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

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;
23 HUGH J. HURWITZ, Acting Director,
Federal Bureau of Prisons,
24 DAVID SHINN, Warden, FCI
Victorville Medium Security Prison I/II,
in their official capacities only,

25 Defendants
26
27
28

Case No. 5:18-CV-01609

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
LIMITED EXPEDITED
DISCOVERY; 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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27 Attorneys for Plaintiffs, on *behalf of*
themselves and others similarly situated

28

1 **NOTICE OF MOTION AND MOTION FOR LIMITED EXPEDITED**
2 **DISCOVERY**

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

5 NOTICE IS HEREBY GIVEN that on October 15, 2018 at 9:00 AM or as
6 soon thereafter as the matter may be heard by the above Court, located at Riverside,
7 California, Plaintiffs Stephenson Awah Teneng, Marcel Ngwa, Ankush Kumar,
8 Gurjinder Singh, Atinder Paul Singh, and Noe Mauricio Granados Aquino, on
9 behalf of themselves and all others similarly situated (“Plaintiffs”), will and hereby
10 move the Court for entry of an Order allowing limited expedited discovery of
11 Defendants pursuant to Federal Rules of Civil Procedure 26(d)(1), 30(a)(2)(A)(iii),
12 34(a), and Local Rule 26.

13 Specifically, Plaintiffs request the following orders for expedited discovery:

- 14 1) An order requiring Defendants to identify and produce the following
15 categories of documents on or before October 22, 2018.
- 16 a. All FCI Victorville health care policies and procedures other than BOP
17 or ICE policies;
 - 18 b. Health care records of ICE detainees who have signed releases;
 - 19 c. Documents sufficient to show staffing and vacancy levels for custody
20 and health care from the date that the ICE detainees first arrived to the present;
 - 21 d. Lists of programs available to prisoners and lists of programs available
22 to ICE detainees and ICE logs of detainee attendance at those programs;
 - 23 e. All documents relating to ICE detainees’ ability to engage in religious
24 exercise, including documents showing religious programming or services, and
25 religious accommodations, provided or denied to ICE detainees;
 - 26 f. Documents sufficient to show the number of ICE detainees held at FCI
27 Victorville, the average length of stay for an ICE detainee, and the countries of
28 origin for ICE detainees; and

1 g. Any requests from any governmental entity, including, without
2 limitation, the United States Office of Special Counsel, concerning the conditions of
3 confinement of ICE detainees at FCI Victorville, and any responses to such requests.

4 2) An order requiring Defendants to produce for deposition on or before
5 October 29, 2018 designees of the BOP and ICE under Rule 30(b)(6) most
6 knowledgeable about:

7 a. FCI Victorville’s health care operations (including but not limited to
8 screening, sick call, chronic care, medication administration, mental health care,
9 dental care, emergency care, infectious diseases, and/or specialty care);

10 b. The prison’s chaplaincy program, religious programming and services for
11 detainees, and religious accommodations for ICE detainees;

12 c. Custodial operations in the units in which ICE detainees are incarcerated;

13 d. Custodial operations in the units in which prisoners are incarcerated; and

14 e. Any training that FCI Victorville staff received in connection with the
15 detention of ICE detainees at the facility.

16 3) An order requiring Defendants to produce for deposition on or before
17 October 29, 2018 John Kostelnik, President of the American Federation of
18 Government Employees Local 3969, which represents custody officers at FCI
19 Victorville.

20 4) An order requiring Defendants to permit a Rule 34 inspection of the
21 prison during the week of October 29, 2018 by three of plaintiffs’ experts,
22 accompanied by Plaintiffs’ counsel, including ability to talk to staff and ICE
23 detainees and inspection of health care records and related documents such as
24 chronic care logs, specialty appointments, hospitalization logs, emergency room
25 logs, etc.

26 On August 18, 2018, Plaintiffs served a letter on Defendants seeking a
27 conference pursuant to Local Rule 37-1 on expedited discovery. Local Rule 37-1
28 states that “counsel for the opposing party shall confer with counsel for the moving

1 party within ten (10) days after the moving party serves a letter requesting such
2 conference.” On September 5, 2018, Plaintiffs’ counsel conferred with counsel for
3 Defendants regarding this motion. *See* Declaration of Donald Specter in support of
4 Plaintiffs’ Motion for Leave to Exceed the Page Limits for the Motion for
5 Preliminary Injunction, Doc. 42-1 at ¶ 3. Accordingly, Plaintiffs may file this
6 motion for limited expedited discovery.

7 In support of their motion, Plaintiffs submit the accompanying Memorandum
8 of Points and Authorities and attached exhibit, and incorporate by reference the
9 pleadings and motions on file in this action, and any oral argument or such other
10 matters as the Court may consider.

11
12 DATED: September 11, 2018

Respectfully submitted,

13
14 By: /s/ Margot Mendelson

15 **ACLU FOUNDATION**

David C. Fathi
16 Daniel Mach
17 Victoria Lopez
18 Heather L. Weaver

PRISON LAW OFFICE

Don Specter
Corene Kendrick
Margot Mendelson
Attorneys for Plaintiffs

19 **CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER**

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13 Orange County Register (June 29, 2018),

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18 *Victorville Prison*, San Diego Union-Tribune (June 7, 2018),

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23 2018), [https://www.huffingtonpost.com/entry/victorville-prison-](https://www.huffingtonpost.com/entry/victorville-prison-suicide-attempt-migrants_us_5b6267cce4b0de86f49dcbda)

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Time is of the essence. As Plaintiffs allege in their complaint, the inhumane
4 and life-threatening living conditions at Federal Correctional Institution (“FCI”)
5 Victorville II have already caused extreme hardship in the form of physical, mental,
6 and spiritual suffering. Plaintiffs seek a preliminary injunction to ensure that these
7 violations of ICE detainees’ fundamental rights do not continue, and that the
8 immigrants imprisoned at FCI Victorville are afforded the care to which they are
9 entitled, including adequate food and medical care, and the ability to practice their
10 religion. *See* Plaintiffs’ Motion for Preliminary Injunction, filed herewith.

