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6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**
8 **WESTERN DIVISION**

8 AL OTRO LADO and EDWIN F.)
9 MANDEL LEGAL AID CLINIC)
10 Plaintiffs,)
11 vs.)

11 UNITED STATES DEPARTMENT)
12 OF HOMELAND SECURITY,)
13 UNITED STATES CUSTOMS AND)
14 BORDER PROTECTION, and)
15 UNITED STATES IMMIGRATION)
16 AND CUSTOMS ENFORCEMENT,)
17 Defendants.)

Case No.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

18 **INTRODUCTION**

19 1. This is an action under the Freedom of Information Act (“FOIA”), 5
20 U.S.C. § 552, to compel the U.S. Department of Homeland Security (“DHS”), U.S.

1 Customs and Border Protection (“CBP”), and U.S. Immigration and Customs
2 Enforcement (“ICE”) to conduct a proper search for and disclose records possessed
3 by these government agencies regarding the COVID-19 outbreak at the following
4 facilities (hereinafter the “facilities”): Adelanto Detention Center (“Adelanto”),
5 Otay Mesa Detention Center (“Otay Mesa”), and all land ports of entry and Border
6 Patrol stations in California.

7 2. The documents have been requested by Al Otro Lado (“AOL”) and
8 the Edwin F. Mandel Legal Aid Clinic at the University of Chicago Law School
9 (“Mandel Clinic”) (together, “Requesters”). AOL is a bi-national non-profit legal
10 services organization established to serve indigent refugees, migrants, and
11 deportees in the U.S. and Mexico. AOL regularly provides information and
12 analysis to the media and the general public, as well as international organizations
13 and human rights monitoring bodies. The Edwin F. Mandel Legal Aid Clinic is a
14 non-profit legal aid clinic at the University of Chicago Law School.

15 3. It has been 23 business days since DHS, CBP, and ICE granted
16 Requester’s request for expedited processing. DHS, CBP, and ICE have failed to
17 make a determination about production within the twenty-business day statutory
18 deadline.

19 4. The records sought by Requesters’ FOIA request are critically
20 important to assist detained persons, families and friends of detained persons,

1 attorneys, and the general public in understanding how the U.S. government treats
2 people in its custody who are at serious risk due to the COVID-19 pandemic.

3 5. The facilities targeted by this request have been hit particularly hard
4 by the COVID-19 pandemic, with Otay Mesa being the site of the largest COVID-
5 19 outbreak of any ICE detention facility nationwide.¹ Many immigrant detainees
6 have preexisting conditions or comorbidities that place them at higher risk for
7 severe illness or death arising from COVID-19.² In late April 2020, twelve
8 immigrant detainees at Otay Mesa went on a hunger strike in order to protest the
9 lack of sanitary precautions being taken at the facility.³ Nationwide, more than half
10

11 ¹ Kate Morrissey, SAN DIEGO UNION-TRIBUNE, *After judge's order, ICE has*
12 *released just 2 Otay Mesa detainees identified as 'medically vulnerable' so far*
(May 4, 2020),

13 [https://www.sandiegouniontribune.com/news/immigration/story/2020-05-](https://www.sandiegouniontribune.com/news/immigration/story/2020-05-04/after-judges-order-ice-has-so-far-released-2-otay-mesa-detainees-identified-as-medically-vulnerable)
14 [04/after-judges-order-ice-has-so-far-released-2-otay-mesa-detainees-identified-](https://www.sandiegouniontribune.com/news/immigration/story/2020-05-04/after-judges-order-ice-has-so-far-released-2-otay-mesa-detainees-identified-as-medically-vulnerable)
15 [as-medically-vulnerable](https://www.sandiegouniontribune.com/news/immigration/story/2020-05-04/after-judges-order-ice-has-so-far-released-2-otay-mesa-detainees-identified-as-medically-vulnerable); Alison St John and Marissa Cabrera, KPBS, *ICE Slow*
to Release Otay Mesa Detainees at High Risk from COVID-19 (May 5, 2020),
[https://www.kpbs.org/news/2020/may/05/ice-slow-release-otay-mesa-detainees-](https://www.kpbs.org/news/2020/may/05/ice-slow-release-otay-mesa-detainees-high-risk-cov/)
[high-risk-cov/](https://www.kpbs.org/news/2020/may/05/ice-slow-release-otay-mesa-detainees-high-risk-cov/).

