fluent in Spanish and English.
2. On August 15, 2018, I provided interpretation services to Nancy Harris when she was meeting with detainees at FCI Victorville.
3. I provided interpretation services for Nancy Harris when she met Mr. Fabio Jose Serrano Solorzano, who speaks Spanish.
4. I communicated the contents of the Mr. Serrano Solorzano's declaration to him by accurately translating from English to Spanish.
5. On August 16, 2018, I provided interpretation services to Elizabeth Jordan when she was meeting with detainees at FCI Victorville.
6. I provided interpretation services for Elizabeth Jordan when she met with the following detainees, all of whom speak Spanish:
 - a. Yoni Santiago Gutierrez Gonzalez
 - b. Noe Siles
 - c. Gabriel Manzanilla Pedron
 - d. Alex Armando Villalobos Veliz
7. I communicated the contents of Mr. Gutierrez Gonzalez's declaration to him by accurately translating from English to Spanish.
8. I communicated the contents of Mr. Siles' declaration to him by accurately translating from English to Spanish.
9. I communicated the contents of Mr. Manzanilla Pedron's declaration to him by accurately translating from English to Spanish.
10. I communicated the contents of Mr. Villalobos Veliz's declaration to him by accurately translating from English to Spanish.

I declare under penalty of perjury of the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on September 5, 2018 in Oakland, California.



Claudia Ceseña

EXHIBIT 7

Declaratum of
Fabio Jose Serrano Solorzano

A# 215-672-568

BOP# 06876-461

1. I, Fabio Jose Serrano Solorzano, am currently detained at FCI Victorville II.

2. I arrived at FCI Victorville on July 20, 2018.

3. I am seeking asylum in the United States. When I arrived in the United States, I was held for ten days at the "bieldaras" in San Ysidro. This was a terrifying experience. The conditions were inhumane.

4. I was brought to Victorville on a van. The ride took more than 5 hours; during that time I was shackled on my hands and feet and had a chain around my waist. When I arrived at the Victorville prison I was told that I must stay at the prison for three months. After that I might be moved to the immigration detention center but only if there was space.

5. I have not seen an immigration officer since

1
2 I arrived at Victorville.

3
4 5. There was no medical screening at the
5 time I arrived at Victorville. I was given
6 an injection at that time but was not told
7 what it was for. The person who gave me the
8 injection did not appear to be a medical
9 person. She did not speak Spanish and
10 there was no interpreter.

11
12 6. When I was at the Day Mesa facility, I was
13 seen by a doctor there for pain that I
14 have in my lower abdomen groin area. That
15 doctor told me that I have a hernia and would
16 need an operation.

17
18 7. I continue to have severe pain. It is constant
19 and I would rank it as 7 or 8 on a scale of 1-10.
20 I believe this is from the hernia. I asked to
21 see a doctor and saw one about 3 weeks ago.
22 ~~That doctor speaks Spanish but when he saw~~
23 ~~me he said he was "sick and tired" of seeing~~
24 ~~people. He did say she would provide me~~
25 ~~pain medication but I still have not received~~
26 ~~any pain medication. One week later I saw~~
27 ~~another doctor who said he was sick + tired of~~
28 ~~seeing me, although it was the first time I'd seen~~
that doctor.

1
2 8. The guards at the prison are psychologically
3 abusive. ~~They~~ I have heard guards say
4 that we are criminals and will be treated
5 as such. They scream and yell a lot and
6 are very hostile.
7

8
9 9. The guards punish us if we do not comply
10 with their wishes. One guard ~~is~~ locked up
11 all of the detainees because one person
12 turned on a t.v. in the common room.