11 Limited expedited discovery is necessary here in order for Plaintiffs to gather,
12 document, and preserve crucial evidence regarding the full extent of constitutional
13 violations at issue in the preliminary injunction motion. Without a court order
14 expediting discovery, Plaintiffs, and their experts, would be forced to wait months—
15 until after the Rule 26(f) conference—to inspect these facilities and gather evidence
16 to support their claim for preliminary injunctive relief. Limited expedited discovery
17 is necessary to preserve evidence of the conditions of confinement at Victorville
18 because of the substantial barriers to access the medium-security prison, and to
19 documenting these conditions. While the need for expedited discovery is great,
20 Defendants will not be burdened or suffer prejudice from an order granting
21 Plaintiffs’ limited expedited discovery requests. Plaintiffs respectfully request that
22 the Court permit them to take the discovery identified in the accompanying motion.

23 **II. FACTUAL BACKGROUND**

24 FCI Victorville is a medium-security prison operated by the BOP and is
25 recognized as being among the most dangerous places for convicted persons in
26 BOP’s system of medium security prisons. *See* District of Columbia Corrections
27 Information Council, Inspection Report: FCI Victorville Medium II (Jan. 7, 2016),
28 at 3 (“Based on the documents provided by the FBOP, the number of significant

1 incidents reported by the facility indicates relatively high levels of violence for a
2 medium security level institution.”).¹ Due to understaffing, BOP closed down nine
3 housing units at the Victorville prison. *See* Kate Morrissey, *ICE Is Sending 1,000*
4 *Immigrant Detainees to Victorville Prison*, San Diego Union-Tribune (June 7,
5 2018).² Nevertheless, in early June 2018, ICE began transferring immigration
6 detainees to the Victorville prison. *Id.* When the prison reopened those units in June,
7 in order to accommodate the influx of immigration detainees, sufficient staff was
8 not added. Lauren Weber, *Detainee Attempts Suicide After Trump Administration*
9 *Jams Migrants Into Troubled Prison*, The Huffington Post (Aug. 1, 2018).³

10 By policy and practice, Defendants fail to provide minimally adequate health
11 care to Plaintiffs and other detainees. Detainees receive minimal or no medical,
12 dental, or mental health screenings upon their arrival at Victorville. *See* Doc. 1-6 at
13 ¶¶ 15-16; Doc. 1-10 at ¶ 12; Doc. 1-15 at ¶ 5; Doc. 1-19 at ¶ 6. The lack of
14 screening is especially dangerous in light of the confirmed outbreaks of chicken pox
15 and scabies among the detained population. *See* Roxana Kopetman, *Immigration*
16 *detainees in Victorville prison get more scabies, chicken pox; protesters to gather*
17 *Saturday*, The Orange County Register (June 29, 2018);⁴ *see also* Doc. 1-2 at ¶¶ 5,
18 13. Those who have received intake health care screening, or any subsequent health
19 care, generally must communicate with medical staff who speak only English
20 without a translator, or rely on other detainees who may speak some English. *See*

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22
23 ¹ Available at <https://cic.dc.gov/node/1133737>.

24 ² Available at <http://www.sandiegouniontribune.com/news/immigration/sd-me-victorville-immigrants-20180607-story.html>.

25 ³ Available at https://www.huffingtonpost.com/entry/victorville-prison-suicide-attempt-migrants_us_5b6267cce4b0de86f49dcbda.

26
27 ⁴ Available at <https://www.ocregister.com/2018/06/29/immigration-inmates-in-victorville-get-more-scabies-chicken-pox-protesters-to-gather-saturday>.

1 Doc. 1-2 at ¶ 16; Doc. 1-3 at ¶ 6; Doc. 1-7 at ¶ 4; Doc. 1-9 at ¶ 16; Doc. 1-14 at ¶ 5-
2 6; Doc. 1-17 at ¶ 8, 9.

3 There is no clear process for the immigration detainees imprisoned at FCI
4 Victorville to request medical attention other than an emergency button in their
5 cells. When detainees press the button, they frequently are ignored or threatened
6 with punishment. *See* Doc. 1-2 at ¶¶ 11-12; Doc. 1-3 at ¶ 5; Doc. 1-8 at ¶ 13; Doc.
7 1-9 at ¶ 15; Doc. 1-10 at ¶ 11; Doc. 1-11 at ¶¶ 6-8; Doc. 1-15 at ¶ 24. Detainees do
8 not have access to necessary medications. *See* Doc. 1-3 at ¶ 5-7; Doc. 1-15 at ¶¶ 3,
9 5, 6-8. *Id.* at ¶¶ 48, 50. Detainees have informed staff of their medical conditions but
10 their needs have been ignored. *See* Doc. 1-1 at ¶ 17; Doc. 1-2 at ¶¶ 10, 13, 15; Doc.
11 1-6 at ¶¶ 11, 14-16; Doc. 1-7 at ¶¶ 7-12; Doc. 1-8 at ¶ 14; Doc. 1-9 at ¶¶ 15-16; Doc.
12 1-14 at ¶ 7; Doc. 1-15 at ¶¶ 16-18, 25; Doc. 1-17 at ¶ 16; Doc. 1-18 at ¶¶ 3, 7; Doc.
13 1-19 at ¶¶ 7-9; Doc. 1-20 at ¶¶ 2, 4, 8-9. Detainees have minimal or no access to
14 mental health services. *See* Doc. 1- 2 at ¶¶ 10, 15; Doc. 1-6 at ¶¶ 11, ¶¶ 15-16; Doc. 1-
15 8 at ¶ 14; Doc. 1-15 at ¶¶ 16-18; Doc. 1-18 at ¶¶ 3, 7; Doc. 1-17 at ¶ 16. *Id.* at ¶¶ 55-
16 58.