16 ² See Shannon Dooling, WBUR, *'They Fear That They're Going To Die Here';*
17 *ICE Detainees in Bristol County Speak Out on COVID-19 Concerns* (Mar. 24,
18 2020), [https://www.wbur.org/news/2020/03/24/bristol-county-detainees-](https://www.wbur.org/news/2020/03/24/bristol-county-detainees-immigration-ice-covid-19-coronavirus)
[immigration-ice-covid-19-coronavirus](https://www.wbur.org/news/2020/03/24/bristol-county-detainees-immigration-ice-covid-19-coronavirus); Centers for Disease Control and
Prevention, *People Who Are at Higher Risk for Severe Illness* (Apr. 15, 2020),
available at [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html)
[precautions/people-at-higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html).

19 ³ Max Rivkin-Nadler, KPBS, *Immigrant Advocates Try to Deliver Masks to Otay*
20 *Mesa Detention Center* (Apr. 24, 2020),
[https://www.kpbs.org/news/2020/apr/24/immigrant-advocates-try-deliver-masks-](https://www.kpbs.org/news/2020/apr/24/immigrant-advocates-try-deliver-masks-site-biggest/)
[site-biggest/](https://www.kpbs.org/news/2020/apr/24/immigrant-advocates-try-deliver-masks-site-biggest/).

1 of the 3,146 detainees that have been tested for COVID-19 as of June 4, 2020 have
2 tested positive for the virus,⁴ and at least five people—two detainees and three
3 detention facility guards— have died due to exposure at ICE detention centers.⁵

4 6. This request for public records comes at a time when the public and
5 media have shown a “widespread and exceptional . . . interest in” the issue of
6 COVID-19 infections in immigration detention facilities and the associated risks
7 of contagion, sickness, and death that immigrant detainees presently face in ICE
8 and CBP custody.⁶ DHS, CBP, and ICE have failed to substantively and adequately
9 respond to Requester’s urgent request for information.

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11 ⁴ U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19*
(Jun. 4, 2020), <https://www.ice.gov/coronavirus>.

12 ⁵ Seth Freed Wessler, *Fear, Illness and Death in ICE Detention: How a Protest*
Grew on the Inside (Jun. 4, 2020),

13 <https://www.nytimes.com/2020/06/04/magazine/covid-ice.html>; Lisa Riordan
Seville & Hannah Rappleye, NBC NEWS, *ICE Keeps Transferring Detainees*
around the Country, Leading to COVID-19 Outbreaks (May 31, 2020),
14 [https://www.nbcnews.com/politics/immigration/ice-keeps-transferring-detainees-](https://www.nbcnews.com/politics/immigration/ice-keeps-transferring-detainees-around-country-leading-covid-19-outbreaks-n1212856)
[around-country-leading-covid-19-outbreaks-n1212856](https://www.nbcnews.com/politics/immigration/ice-keeps-transferring-detainees-around-country-leading-covid-19-outbreaks-n1212856).

15 ⁶ See Press Release, Senator Kamala Harris, Harris Statement on Inhumane
Conditions at Otay Mesa Detention Center (Apr. 12, 2020), available at
16 [https://www.harris.senate.gov/news/press-releases/harris-statement-on-](https://www.harris.senate.gov/news/press-releases/harris-statement-on-inhumane-conditions-at-otay-mesa-detention-center)
[inhumane-conditions-at-otay-mesa-detention-center](https://www.harris.senate.gov/news/press-releases/harris-statement-on-inhumane-conditions-at-otay-mesa-detention-center); Press Release, Senator
17 Dianne Feinstein, Feinstein to ICE: Protect Detained Immigrants from
Coronavirus, Allow Supervised Release (Apr. 27, 2020), available at
18 [https://www.feinstein.senate.gov/public/index.cfm/press-](https://www.feinstein.senate.gov/public/index.cfm/press-releases?id=D4B25E9D-55D4-4B69-A146-8398827EE027)
[releases?id=D4B25E9D-55D4-4B69-A146-8398827EE027](https://www.feinstein.senate.gov/public/index.cfm/press-releases?id=D4B25E9D-55D4-4B69-A146-8398827EE027) (summarizing
19 Senator Feinstein’s April 27, 2020 letter to Acting ICE Director Matthew T.
Albence); Kate Morrissey, SAN DIEGO UNION-TRIBUNE, *As coronavirus spreads*
in federal detention center, calls for widescale release grow (Apr. 12, 2020),
20 <https://www.sandiegouniontribune.com/news/immigration/story/2020-04->

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and (a)(6)(C)(i). Because this action arises under the federal laws of the United States, this Court also has jurisdiction pursuant to 28 U.S.C. § 1331.

8. Venue properly rests with this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1)(C) because Plaintiff AOL resides or has its principal place of business within this District.