13 10. This morning ^{an official in a suit} ~~one of the guards~~ told us that
14 he wanted for us to clean our cells. He said
15 he wanted the cells to be really, really clean
16 or he would lock us up for 24 hours. Because
17 the guards do lock us in cells in retaliation I
18 believed he would do so.
19

20 11. The experience of being in this prison has been
21 psychologically abusive. I did not expect to
22 be treated like a criminal. I have become very
23 depressed. I believe I need mental
24 counseling. There are no mental health
25 counselors here, but I would go to one if it
26 was available.
27
28

1
2 12. Last week I heard a guard threaten
3 another detainee with violence. The other
4 detainee was late to a legal visit and the
5 guard was angry. I heard the guard say
6 to him "If we were outside, I would beat
7 your ass."
8

9 ~~13. About two~~

10 13. Until about two weeks we were not provided
11 any outdoor access. Then about two weeks
12 ago, ~~because~~ they told us we would have
13 to go outside from Noon to 2 pm. We can
14 either go outside or be locked in our cells during
15 this time. The heat at that time of day is
16 unbearable. There is a small shaded area
17 but not enough seating for everyone to sit
18 in the shade. On some days, but not all,
19 they have allowed us to sit in an air
20 conditioned room during this time.
21

22 14. I was originally housed in Unit F. ~~When~~ ^{Since} I
23 was transferred to Unit A on August 13, I
24 have not been able to place calls. My telephone
25 calls have been blocked. On one prior weekend,
26 all of the people in my unit were blocked
27 from making external calls.
28

1
2 15. I am a Catholic. My faith is important to
3 me. When I was in Nicaragua I
4 attended mass at my church twice a
5 week.

6
7 16. About two weeks ago, a group of us tried to
8 gather to pray together and sing hymns.
9 We were told that we could not ~~to do~~ gather
10 together as a group. We have not been
11 offered to attend any Catholic services.
12 Now have we been told that there is a priest
13 or pastor who could see us. In the past I
14 would have found it helpful to seek the advice of
15 my priest but I am ~~so~~ desperate now ~~that~~
16 and am only focused on getting my freedom.
17

18 17. I have felt very desperate by being imprisoned
19 when I have committed no crime. ~~There~~ I
20 can believe the guards engage in psychological
21 abuse. I have considered a hunger strike
22 and would still consider it if we are not
23 treated more humanely.
24

25 18. This declaration was read to me in Spanish.
26 I, Fabio Jose Serrano Solorzano, declare under penalty of perjury
27 that the foregoing is true and correct and that this declaration
28 was completed and signed on August 15, 2018 at Victorville, California.

Fabio Serrano

DECL. OF

Fabio Jose Serrano Solorzano

I, Claudia Ceseña, declare:

1. I am fluent in Spanish and English.
2. On August 15, 2018, I provided interpretation services to Nancy Harris when she was meeting with detainees at FCI Victorville.
3. I provided interpretation services for Nancy Harris when she met Mr. Fabio Jose Serrano Solorzano, who speaks Spanish.
4. I communicated the contents of the Mr. Serrano Solorzano's declaration to him by accurately translating from English to Spanish.
5. On August 16, 2018, I provided interpretation services to Elizabeth Jordan when she was meeting with detainees at FCI Victorville.
6. I provided interpretation services for Elizabeth Jordan when she met with the following detainees, all of whom speak Spanish:
 - a. Yoni Santiago Gutierrez Gonzalez
 - b. Noe Siles
 - c. Gabriel Manzanilla Pedron
 - d. Alex Armando Villalobos Veliz
7. I communicated the contents of Mr. Gutierrez Gonzalez's declaration to him by accurately translating from English to Spanish.
8. I communicated the contents of Mr. Siles' declaration to him by accurately translating from English to Spanish.
9. I communicated the contents of Mr. Manzanilla Pedron's declaration to him by accurately translating from English to Spanish.
10. I communicated the contents of Mr. Villalobos Veliz's declaration to him by accurately translating from English to Spanish.

I declare under penalty of perjury of the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on September 5, 2018 in Oakland, California.



Claudia Ceseña

EXHIBIT 8

1 Declaratum of Dominic Ngoh Tebit

2 A # 215-672-633

3 BOP # 06968-461

4
5 ① I, Dominic Ngoh Tebit, am currently detained
6 at FCI Victorville II.

7
8 ② I arrived ~~at~~ FCI Victorville on July 20, 2018.

9
10 ③ I am seeking asylum in the U.S.

11
12 ④ I am currently housed in a cell with one other
13 person in a cell in the prison.

14
15 ⑤ I have seen a doctor on August 10. She looked at
16 my foot and gave me medicine for a wound
17 on my foot. I also told her that I had
18 bad stomach pain and have gastritis. She
19 said she would prescribe ~~paracetamol~~ pain medication
20 but I have not recieved any pain medication
21 yet.