17 Defendants have denied Plaintiffs and other detainees adequate nutrition and
18 adequate time to eat even the substandard food they are provided. *See* Doc. 1-8 at ¶¶
19 15, 17; Doc. 1-9 at ¶ 10; Doc. 1-10 at ¶ 8; Doc. 1-15 at ¶ 21. For example, Plaintiffs
20 and other detainees imprisoned at Victorville have lost weight due to inadequate
21 food, and Defendants sometimes serve Plaintiffs food that is inedible. *See* Doc. 1-4
22 at ¶ 11; Doc. 1-8 at ¶ 15; Doc. 1-10 at ¶ 8; Doc. 1-11 at ¶ 5; Doc. 1-15 at ¶ 22.
23 Defendants allow Plaintiffs and other detainees only minutes to eat each meal and
24 throw away any uneaten food. *See* Doc. 1-6 at ¶¶ 20-21; Doc. 1-7 at ¶ 5; Doc. 1-8 at
25 ¶ 15; Doc. 1-10 at ¶ 8; Doc. 1-17 at ¶ 12.

26 Defendants have refused to provide, or make available, any religious services
27 to Plaintiffs or the other detainees of faith at FCI Victorville, and they have not
28 provided adequate opportunities for detainees to engage in congregate prayer,

1 worship services, religious study or counseling. *See* Doc. 1-2 at ¶ 9; Doc. 1-6 at ¶
2 23; Doc. 1-7 at ¶ 13; Doc. 1-9 at ¶ 9; Doc. 1-12 at ¶ 7; Doc. 1-14 at ¶ 12; Doc. 1-18
3 at ¶ 2. Defendants restrict detainees' access to religious items, and many detainees
4 have had personal property such as turbans, Bibles, or rosaries confiscated.
5 Detainees have been told that that these items are not authorized or not available, or
6 that they must pay for replacements, even though many are indigent. *See* Doc. 1-4 ¶
7 9; Doc. 1-5 at ¶ 6; Doc. 1-6 at ¶¶ 24-25; *see also* Doc. 1-12 at ¶¶ 4-9; Doc. 1-15 at ¶
8 15; Doc. 1-18 at ¶ 2; Doc. 1-20 at ¶ 10.

9 In total, Plaintiffs and other detainees are subjected to conditions at FCI
10 Victorville that are unnecessarily restrictive to fulfill the government's purported
11 objectives of ensuring that immigrants appear at future immigration proceedings.
12 Upon transferring Plaintiffs and other detainees to FCI Victorville, Defendants
13 maintained a 24-hour lockdown for three or more days, during which time Plaintiffs
14 were not allowed to leave their cells for any reason, including exercise, free time,
15 telephone calls, religious services, personal or attorney visits, meals, or showers. *See*
16 Doc. 1-4 at ¶ 8; Doc. 1-5 at ¶ 7; Doc. 1-8 at ¶ 16; Doc. 1-11 at ¶ 3; Doc. 1-17 at ¶ 7.
17 Victorville was so unprepared for the influx of detainees in June that Defendants
18 issued to the men only one set of clothing upon their arrival at Victorville. *See* Doc.
19 1-4 at ¶ 3; Doc. 1-15 at ¶ 23. Defendants did not issue another set of clean clothing,
20 including clean undergarments, to detainees for approximately the first two to three
21 weeks the detainees were at the prison. *See* Doc. 1-9 at ¶ 11; Doc. 1- 10 at ¶ 9; Doc.
22 1-17 at ¶ 11.

23 The prison provides, at most, a few hours per week of outdoor exercise time;
24 this time is not regularly scheduled and is sometimes cancelled. *See* Doc. 1- 10 at ¶
25 4; Doc. 1- 17 at ¶ 10; Doc. 1-15 at ¶ 20. Defendants require Plaintiffs and other
26 immigration detainees to be locked in their cells whenever the prison's general
27 population is being moved throughout the facility, resulting in several hours of
28 lockdown each day that Plaintiffs would not experience if they were not being

1 imprisoned in the same facility as convicted persons. *See* Doc. 1-6 at ¶ 14; Doc. 1-9
2 at ¶ 6; Doc. 1-10 at ¶ 15; Doc. 1-11 at ¶ 3; Doc. 1-19 at ¶ 12. ICE detainees have no
3 access to educational or other programming or work opportunities; they have limited
4 access even to reading materials in languages they understand. *See* Doc. 1-2 at ¶ 8;
5 Doc. 1-4 at ¶ 7; Doc. 1-9 at ¶ 9; Doc. 1-15 at ¶ 14.

