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14
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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **EASTERN DIVISION – RIVERSIDE**

19 FAOUR ABDALLAH FRAIHAT, *et al.*,
20 Plaintiffs,
21 v.
22 U.S. IMMIGRATION AND CUSTOMS
23 ENFORCEMENT, *et al.*,
24 Defendants.

Case No.: 19-cv-01546-JGB(SHKx)

**PLAINTIFFS’ OPPOSITION TO
DEFENDANTS’ *EX PARTE*
APPLICATION TO RENOTICE
PLAINTIFFS’ EMERGENCY
MOTIONS FOR A LATER
HEARING DATE**

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27 *Admitted Pro Hac Vice; **Pro Hac Vice Application Forthcoming
28

1 Plaintiffs respectfully request that the Court deny Defendants' *ex parte*
2 application to re-notice Plaintiffs' emergency motions for preliminary injunction
3 and class certification to a later hearing date. ("Defs.' *Ex Parte* Appl.") ECF No.
4 85. The grounds for Plaintiffs' opposition are set forth below.

5 The COVID-19 pandemic poses an unprecedented and lethal threat to the
6 lives of Plaintiffs and the putative subclass members. There can be no serious
7 dispute that COVID-19 will infect people in immigration detention.¹ Indeed, there
8 is already at least one documented COVID-19 case for a person detained by ICE,²
9 and multiple ICE detention center staff have become infected.³ These already
10 documented cases are likely just the tip of the iceberg in terms of the number of
11 positive cases given (i) COVID-19's long incubation period; (ii) that many people
12 show few or no symptoms; and (iii) that ICE is not conducting large scale testing.
13 At this crucial moment in stymying the disease's progression and mortality rates,
14 the question therefore is not *if* or even *when* COVID-19 will infect people in ICE
15 detention. Rather, the crucial question is: *How many medically vulnerable people*
16 *will get sick, suffer complications, and ultimately die if ICE continues with its*
17 *inadequate response?* An expedited hearing is necessary to ensure that Plaintiffs
18 and other people with Risk Factors are immediately taken out of harm's way
19 before they, too, fall victim to this deadly illness.

20
21
22 ¹ Decl. of Homer Venters in Supp. of Mot. for Prelim. Inj. and Class Certification
23 ("Venters Decl."), ECF No. 81-11 at ¶ 7 ("ICE will not be able to stop the entry of
24 COVID-19 into ICE facilities, and the reality is that the infection is likely inside
25 multiple facilities already.").

26 ² Hamed Aleaziz, *An Ice Detainee Has Become the First to Test Positive for the*
27 *Coronavirus*, BUZZFEED NEWS (Mar. 24, 2020, 3:36 P.M. EST),
28 <https://www.buzzfeednews.com/article/hamedaleaziz/immigrant-ice-detention-facility-coronavirus-test>.

³ Emily Kassie, *First ICE Emp. Tests Positive for Coronavirus*, THE MARSHALL PROJECT (Mar. 19, 8:15 PM), <https://www.themarshallproject.org/2020/03/19/firstice-employee-tests-positive-for-coronavirus>; Judy Stone, *Immigrant Detainees Are Sitting On A COVID-19 Time Bomb - First Infection Reported*, FORBES (Mar. 24, 2020), <https://www.forbes.com/sites/judystone/2020/03/24/immigrant-detainees-are-sitting-on-a-covid-19-time-bombfirst-infection-reported/#42029c953af2>,

1 As detailed in Plaintiffs’ Emergency Motion for Preliminary Injunction and
2 the substantial evidence in support thereof, COVID-19 will rapidly spread
3 throughout ICE detention centers for a number of reasons, including: the inability
4 to conduct social distancing in congregate settings, the frequent movement of staff
5 and newly detained people into facilities, and the lack of access to medical staff to
6 stop the spread.⁴ Plaintiffs and similarly situated people with Risk-Factors will be
7 especially vulnerable to sickness, serious complications, and death from COVID-
8 19.⁵