22
23 ⑥ This week, after I was moved to Unit A upper,
24 I had a bad experience with a guard. The guard
25 ~~did not~~ yelled at me to get off my bed because
26 I was laying down. He kicked the door of my
27 cell twice while he was yelling at me. I complied
28

1
2 With the guard's request and stood up. This
3 was during the count after lunch time, at
4 about 4 pm.
5

6 ⑦ That same day later when it was time for
7 dinner, the guards opened the cells for
8 other people in the unit. My cell was not
9 opened. I asked another detainee to go
10 ask the guard if he would open the door.
11 That detainee came back and told me the
12 guard told him he would not open the door
13 to my cell. My cellmate and I continued to
14 be locked in while others left to go to the
15 dining hall. I was locked in for 30
16 minutes and was only let out when I pushed
17 the call button. The guard told me I should
18 not press the button unless I am dying. I felt
19 I was locked up for extra time because I

20 ~~was~~ was lying on my bed during the count.
21

22 ⑧ I have been very stressed and unable to
23 sleep. The small cells remind me of very bad
24 experiences I have had ^{in the past}. I am Christian
25 Presbyterian. We were told the available church
26 services were only for Catholics. If I had the
27 option of participating in religious services for my
28

denomination, I would do so. I think it would be helpful to me.

(9) The quality of the food we are provided is not good. We are not given enough time to eat meals, usually it is less than five minutes. When I eat the food in the dining room it sometimes makes the pain in my stomach worse.

(10) I read and understand English.

I, Dominic Ngoh Tebit, declare under penalty of perjury that the foregoing is true and correct and that this declaration was completed and signed on August 15, 2018 at Victorville, California.

Signed: 

EXHIBIT 9

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE**

STEPHENSON AWAH TENENG,
MARCEL NGWA, ANKUSH KUMAR,
GURJINDER SINGH, ATINDER PAUL
SINGH, NOE MAURICIO GRANADOS
AQUINO, and all others similarly situated,

Plaintiffs,

v.

DONALD J. TRUMP, President of the
United States,
KIRSTJEN NIELSEN, Secretary
Department of Homeland Security;
RONALD D. VITIELLO, Acting Director,
Immigration and Customs Enforcement;
DAVID MARIN, Field Office Director, Los
Angeles Field Office of Immigration and
Customs Enforcement;
JEFFERSON BEAUREGARD SESSIONS,
III, U.S. Attorney General;
HUGH J. HURWITZ, Acting Director,
Federal Bureau of Prisons,
DAVID SHINN, Warden, FCI Victorville
Medium Security Prison I/II, in their official
capacities only,

Defendants.

Case Number:

5:18-cv-01609-JGB-KK

**DECLARATION OF
MUNMEETH KAUR SONI**

I, Munmeeth Kaur Soni, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over 18 years of age and am competent to make this Declaration.
2. I am the Co-Legal Director at Immigrant Defenders Law Center in

Los Angeles, California.

3. I am fluent in Punjabi, Hindi, Spanish, and English.

4. I am a lifelong adherent of the Sikh faith and, therefore, am personally aware of Sikh religious beliefs and practices.

5. In connection with my position as Co-Legal Director at Immigrant Defenders Law Center, I have conducted at least ten “Know Your Rights” trainings for civil immigrant detainees at the Federal Correctional Center in Victorville, California. I conducted my first training in July of 2018 and my most recent training on September 4, 2018.

6. During the trainings, I inform detainees, in Punjabi, about their due process rights in relation to their immigration proceedings, their rights to adequate medical and mental health care, and ongoing litigation about these rights. The trainings I provide are directed primarily toward detainees from South Asian countries. Through the course of these trainings, I have interacted with over 500 detainees, most of whom speak Punjabi.

7. Most of the Punjabi-speaking detainees I have interacted with are practicing Sikhs, and many of them have asked me during presentations about religious accommodations that would enable them to practice their Sikh faith.