6 Plaintiffs' counsel has encountered significant barriers to accessing
7 information regarding Plaintiffs' conditions of confinement. For example, BOP and
8 ICE employees have repeatedly denied or otherwise stonewalled counsel's requests
9 for access to certain documents for which counsel presented releases signed by
10 detainees. *See* Declaration of Ana M. Diaz (hereinafter "Diaz Decl."), filed
11 herewith, as Exhibit 1. In one case, a BOP employee told Plaintiffs' counsel that it
12 could not send a detainee's medical records, because the detainee had been
13 transferred out of FCI Victorville. When Plaintiffs' counsel requested the medical
14 records from Adelanto Detention Facility, an ICE detention center to which the
15 detainee had been transferred, an ICE employee told Plaintiffs' counsel that ICE
16 could not send the records, because they had not been sent to ICE by the BOP. *See*
17 *id.* at ¶ 8. Several times, when Plaintiffs' counsel has tried to contact the medical
18 records department at FCI Victorville, the front desk officer has told Plaintiffs'
19 counsel that medical records staff are not in, or no one at the facility answered the
20 main phone line. *See id.* at ¶¶ 9, 11. Plaintiffs' counsel has also been told that the
21 BOP could not send them medical records, despite the signed releases, because BOP
22 staff has not received guidance on how to handle medical records requests for
23 detainees. *See id.* at ¶ 14. Despite Plaintiffs' counsel's efforts, neither BOP nor ICE
24 employees have sent requested records to Plaintiffs' counsel, confirmed that
25 requested records could be sent to Plaintiffs' counsel, or even instructed Plaintiffs'
26 counsel on the process for requesting records. *See id.* at ¶ 16.

27 **III. PROCEDURAL BACKGROUND**

28 Plaintiffs, as civil immigration detainees, filed their class action complaint on

1 August 1, 2018, challenging the conditions of their confinement and the
2 infringement of their right to practice their faith.⁵ Doc. 1.

3 On September 4, 2018, Plaintiffs filed a motion for class certification. Doc.
4 34. Plaintiffs moved the Court to certify a class of civil detainees that includes “all
5 persons who are now, or in the future will be, in the legal custody of the U.S.
6 Immigrations and Customs Enforcement (‘ICE’) and housed at Federal Correctional
7 Institution (‘FCI’) Victorville.” *Id.* In addition, Plaintiffs ask the Court to certify a
8 “Religious Freedom” subclass consisting of “all religious persons who are now, or
9 in the future will be, in the legal custody of ICE and housed at FCI Victorville, and
10 whose ability to practice their religious beliefs is or would be impeded or
11 substantially burdened by Defendants’ policies and practices.” *Id.*

12 On September 7, the Court granted Plaintiffs leave to file an oversized brief in
13 support of their Motion for Preliminary Injunction. Doc. 44. That motion is filed
14 herewith.

15 On August 15, 2018, Plaintiffs’ counsel served on Defendants a letter
16 pursuant to Local Rule 37-1 outlining Plaintiffs’ requests for expedited discovery
17 and the legal authority which is dispositive of this issue. *See* Exhibit 1 to the Decl.
18 of Donald Specter in support of Plaintiffs’ Class Certification Motion, Doc. 36-1.

19 Plaintiffs’ requests are as follows:

- 20 1) An order requiring Defendants to identify and produce the following
21 categories of documents on or before October 22, 2018,
- 22 a. All FCI Victorville health care policies and procedures other than BOP
23 or ICE policies;
 - 24 b. Health care records of ICE detainees who have signed releases;
 - 25 c. Documents sufficient to show staffing and vacancy levels for custody

26
27 ⁵ Defendants transferred the original six named Plaintiffs from FCI Victorville after
28 the complaint was filed.

1 and health care from the date that the ICE detainees first arrived to the present;

2 d. Lists of programs available to prisoners and lists of programs available
3 to ICE detainees and ICE logs of detainee attendance at those programs;

4 e. All documents relating to ICE detainees' ability to engage in religious
5 exercise, including documents showing religious programming or services, and
6 religious accommodations, provided or denied to ICE detainees;

7 f. Documents sufficient to show the number of ICE detainees held at FCI
8 Victorville, the average length of stay for an ICE detainee, and the countries of
9 origin for ICE detainees; and

10 g. Any requests from any governmental entity, including, without
11 limitation, the United States Office of Special Counsel, concerning the conditions of
12 confinement of ICE detainees at FCI Victorville, and any responses to such requests.

13 2) An order requiring Defendants to produce for deposition on or before
14 October 29, 2018 designees of the BOP and ICE under Rule 30(b)(6) most
15 knowledgeable about:

16 a. FCI Victorville's health care operations (including but not limited to
17 screening, sick call, chronic care, medication administration, mental health care,
18 dental care, emergency care, infectious diseases, and/or specialty care);

19 b. The prison's chaplaincy program, religious programming and services for
20 detainees, and religious accommodations for ICE detainees;

21 c. Custodial operations in the units in which ICE detainees are incarcerated;

22 d. Custodial operations in the units in which prisoners are incarcerated; and

23 e. Any training that FCI Victorville staff received in connection with the
24 detention of ICE detainees at the facility.

25 3) An order requiring Defendants to produce for deposition on or before
26 October 29, 2018 John Kostelnik, President of the American Federation of
27 Government Employees Local 3969, which represents custody officers at FCI
28 Victorville.

1 4) An order requiring Defendants to permit a Rule 34 inspection of the
2 prison during the week of October 29, 2018 by three of plaintiffs’ experts,
3 accompanied by Plaintiffs’ counsel, including ability to talk to staff and ICE
4 detainees and inspection of health care records and related documents such as
5 chronic care logs, specialty appointments, hospitalization logs, emergency room
6 logs, etc.