9 Further, substantial evidence shows that ICE’s response to the COVID-19
10 pandemic—especially as it relates to medically vulnerable people—has been
11 dangerously inadequate, which exponentially magnifies the high risks of COVID-
12 19 inherent in the detention setting. As Dr. Venters’s report details, ICE’s response
13 to COVID-19 has serious and dangerous defects including: failures to screen
14 medically vulnerable people and implement corresponding precautions; inadequate
15 screening mechanisms; inadequate infection control procedures; inadequate
16 guidance to clinicians on when to test and hospitalize; failure to account for
17 infection surge and corresponding impact on preexisting inadequacies of facility,
18 equipment, and staffing capabilities; failures to consider the medical necessity of
19 release; amongst other defects.⁶ The substantial risk of harm stemming from these
20 defects will be exacerbated by ICE’s pre-existing inadequate healthcare system and
21 long-entrenched failures to conduct meaningful oversight of medical care.⁷ In sum,
22

23 ⁴ See Pls.’ Mem. in Supp. of Emergency Mot. for Prelim. Inj. (“Memo in Support
24 of P.I.”), ECF No. 81-1 at 5-6; *see also, e.g.*, Venters Decl. ¶ 8; Letter from Dr.
25 Scott Allen and Dr. Josiah Rich to Congressman Bennie Thompson et al. (Mar. 19,
26 2020), Ex. E to ECF No. 83-4 at 3-4; Decl. of Jaimie Meyer in Supp. of Mot. for
27 Prelim. Inj. and Class Certification, ECF No. 81-8 ¶¶ 7-19.

28 ⁵ Memo in Support of P.I. at 6-7.

⁶ Venters Decl. at ¶¶ 21-22; Memo in Support of P.I. at 10.

⁷ Memo in Support of P.I. at 6-7.

1 absent immediate emergency relief, Plaintiffs and other medically vulnerable
2 people will almost certainly get sick, suffer complications, and die.

3 Defendants are simply wrong that this Court must mechanically follow the
4 schedule specified in Local Rule 6-1. Courts have broad discretion in the
5 application of the Local Rules. *Threshold Media Corp. v. Relatively Media, LLC*,
6 CV 10-09318 DMG (AJWx), 2013 WL 12331550, *1 (C.D. Cal. Mar. 19, 2013).
7 Accordingly, courts routinely expedite hearings on motions for preliminary
8 injunctions. *See, e.g., Green Island Produce, Inc. v. Azusa Supermarket, Inc.*, No.
9 CV 18-2196-DMG, 2018 WL 1942553 (C.D. Cal. Mar. 16, 2018).

10 Further, nowhere in Defendants' motion do they dispute that the issues
11 underlying Plaintiffs' motions are urgent from a medical and public health
12 perspective. Nor could they. Instead, Defendants merely contend that they need
13 additional time to respond "given the volume of Plaintiffs' filings."⁸ But
14 Defendants' alleged need for additional time to respond pales in comparison to the
15 urgent and immediate needs of medically vulnerable people to be taken out of
16 harm's way before they are infected with and potentially killed by COVID-19.

17 Defendants also ignore that, if a hearing is delayed by 28 days, then
18 infection and mortality numbers will exponentially increase with each day of
19 delay. At the time Plaintiffs filed their motions, approximately 46,000 people had
20 been infected with and 600 people had died from COVID-19 in the United States.⁹
21 Just two days later, there are now over 75,000 confirmed cases and over 1000
22 deaths in the United States.¹⁰ As these startling statistics lay bare, each day that
23 passes before a hearing exponentially increases the likelihood that Plaintiffs and
24

25 ⁸ Defs.' *Ex Parte* Appl., ECF No. 85 at 4.

26 ⁹ Memo in Support of P.I. at 6.

27 ¹⁰ *Coronavirus COVID-19 Global Cases by the Ctr. for Sys. Sci. and Eng'g*
28 *(CSSE) at John Hopkins Univ.*, JOHN HOPKINS UNIV. & MED. (Mar. 24,
2020), <https://coronavirus.jhu.edu/map.html>

1 other medically vulnerable will be infected without adequate and medically
2 necessary safeguards.

3 For these reasons, Plaintiffs respectfully request that the Court deny
4 Defendants’ *ex parte* application and allow an immediate hearing on Plaintiffs’
5 emergency motions.

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7 DATED: March 26, 2020

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9 Respectfully Submitted,

10
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