8. One question that has come up repeatedly pertains to whether and when the detainees will be able to obtain turbans or other head coverings. As a

practicing Sikh myself, I am well aware that, for many Sikh men, wearing a turban is an integral part of their religious practice. It symbolizes devotion to God. In particular, for Sikh men who maintain unshorn hair as part of their religious practice, covering their hair with a turban is required, and being forced to go without a turban is shameful and a serious violation of their religious beliefs.

9. In response to the detainees' repeated questions about turbans and head coverings, I have asked those in attendance at my presentations to raise their hands if they needed one. During my presentations, alone, at least 60 detainees have indicated that they needed a turban or head covering. Outside of my presentations, I also have personally observed over 30 detainees who have unshorn (never cut) hair, without turbans, at Victorville.

10. Until two weeks ago, I never saw any detainee at Victorville wear a turban or other head covering. On more recent visits, some detainees have had turbans. However, other Sikh detainees continue to inquire during my presentations about obtaining turbans or head coverings. Although detainees are now allowed to purchase turbans from the prison commissary, they inform me that the commissary is only open on Mondays. In addition, commissary hours are often cancelled without any notice. Thus, if a detainee arrives after Monday's commissary hours, he has to go for a week or more without a turban,

11. Many of the Sikh detainees cannot afford the \$10 charged by the

commissary for turbans because they have no money on their prison accounts and no family or friends outside of the prison who can help financially. Some of the indigent men were open to my offer to donate money to their accounts so they could purchase a turban or head covering. However, I have had difficulty identifying their prison account numbers or current locations.

12. During my presentations at Victorville, several detainees who were visibly ill were in attendance. I once saw a BOP custodial official tell friends of a visibly ill detainee that ICE was picking him up to send him back home. The BOP staff was gruff with the detainees who asked after their friend.

13. I also have visited ICE's detention facility in Adelanto, California.

14. On August 9, 2018, I attended a worship service held for Sikh men at the detention center. During the service, which was held in the facility's chapel, there appears to be approximately 170 detainees in attendance. The service was led by a local Sikh priest whom I personally know.

15. During the worship service, I saw former detainees from Victorville, whom I recognized by their faces. Many were wearing turbans or head coverings at this religious service, as were many of the other men in attendance.

16. Before, during, and after the worship service, I did not witness any apparent security problems. The men gathered peacefully and were well-behaved throughout the service and thereafter.

17. While at Adelanto, I also saw a bookshelf filled with different kinds religious texts, including Bibles, the Quran, and multiple Sikh texts that were properly kept in accordance with Sikh religious mandates. These included religious texts in languages other than English.

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



Munmeeth Kaur Soni

Executed this 4th day of September, 2018

1 Donald Specter, Cal. #083925
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2 Corene T. Kendrick, Cal. #226642
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3 Margot K. Mendelson, Cal. #268583
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4 **PRISON LAW OFFICE**
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7 **[ADDITIONAL COUNSEL ON**
FOLLOWING PAGE]

8
9 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
10
11 **EASTERN DIVISION - RIVERSIDE**

12 STEPHENSON AWAH TENENG,
13 MARCEL NGWA, ANKUSH
14 KUMAR, GURJINDER SINGH,
ATINDER PAUL SINGH, NOE
MAURICIO GRANADOS AQUINO,
and all others similarly situated,

15 Plaintiffs,

16 v.

17 DONALD J. TRUMP, President of the
United States,
18 KIRSTJEN NIELSEN, Secretary
Department of Homeland Security;
19 RONALD D. VITIELLO, Acting
Director, Immigration and Customs
Enforcement;
20 DAVID MARIN, Field Office Director,
Los Angeles Field Office of
21 Immigration and Customs Enforcement;
JEFFERSON BEAUREGARD
22 SESSIONS, III, U.S. Attorney General;
HUGH J. HURWITZ, Acting Director,
23 Federal Bureau of Prisons,
DAVID SHINN, Warden, FCI
24 Victorville Medium Security Prison I/II,
in their official capacities only,

25 Defendants
26
27
28

Case No. 5:18-CV-01609-JGB-KK

**DECLARATION OF MARGOT
MENDELSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

DATE: Oct. 15, 2018
TIME: 9:00 a.m.
JUDGE: Hon. Jesus G. Bernal
CRTRM: 1

1 David C. Fathi, Wash. #24893*
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2 Daniel Mach, D.C. #461652**
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3 Victoria Lopez, Ill. #6275388*
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5 **ACLU FOUNDATION**
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6 Washington, DC 20005
Phone: (202) 548-6603
7 Fax: (202) 393-4931

8 *Admitted *pro hac vice*. Not admitted in DC;
practice limited to federal courts

9 **Admitted *pro hac vice*.