7 On September 5, 2018, Plaintiffs’ counsel conferred with counsel for
8 Defendants regarding this motion. *See* Specter, submitted in support of Plaintiffs’
9 Motion to Exceed the Page Limits for the Preliminary Injunction Motion, Doc. 42-1
10 at ¶ 3. By the instant motion, Plaintiffs seek limited expedited discovery to preserve
11 evidence and to support Plaintiffs motion for a preliminary injunction, which
12 requests that the Court enjoin the ongoing violations of the rights of Plaintiffs and
13 the putative class members.

14 **IV. ARGUMENT**

15 Federal Rule of Civil Procedure 26(d)(1) recognizes that a party may seek
16 discovery before the Rule 26(f) conference “by stipulation, or by court order.”
17 Expedited discovery is appropriate where “good cause” exists based “on the entirety
18 of the record to date and the reasonableness of the request in light of all the
19 surrounding circumstances.” *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D.
20 273, 276 (N.D. Cal. 2002); *Smagin v. Yegiazaryan*, No. CV 14-9764-R, 2015 WL
21 12762270, at *2 (C.D. Cal. 2007). Good cause may be found “where the need for
22 expedited discovery, in consideration of the administration of justice, outweighs the
23 prejudice to the responding party.” *Arista Records LLC v. Does 1-43*, No.
24 07CV2357-LAB (POR), 2007 WL 4538697 at *1 (C.D. Cal. 2015), citing *Semitoool,*
25 *Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). Courts may
26 weigh factors in determining whether to grant a motion for expedited discovery,
27 including, but not limited to: (1) whether a preliminary injunction is pending; (2) the
28 purpose for requesting the expedited discovery; (3) the breadth of the discovery

1 requests; (4) the burden on the defendants to comply with the requests; and (5) how
2 far in advance of the typical discovery process the request was made.” *Smagin*, 2015
3 WL 12762270, at *2.

4 **A. Good Cause Exists Because a Preliminary Injunction is Pending**

5 Plaintiffs have simultaneously sought a preliminary injunction to enjoin
6 Defendants from providing constitutionally inadequate health care to ICE detainees
7 at FCI Victorville, subjecting ICE detainees at FCI Victorville to conditions and
8 practices that amount to punishment, restricting detainees’ religious exercise or
9 failing to accommodate detainees’ religious exercise in a manner that violates or is
10 otherwise inconsistent with ICE’s Detention Standards, and transferring any
11 additional ICE detainees to FCI Victorville.

12 To support this motion, Plaintiffs require expedited discovery to gather
13 evidence and inform their experts’ opinions in support of the preliminary injunction
14 motion and any associated hearing. An order to expedite discovery under Rule 26(d)
15 is especially appropriate in such cases. *See* Fed. R. Civ. P. 26 Advisory Committee’s
16 Note to 1993 Amendment to subdivision (d) (explaining that expedited discovery is
17 “appropriate in some cases, such as those involving requests for a preliminary
18 injunction”); *see also Meritain Health Inc. v. Express Scripts, Inc.*, No. 4:12-CV-
19 266-CEJ, 2012 WL 1320147 at *2 (E.D. Mo. 2012) (“Expedited discovery is
20 generally appropriate in cases, such as this, where a party is attempting to prepare
21 for a preliminary injunction hearing.”) (citation omitted).

22 Second, because Plaintiffs’ preliminary injunction motion seeks to prevent the
23 ongoing violations of putative class members’ constitutional rights, limited
24 discovery is necessary and appropriate to gather evidence and uncover the full
25 extent of the harm to putative class members. *See, e.g., Oglala Sioux Tribe v. Van*
26 *Hunnik*, 298 F.R.D. 453, 456 (D.S.D. 2014) (granting expedited discovery to allow
27 plaintiffs the opportunity to adduce evidence for a preliminary injunction that would
28 “prove that members of the Plaintiff class are likely to be injured in the immediate

1 future by the policies, practices, and customs that allegedly exist”).

2 Accordingly, because expedited discovery is necessary for the pending
3 preliminary injunction and any associated hearings, good cause exists for expedited
4 discovery.

5 **B. Good Cause also Exists Because Expedited Discovery Is Necessary**
6 **to Document Changing Conditions of Confinement.**

7 Beyond gathering evidence for the pending preliminary injunction, expedited
8 discovery is necessary to preserve evidence of confinement conditions that
9 Defendants may modify and that would, therefore, become difficult or impossible to
10 document as time passes. Courts have recognized that expedited discovery is
11 appropriate where, as here, evidence may be susceptible to loss or spoliation. *See*
12 *Monsanto Co. v. Woods*, 250 F.R.D. 411, 413 (E.D. Mo. 2008) (granting expedited
13 discovery where likelihood of discovering evidence might decrease due to passage
14 of time or intentional destruction).

15 Cognizant of this concern, Plaintiffs and their counsel have diligently
16 attempted to preserve and obtain evidence of Defendants’ practices and policies but
17 have been limited by several factors beyond their control. For example, Plaintiffs’
18 counsel has limited access to detainees at the facility. In June 2018, separate
19 litigation was filed alleging that the federal government has refused to allow
20 attorneys to visit or contact detainees at Victorville or permit the detainees to
21 contact an attorney. *Rodriguez Castillo, et al. v. Nielsen, et al.*, No. CV 18-01317-
22 ODW-MAA (C.D. Cal. 2018), Doc. 1. The Court held that denying this access
23 violates detainees’ rights and ordered that they be allowed to visit, in-person, with
24 attorneys. *Rodriguez Castillo, et al. v. Nielsen, et al.*, No. CV 18-01317-ODW-
25 MAA (C.D. Cal. 2018), Doc. 10. Although Plaintiffs’ counsel have since met with
26 some detainees at FCI Victorville, their access remains severely impaired by long
27 wait times, the lack of available private attorney rooms, and retaliation against
28 detainees who speak with attorneys. *Rodriguez Castillo, et al. v. Nielsen, et al.*, No.