9. Plaintiff has exhausted any and all administrative remedies in connection with its FOIA requests, as detailed below.

[12/coronavirus-spread-in-otay-mesa-detention-center](https://www.latimes.com/california/story/2020-04-24/judge-orders-ice-reduce-immigrant-detainees-adelanto-facility); Andrea Castillo, LOS ANGELES TIMES, *Judge Orders ICE to reduce number of immigrant detainees at California facility* (April 24, 2020), <https://www.latimes.com/california/story/2020-04-24/judge-orders-ice-reduce-immigrant-detainees-adelanto-facility>; Tanvi Misra, ROLL CALL, *ICE’s COVID-19 test figures hint at health crisis in detention* (April 17, 2020), <https://www.rollcall.com/2020/04/17/ices-covid-19-test-figures-hint-at-health-crisis-in-detention/>; Jessica Schladebeck, NEW YORK DAILY NEWS, *San Diego immigration detention center turns down masks donated to protect detainees from coronavirus* (Apr. 25, 2020), <https://www.nydailynews.com/coronavirus/ny-coronavirus-san-diego-immigration-detention-center-masks-donated-20200425-4ofwikhmijeovo357f63x2k4oe-story.html>; *See also* Joshua Matz, THE ATLANTIC, *The Coronavirus Is Testing America’s Commitment to People’s Constitutional Rights* (April 20, 2020), <https://www.theatlantic.com/ideas/archive/2020/04/coronavirus-jails-constitutional-rights/610216/> (examining immigrant detainees’ COVID-related due process claims).

PARTIES

1
2 10. Plaintiff AOL is a bi-national non-profit legal services organization
3 established to serve refugees, migrants, and deportees in the U.S. and Mexico.
4 AOL regularly provides information and analysis to the media and the general
5 public, as well as to international human rights advocacy organizations and human
6 rights monitoring bodies. AOL actively shares and disseminates information about
7 its work and conditions on the U.S.-Mexico border through its various social media
8 accounts and website.⁷ Disseminating information to the public is a critical
9 component of AOL’s work. AOL does this at no cost to the public.

10 11. Plaintiff Mandel Clinic is a non-profit legal aid clinic at the University
11 of Chicago Law School. The Mandel Clinic publishes documents that compile and
12 analyze information regarding legal developments that affect immigrant
13 populations at no cost to the public.⁸

14 12. Defendant DHS is a department of the executive branch of the United
15 States government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).
16 DHS is responsible for, *inter alia*, administering and enforcing federal immigration
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18

⁷ See e.g.,
19 https://twitter.com/AlOtroLado_Org?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor; <https://alotrolado.org/programs/border-rights-project/>.

⁸ See <https://www.law.uchicago.edu/clinics/immigrants>.

1 laws. Upon information and belief, DHS has possession and control over records
2 requested by Requesters.

3 13. Defendant CBP is a component of DHS and an agency within the
4 meaning of 5 U.S.C. § 552(f)(1). CBP is the largest law enforcement agency within
5 DHS and, among other duties, operates and oversees ports of entry and Border
6 Patrol stations. Upon information and belief, CBP has possession and control over
7 records requested by Requesters.

8 14. Defendant ICE is a component of DHS and an agency within the
9 meaning of 5 U.S.C. § 552(f)(1). ICE is the largest investigative arm of DHS and,
10 among other duties, operates and oversees detention facilities. Upon information
11 and belief, ICE has possession and control over records requested by Requesters.

12 **BACKGROUND**

13 15. Since the first case of the COVID-19 virus was confirmed in the
14 United States, in January 2020, the disease has spread rapidly throughout the
15 country, infecting over 1.8 million people and killing over 114,000.⁹ To reduce the
16 spread of the virus, federal, state, and local government actors have implemented
17 unprecedented social distancing measures to separate people from one another and
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19 _____
20 ⁹ Centers for Disease Control and Prevention, *Coronavirus Disease 2019*
21 (*COVID-19*): *Cases in the US* (Jun. 5, 2020),
22 <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

1 prevent person-to-person spread.¹⁰ Despite such measures, the tremendous flood
2 of COVID-19 cases has often overwhelmed available medical resources.¹¹

3 16. People in detention centers are particularly vulnerable to the COVID-
4 19 virus. Over the past months, experts have warned that immigrant detention
5 centers are “primed for uncontrolled coronavirus transmission” and amount to “a
6 public health disaster in the making.”¹² In a report issued May 6, 2020, the CDC
7 warned that detention facilities “face challenges in controlling the spread of
8 infectious diseases because of crowded, shared environments and potential
9 introductions by staff members and new intakes.”¹³

10 17. In addition to the risks that arise from crowding, detention centers also
11 pose a serious risk because of poor health care practices. Numerous reports have
12 found that detention centers often have unsanitary conditions and limited medical
13

14 ¹⁰ Sarah Mervosh, Denise Lu, and Vanessa Swales, N.Y. TIMES, *See Which States*
15 *and Cities Have Told Residents to Stay at Home* (Apr. 20, 2020),
[https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-](https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html)
16 [order.html](https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html).