10 Timothy Fox, Cal. #157750
tfox@creeclaw.org
11 Elizabeth Jordan, La. Bar Roll No. 35186*
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12 **CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER**
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Denver, CO 80203
14 Phone: (303) 757-7901
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15 *Admitted *pro hac vice*. Not admitted in Colorado.

16 Nancy E. Harris, Cal. # 197042
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26 Telephone: (619) 569-2099
Facsimile: (619) 330-4800

27 Attorneys for Plaintiffs, on *behalf of*
28 *themselves and others similarly situated*

1 I, Margot Mendelson, declare as follows:

2 1. I am an attorney at law admitted to practice before the courts of the
3 State of California and before this Court. I am a Staff Attorney at the Prison Law
4 Office, and counsel for Plaintiffs in this litigation. I make this declaration in support
5 of Plaintiffs' Motion for Preliminary Injunction. If called as a witness, I would and
6 could competently testify to the facts stated herein, all of which are within my
7 personal knowledge.

8 2. Attached herein as **Exhibit 1** is a true and correct copy of a transcript
9 of a video from the following webpage:
10 https://m.facebook.com/story.php?story_fbid=473808243115235&id=16764389665
11 [6391](#)
12

13 3. The video contains an interview of John Kostelnik, who stated that he
14 is the president of AFGE 3969, which represents employees at FCI Victorville. The
15 interview was conducted by U.S. Representative Ted W. Lieu on August 27, 2018.

16 4. The interview was transcribed by a professional transcriptionist, Lissa
17 Ireland. Ms. Ireland's signed statement appears at the end of the transcript.
18

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

21 Executed this 5th day of September, 2018, in Berkeley, California.
22
23
24

25 /s/ Margot Mendelson
26 Margot Mendelson
27 *Attorney for Plaintiffs*
28

EXHIBIT 1

1 *Stephenson Teneng, et al. v. Donald J. Trump, et al.*

2 **FACEBOOK LIVE INTERVIEW BY CONGRESSMAN TED LIEU OF JOHN**

3 **KOSTELNIK, PRESIDENT OF AFGE 3969 AT VICTORVILLE FEDERAL PRISON**

4
5 Congressman Lieu: Hello, I'm Congressman Ted Lieu. I'm here at Victorville Federal Prison
6 and I'm here with John Kostelnik, who is the president of AFGE 3969.

7 John Kostelnik: Yes sir.

8 Congressman Lieu: And, we're here to talk to you about what's happening at Victorville Prison.
9 They have had between 400 to 1,000 detainees here and this is a prison that has thousands of inmates
10 in addition to these detainees of which 1,200 are in the maximum-security prison. And so, John
11 what I want to ask you is when the administration put in all these detainees at Victorville, um, did
12 they increase staffing resources?

13 John Kostelnik: No, um, the minute we got notified of this, uh, mission, uh, receiving detainees,
14 uh, it's one of the first things that the union, um, brought up was the fact that we need staff. Um,
15 since that time, we have not received a single staff member.

16 Congressman Lieu: And, has that affected the security in the maximum-security area?

17 John Kostelnik: Yes, um, in multiple ways. Uh, we've had people reassigned, um, to cover the,
18 uh, increase in the detainees and movement of the other inmates from that facility, um, as well as,
19 uh, you know, the overtime, the, uh, stress that's being put on our staff, um, from a standpoint of
20 being short, um, and having to cover our bases, uh, basically, the simple mathematics is - is, um, we
21 had 3,500 inmates. We had approximately 900 staff. You've increased it by 1,000, um, detainees
22 and we still have 900 staff, um, and we, you know, you get, basically, stretched thin. You know,
23 we're at that point where, uh, we've been stretched so thin that, um, it's almost broke us.