1 CV 18-01317-ODW-MAA (C.D. Cal. 2018), Doc. 21. The difficulty of preserving
2 such evidence is further compounded by both the affected population's high
3 turnover rate and the challenges of tracking detainees once they have been released,
4 repatriated, or transferred.

5 This constrained access is especially burdensome to Plaintiffs here because
6 there are few other ways in which Plaintiffs and their counsel can gather
7 information. Prisons are notoriously closed institutions that lack transparency to
8 those who are not employed by correctional authorities or their contractors. *See,*
9 *e.g.,* Michele Deitch, *Independent Correctional Oversight Mechanisms Across the*
10 *United States: A 50-State Inventory*, 30 PACE L. REV. 1754, 1762 (2010) (noting
11 that prisons operate "entirely outside the public eye"); John J. Gibbons & Nicholas
12 de B. Katzenbach, *Confronting Confinement: A Report of the Commission on Safety*
13 *and Abuse in America's Prisons*, 22 WASH. U.J.L. & POL'Y. 385, 408 (2006)
14 (finding that most correctional facilities are "walled off from external monitoring
15 and public scrutiny"); *see also Pell v. Procunier*, 417 U.S. 817, 827 (1974) (noting
16 that prison officials have broad powers to restrict the "entry of outsiders into the
17 prison").

18 The lack of transparency is illustrated by BOP and ICE employees repeatedly
19 denying or otherwise evading counsel's requests for access to certain documents for
20 which counsel presented releases signed by detainees. *See* Diaz Decl. at ¶¶ 8-16.
21 Due to Plaintiffs' counsel lack of access to information, and Defendants' monopoly
22 over the evidence, limited expedited discovery is necessary to ensure that Plaintiffs
23 are able to collect relevant information and document conditions as they currently
24 exist.

25 **C. Plaintiffs' Discovery Requests Are Narrowly Tailored to Plaintiffs'**
26 **Good-Cause Interests.**

27 Plaintiffs' limited discovery requests are narrowly tailored to the good-cause
28 interests discussed above. In order to prevail on their motion for preliminary

1 injunction, Plaintiffs must be able to show that they and the putative class members
2 are subject to conditions of confinement that violate their constitutional rights as
3 civil immigration detainees. To do so, Plaintiffs intend to show that they are being
4 held in “punitive” conditions of confinement that are (1) intended to punish
5 detainees entering the United States, (2) “excessive in relation to [non-punitive]
6 purpose,” or (3) “employed to achieve objectives that could be accomplished in so
7 many alternative and less harsh methods.” *Jones v. Blanas*, 393 F.3d 918, 933-34
8 (9th Cir. 2004) (citations omitted). They also intend to show that the conditions of
9 confinement of immigration detainees at Victorville are similar to, or worse than,
10 those of persons charged with or convicted of criminal offenses, and are thus
11 presumptively unconstitutional. *Id.* at 931-32. Finally, they intend to demonstrate
12 that the broad restrictions on their religious-exercise rights are not the least
13 restrictive means of achieving a compelling governmental interest. *See Religious*
14 *Freedom Restoration Act*, 42 U.S.C. § 2000bb-1(b).

15 Plaintiffs intend to offer expert opinions regarding whether the confinement
16 conditions at FCI Victorville meet minimally acceptable civil detention standards.
17 Plaintiffs’ inspection, document, and deposition requests are narrowly tailored so
18 that Plaintiffs’ agents can observe and document current conditions of confinement
19 at the prison.

20 Plaintiffs will undoubtedly require access to additional documents and
21 detainees over the regular course of discovery in this case. Nevertheless, at this early
22 stage, without limited expedited discovery, Plaintiffs’ experts require firsthand
23 access to more fully inform opinions about what those conditions are and how they
24 compare to standards on the conditions of civil confinement.

25 **D. Defendants Can Accommodate Plaintiffs’ Limited Discovery**
26 **Requests with Minimal Burden, Because Defendants Have**
Responded Previously to Similar Requests

27 Defendants can accommodate Plaintiffs’ requested discovery with minimal
28 burden. Previously, the BOP has hosted tours of FCI Victorville for Representative

1 Mark Takano and his staff, as well as staff from Sen. Kamala Harris's office. BOP
2 employees have also made requested documents available to congressional staffers,
3 in particular the contract between BOP and ICE on the detention of civil
4 immigration detainees at FCI Victorville. Additionally, BOP facilities are subject to
5 site visits and document review by oversight agencies involving investigation of
6 many of the same conditions Plaintiffs seek to inspect. For example, the DOJ Office
7 of Inspector General conducted site visits to BOP facilities and reviewed documents
8 to examine the impact of an aging prison population and restrictive housing of
9 persons with mental illness. Under the Prison Rape Elimination Act, trained auditors
10 have inspected Victorville and reviewed documents for compliance with the statute.
11 As a facility that incarcerates federal prisoners from the District of Columbia, FCI
12 Victorville is subject to inspection by the District of Columbia Corrections
13 Information Council. The facility also makes itself and its documents open to
14 inspection by non-governmental entities, namely the American Correctional
15 Association and the Joint Commission. Additionally, as a facility that contracts with
16 ICE to house civil immigration detainees, FCI Victorville may also be inspected by
17 ICE to ensure compliance with its contract. Given that Defendants have made the
18 facility available for tours, inspections, and document review by many groups,
19 Plaintiffs' requests would cause no prejudice to Defendants.

20 Plaintiffs seek to observe conditions in the facilities, to review readily
21 available records, and to ask questions of agency representatives about the contract
22 and policies that govern the detention conditions at FCI Victorville. Plaintiffs do not
23 request that Defendants conduct any extensive document searches or create any
24 reports not already kept in the ordinary course of business.

25 **E. Plaintiffs' Requests Come Several Months in Advance of the Rule**
26 **26(f) Conference.**

27 As for the fifth factor, Plaintiffs' expedited discovery requests come several
28 months before discovery would ordinarily be permitted. For the reasons already

1 stated, this is precisely why expedited discovery is so crucial in this case. Weighing
2 the minimal burden to Defendants against ongoing constitutional violations and the
3 substantial risk of physical, psychological, and spiritual harm to current and future
4 civil immigration detainees, as well as the risk that key evidence will no longer be
5 available after the Rule 26(f) conference, Plaintiffs’ request to expedite discovery is
6 highly justified in this case. Without an order expediting discovery, Plaintiffs would
7 be forced to wait months—until well after the Rule 26(f) conference—to secure
8 important evidence to support a preliminary injunction motion. Such delay is
9 unwarranted in the face of such ongoing, widespread, and systematic constitutional
10 violations and failures on the part of the BOP and ICE.

11 **V. CONCLUSION**

12 Hundreds of civil immigration detainees are being subjected to cruel,
13 inhumane, and punitive conditions each and every day at FCI Victorville. They are
14 routinely deprived of basic human needs, including adequate medical care, mental
15 health care, food, and healthy, sanitary conditions. Additionally, they are prevented
16 from practicing according to their religious beliefs. Plaintiffs are seeking
17 preliminary injunctive relief on behalf of putative class members to stop the
18 widespread pattern of unconstitutional conditions. By this motion, Plaintiffs merely
19 seek the opportunity to gather evidence showing the full extent of these violations to
20 support their preliminary injunction motion and to ensure that the relevant evidence
21 is not subject to loss or spoliation.

22 For all of the foregoing reasons, Plaintiffs respectfully request that the Court
23 grant their expedited discovery requests.

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DATED: September 11, 2018

ACLU FOUNDATION
David C. Fathi
Daniel Mach
Victoria Lopez
Heather L. Weaver

Respectfully submitted,

By: /s/ Margot Mendelson

PRISON LAW OFFICE
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Corene Kendrick
Margot Mendelson
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Jason S. Rosenberg
Ellyn L. Moscovitz
Anne E. Smiddy

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Civil Action No. 5:18-cv-01609-JGB-KK

STEPHENSON AWAH TENENG , et al.

Plaintiff(s),

v.

DONALD J. TRUMP , et al.

Defendant(s).

DECLARATION OF ANA M. DIAZ

I, Ana M. Diaz, do hereby declare:

1. I am over 18 years of age and am competent to make this Declaration. I make this Declaration on personal knowledge.

2. I am a paralegal employed by the Civil Rights Education and Enforcement Center (“CREEC”).

3. On July 16, 2018, I called the Federal Correctional Institution, Victorville (“Victorville”) at its main phone line, 760-530-5700, listed on its website at bop.gov/locations/institutions/vvm/. I spoke to an operator who transferred me to the medical records department, and inquired as to the process of submitting medical records requests. The officer in that department instructed me to fax records requests, along with signed release forms, to the medical records department at 760-530-5762 and 760-530-5765.

4. That same day, I sent a fax using efax.com to the medical records department at Victorville, using the two fax numbers given to me by the officer. In the fax, I requested the release of all medical and mental health records pertaining to Marlon Escoto-Cortez, and

attached forms A0192 and A0621, signed by Mr. Escoto-Cortez. I received confirmations from efax.com that the faxes were transmitted successfully.

5. That same day, I received a faxed response from 760-530-5700, with a handwritten note stating “unfortunately the Detainee left our facility on 7/12/18.” It was signed by P. Cast, a Health Information Technician at Victorville. There was no further information in the message.

6. On July 17, 2018, I emailed Vicky Perez at VJPerez@correctcaresolutions.com, a medical records clerk at Adelanto ICE Processing Center (“Adelanto”), to request all medical and mental health records for Mr. Escoto-Cortez, including records that may have been transferred from Bureau of Prisons (“BOP”) since he was previously detained at Victorville. I attached to the email a Privacy Waiver (ICE Form 60-001), signed by Mr. Escoto Cortez.

7. That same day, I received an email response from Ms. Perez that the records I requested were ready to be picked up. I replied via email on July 18, 2018, informing her that we were not local to the area and asking that she send the records via fax or email.

8. On July 19, 2018, I spoke with Ms. Perez on the phone, who informed me that Adelanto did not have Mr. Escoto-Cortez’s medical records from Victorville, since that is a BOP facility, and any records he had during that time had not been forwarded to them by BOP.

9. That day and the days following, I called Victorville’s main facility line to attempt to speak to the medical records department, with no success: I was told either that the medical records staff was not in, or no one answered the main phone line.

10. On July 19, 2018, I faxed a second request to the medical records department at Victorville using the two fax numbers previously given me, informing them that Mr. Escoto-Cortez’s current facility was not in possession of his records, and requesting again that any records they have be forwarded to CREEC. I also requested that, if his records were no longer in

their possession, they would advise me as to where the records had been transferred to. I received no reply.