24 Congressman Lieu: How many doctors are there for all of those people?

25 John Kostelnik: Uh, we have two doctors; one of the doctors is a, uh, administrator, a clinical

1 director, um, he does practice, but, for all those inmates and detainees, we have two.

2 Congressman Lieu: So, other than the administrator, you especially - you essentially have one
3 doctor.

4 John Kostelnik: Yes.

5 Congressman Lieu: And, you've had an outbreak here of scabies ...

6 John Kostelnik: Mm-hm.

7 Congressman Lieu: ... and, uh, chicken pox. Is that right?

8 John Kostelnik: Yes, we've, uh, we've had almost, uh, around 60 cases of scabies. Um, we've
9 had, uh, approximately 30 cases of, uh, chicken pox now. Um, it's been an ongoing and continuous
10 issue that won't cease until we actually see the staff.

11 Congressman Lieu: And, in terms of the morale of the staff here, how would you describe that?

12 John Kostelnik: Um, our morale's extremely low. Um, we're doing a job that - it- it's kind of a
13 thankless job so we already understand that. Um, you know, we're all law enforcement officers, we
14 love what we do, um, but the only kind of thanks that we ever really look for is thanks from our own
15 managers or our - our own agency and, uh, in doing so, it's, uh, giving us the resources and the
16 staffing that we need to do the job. Um, and in doing so, if we have the staff - if we have the
17 resources, we have the equipment, um, we're all happy and we'll do our jobs. Nobody will ever hear
18 from us and, uh, we'll keep the community safe. But, um, right now, we're not seeing any of that
19 stuff from this agency and, uh, our morale is really low and, uh, it's not looking any better.

20 Congressman Lieu: And, it's also costing the federal government more money because everyone
21 has to do all this massive overtime.

22 John Kostelnik: Yes, the amount of overtime, uh, we even have the mandatory overtimes now
23 where, uh, our staff are basically, uh, after their eight-hour shift, uh, are forced to stay another eight-
24 hours. Uh, you know, regardless of what they have going on at home with their families and in their
25 personal lives, um, it's completely affected them. Um, outside of that, we're using staffing from

1 other facilities who are also short as it is. Um, they're sending their staff down here as a band-aid,
2 um, to try to help us with the staffing issue, um, which is costing tons of money, um, in resources,
3 such as, you know, they gotta pay them per diem, their hotel - their hotel costs, all those things they
4 have to pay for these TDY staff when all we need to do is hire - just hire some more people.

5 Congressman Lieu: Again, I'm Congressman Ted Lieu here, I'm here with John Kostelnik, the
6 President of the correctional officers here in Victorville Federal Prison and I know that food issues
7 have been a problem and for folks, uh, who have been quarantined or separated from the general
8 population, I know that they get food served to them. Can you just describe what is - what do they
9 actually get served?

10 John Kostelnik: So, um, due to, uh, again, a shortage in staff in, uh, food service, um, and our
11 resources and equipment that we don't have, um, we're forced to, basically, uh, go through a
12 contract and purchase, uh, kind of like a box meal, and, uh, the box meal consists of, uh, basically
13 two pieces of bread, um, some peanut butter, uh, some chips or crackers, um, and a drink. That's all
14 that they're given. Um, it is - I will say that it is, um, according to them, up to nutritional standards,
15 um, but, uh, still that's all that they're getting.

16 Congressman Lieu: And, o- of the detainee population, a - a significant number were actually
17 Indian and Punjabi. Sheikh. Is that correct?

18 John Kostelnik: Yes. Uh, actually, a very high, uh, number of those, uh, detainees that we have
19 are those.

20 Congressman Lieu: And, there are language issues, is that right?

21 John Kostelnik: Huge language issues where, uh -- we received no training, um, in how to even
22 deal with these cultures, um - uh, we don't have translators on sight, um, so we've had to, basically,
23 uh, adapt to communication with these guys, whether it be through, like, a form of sign language, not
24 official sign lang- sign language, um, or through using somebody in that, um, culture, in that group,
25 that speaks some English. Um, it's - it's been kind of an obstacle but, uh, our staff have managed it

1 somewhat due to that, but we've had no assistance from anybody (unintelligible).

2 Congressman Lieu: Well, thank you for speaking with me today and for telling the American
3 public, uh, some of the problems here at Victorville Federal Prison, uh, I will look into this and we
4 will try to, uh, see what we can do to make things better. Uh, I also - I wanted to let you know, I was
5 on, uh, Washington Journal with CSPAN earlier this year. Uh, one of your guards actually called
6 into the show and he was exp- explaining that you got 1,000 detainees here, no additional resources,
7 there are all these problems. He wanted me to come take a look, so I came today to take a look and,
8 uh, the problem's very real. Thank you for doing the best you can given the resources you have and
9 look forward to working with you as we try to make things better.

10 John Kostelnik: Yes, sir, and I - we greatly appreciate you coming and, uh, look forward to wor-
11 uh, working with you and we appreciate all your staff and everybody in your office.

12 Congressman Lieu: Thank you, John.

13 John Kostelnik: Thank you, sir.

14 [END OF RECORDING]


15 *2018.08.27 Congressman Ted Lieu interview at Victorville*

Transcriptionist's Certificate

I, Lissa R. Ireland, declare under penalty of perjury that I was assigned to transcribe verbatim, a video recording entitled, "2018.08.27 Congressman Ted Lieu interview at Victorville"; that I thereafter did transcribe said video, to the best of my ability and knowledge, and the pages numbered 1 through 4, inclusive, constitute an accurate, complete, true and correct transcript of the audio recording.

Executed on this 2nd day of September, 2018 in San Jose, California.

Lissa's Transcription Service


Lissa R. Ireland, Transcriptionist

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3 Margot K. Mendelson, Cal. #268583
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7 **[ADDITIONAL COUNSEL ON**
FOLLOWING PAGE]

8
9 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

10 **EASTERN DIVISION - RIVERSIDE**

11 STEPHENSON AWAH TENENG,
12 MARCEL NGWA, ANKUSH
KUMAR, GURJINDER SINGH,
13 ATINDER PAUL SINGH, NOE
MAURICIO GRANADOS AQUINO,
14 and all others similarly situated,

15 Plaintiffs,

16 v.

DONALD J. TRUMP, President of the
17 United States,
KIRSTJEN NIELSEN, Secretary
18 Department of Homeland Security;
RONALD D. VITIELLO, Acting
19 Director, Immigration and Customs
Enforcement;
20 DAVID MARIN, Field Office Director,
Los Angeles Field Office of
21 Immigration and Customs Enforcement;
JEFFERSON BEAUREGARD
22 SESSIONS, III, U.S. Attorney General;
HUGH J. HURWITZ, Acting Director,
23 Federal Bureau of Prisons,
DAVID SHINN, Warden, FCI
24 Victorville Medium Security Prison I/II,
in their official capacities only,

25 Defendants
26
27
28

Case No. 5:18-CV-01609-JGB-KK

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

DATE: Oct. 15, 2018
TIME: 9:00 a.m.
JUDGE: Hon. Jesus G. Bernal
CRTRM: 1

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28 *themselves and others similarly situated*

1 On October 15, 2018, this matter came on regularly for a hearing in
2 Courtroom 1 of this Court, the Honorable Jesus G. Bernal presiding. Having
3 considered the parties' pleadings, the arguments of counsel, and the entire record in
4 this case, and good cause existing therefor,

5 THE COURT HEREBY ORDERS that:

- 6 a) Plaintiffs' Motion for Preliminary Injunction is granted;
- 7 b) The bond requirement set forth in Fed. R. Civ. P. 65(c) is waived;
- 8 c) Defendants are enjoined from:
- 9 (1) providing constitutionally inadequate health care to ICE detainees at
10 FCI Victorville;
- 11 (2) subjecting ICE detainees at FCI Victorville to conditions and
12 practices that amount to punishment;
- 13 (3) restricting detainees' religious exercise or failing to accommodate
14 detainees' religious exercise in a manner that violates or is otherwise
15 inconsistent with ICE's Detention Standards; and
- 16 (4) transferring any additional ICE detainees to FCI Victorville.
- 17 d) The Court shall retain jurisdiction to enforce the terms of this Injunction.

18
19 IT IS SO ORDERED.

20
21 Dated: _____

The Honorable Jesus G. Bernal
U.S. District Judge