11. On July 25, 2018, my colleague Safietou Marième Diop, a paralegal at our office, faxed medical records requests on my behalf to the Medical Department of Victorville, requesting the release of all medical records for detainees Oscar Colindres, Ousmane Diallo, Vicente Orellana, Roger Padilla Flores and Stephenson Teneng, and attached to each fax the detainees' signed release forms, including forms BP-A0192 and/or BP-A0621. She then called the main phone line of FCI Victorville to confirm receipt of the faxes, but no one answered.

12. On Friday, August 3, 2018, I sent a fax to Victorville using the two fax numbers previously provided to me, requesting all medical and mental health records for detainee Ankush Kumar, and attaching a release form signed by Mr. Kumar (form BP-A0621). At approximately 4:00 PM MDT, I called the facility's main line, and was told by the operator that the medical records staff had left for the day, and that I should call back around 9:00 AM GMT on Monday, August 6.

13. On Monday, August 6, 2018 at approximately 9:00 AM GMT, I called the main line at Victorville and requested to be transferred to the medical records department. I was told by the operator that medical records staff was not in, and was instructed to call back in one hour.

14. At approximately 10:11 AM GMT that same day, I called the main facility line and asked for the medical records department. A man who identified himself as Cast answered the phone. I told him I was calling to confirm that they received my faxed records request for Ankush Kumar. He stated that they did receive the request, but that he was not able to process it because it was submitted by a third party. He informed me that BOP inmates typically request their records directly from the facility by filling out a Request to Staff, or a third-party attorney submits a

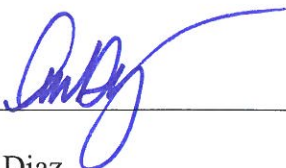
request to the Release of Information section of the central office, which reviews the request before sending it to Victorville. He did not have the contact information for the central office, and informed me that this can be found online. He stated that, because this process is specific to inmates, it may not be relevant to detainees, and that they have not received guidance on how to handle records requests for detainees. He also said that he has been forwarding all requests for medical records to an executive assistant at Victorville who handles information relating to outside sources. He did not give me this person's contact information.

15. That same day, at approximately 3:30 PM MDT I called the Central Office of BOP at 202-616-7750 and left a voicemail inquiring if the process for requesting medical records was different for ICE detainees than for BOP inmates. The recording on the voicemail stated that my call would be returned in the order it was received.

16. I have not heard back from the BOP central office. Given the futility of my efforts so far, I was instructed by my supervisor to discontinue seeking records. To date, I have not received any of the medical records I have requested. In addition, BOP staff has not confirmed that these records can be sent to me, and I have received no clear instruction regarding the process of requesting records for ICE detainees held at Victorville.

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

Signed at Denver, Colorado on September 10, 2018.



Ana M. Diaz

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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;
23 HUGH J. HURWITZ, Acting Director,
Federal Bureau of Prisons,
24 DAVID SHINN, Warden, FCI
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
EXPEDITED DISCOVERY**

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

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

1 The Court, having considered Plaintiffs' Motion for Expedited Discovery
2 pursuant to Federal Rules of Civil Procedure 26(d)(1), 30(a)(2)(A)(iii), 34(a), and
3 Local Rule 26, and finding that good cause appears, GRANTS Plaintiffs' motion
4 and orders as follows:

5 1) Defendants shall identify and produce the following categories of
6 documents on or before October 22, 2018:

7 a. All FCI Victorville health care policies and procedures other than BOP
8 or ICE policies;

9 b. Health care records of ICE detainees who have signed releases;

10 c. Documents sufficient to show staffing and vacancy levels for custody
11 and health care from the date that the ICE detainees first arrived to the present;

12 d. Lists of programs available to prisoners and lists of programs available
13 to ICE detainees and ICE logs of detainee attendance at those programs;

14 e. All documents relating to ICE detainees' ability to engage in religious
15 exercise, including documents showing religious programming or services, and
16 religious accommodations, provided or denied to ICE detainees;

17 f. Documents sufficient to show the number of ICE detainees held at FCI
18 Victorville, the average length of stay for an ICE detainee, and the countries of
19 origin for ICE detainees; and

20 g. Any requests from any governmental entity, including, without
21 limitation, the United States Office of Special Counsel, concerning the conditions of
22 confinement of ICE detainees at FCI Victorville, and any responses to such requests.

23 2) Defendants shall produce for deposition on or before October 29, 2018
24 designees of the BOP and ICE under Rule 30(b)(6) most knowledgeable about:

25 a. FCI Victorville's health care operations (including but not limited to
26 screening, sick call, chronic care, medication administration, mental health care,
27 dental care, emergency care, infectious diseases, and/or specialty care);

28 b. The prison's chaplaincy program, religious programming and services for

1 detainees, and religious accommodations for ICE detainees;
2 c. Custodial operations in the units in which ICE detainees are incarcerated;
3 d. Custodial operations in the units in which prisoners are incarcerated; and
4 e. Any training that FCI Victorville staff received in connection with the
5 detention of ICE detainees at the facility.

6 3) Defendants shall produce for deposition on or before October 29, 2018
7 John Kostelnik, President of the American Federation of Government Employees
8 Local 3969, which represents custody officers at FCI Victorville.

9 4) Defendants shall permit a Rule 34 inspection of the prison during the
10 week of October 29, 2018 by three of plaintiffs’ experts, accompanied by Plaintiffs’
11 counsel, including ability to talk to staff and ICE detainees and inspection of health
12 care records and related documents such as chronic care logs, specialty
13 appointments, hospitalization logs, emergency room logs, etc.

14
15 **IT IS SO ORDERED.**

16
17 Dated: _____
18
19 The Honorable Jesus G. Bernal
20 U.S. District Judge
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