17 ¹¹ See, e.g., Melanie Evans, WALL STREET JOURNAL, *US Strategic Stockpile of*
Medical Supplies Is Outmatched by Coronavirus (Mar. 23, 2020),
18 [https://www.wsj.com/articles/u-s-strategic-stockpile-of-medical-supplies-is-](https://www.wsj.com/articles/u-s-strategic-stockpile-of-medical-supplies-is-outmatched-by-coronavirus-11584990542)
19 [outmatched-by-coronavirus-11584990542](https://www.wsj.com/articles/u-s-strategic-stockpile-of-medical-supplies-is-outmatched-by-coronavirus-11584990542).

20 ¹² Jackie Powder, JOHNS HOPKINS BLOOMBERG SCHOOL OF PUBLIC HEALTH:
COVID-19 – SCHOOL OF PUBLIC HEALTH EXPERT INSIGHTS, *Detained and*
Vulnerable to COVID-19 (Apr. 3, 2020), [https://www.jhsph.edu/covid-](https://www.jhsph.edu/covid-19/articles/detained-and-vulnerable-to-covid-19.html)
19 [19/articles/detained-and-vulnerable-to-covid-19.html](https://www.jhsph.edu/covid-19/articles/detained-and-vulnerable-to-covid-19.html).

20 ¹³ Megan Wallace et al., CENTERS FOR DISEASE CONTROL AND PREVENTION (May
6, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e1.htm>.

1 resources, while detainees lack basic personal hygiene products such as hand soap
2 or clean towels.¹⁴ Detainees at various detention centers have reported recent
3 outbreaks of other diseases, week-long waits for doctors to see broken bones, mold,
4 leaks, clogged toilets in close proximity to beds, poor ventilation, gray drinking
5 water, and total absence of soap or cleaning supplies.¹⁵ The notoriously poor health
6 and hygiene practices at detention centers make them particularly likely sites for
7 COVID-19 outbreaks, and render them gravely unprepared to address such
8 outbreaks.

9 18. Thousands of immigrant detainees are currently held in DHS
10 detention facilities across Southern California, where they are in danger of
11 contracting COVID-19. Many immigrant detainees have preexisting conditions or
12 comorbidities that place them at higher risk for severe illness or death as a result
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14 ¹⁴ See, e.g., Joshua Matz, THE ATLANTIC, *The Coronavirus Is Testing America's*
15 *Commitment to People's Constitutional Rights* (Apr. 20, 2020),
[https://www.theatlantic.com/ideas/archive/2020/04/coronavirus-jails-
16 constitutional-rights/610216/](https://www.theatlantic.com/ideas/archive/2020/04/coronavirus-jails-constitutional-rights/610216/), (describing limited medical care and unsanitary
living spaces at immigration detention facilities); Dahlia Lithwick, SLATE
17 MAGAZINE, *A New COVID-19 Lawsuit Seeks to Challenge the Horrifying*
Conditions in Los Angeles Jails (Apr. 24, 2020), [https://slate.com/news-and-
18 politics/2020/04/covid-19-lawsuit-los-angeles-jails.html](https://slate.com/news-and-politics/2020/04/covid-19-lawsuit-los-angeles-jails.html) (describing risks arising
from crowded conditions, shared facilities, and extremely limited hygiene
products)>.

19 ¹⁵ Eunice Cho, ACLU, *Immigration Detention Was a Black Box Before COVID-*
20 *19. Now, It's a Death Trap*. (Apr. 30, 2020),
[https://www.aclu.org/news/immigrants-rights/immigration-detention-was-a-
black-box-before-covid-19-now-its-a-death-trap/](https://www.aclu.org/news/immigrants-rights/immigration-detention-was-a-black-box-before-covid-19-now-its-a-death-trap/).

1 of COVID-19.¹⁶ Those risks are not limited to ICE detention facilities. As of June
2 4, 2020, 436 CBP employees nationwide – including 96 in California – had been
3 diagnosed with COVID-19.¹⁷

4 19. COVID-19 has already spread to at least 55 of ICE’s detention
5 facilities throughout the country, which total around 200.¹⁸ At least 1,623
6 immigrants in ICE custody had tested positive for COVID-19 as of June 4, 2020,
7 even though only 3,146 detainees had been tested out of more than 25,000.¹⁹ In
8 other words, over half of tested individuals have contracted COVID-19, indicating
9 that hundreds, if not thousands, of untested individuals have probably contracted
10 the virus as well. In a nationwide CDC report aggregating data from prison and
11 detention facilities, about half of cases identified through facility-wide testing were
12 among asymptomatic and presymptomatic persons,²⁰ further indicating that the
13 number of COVID-19 cases in ICE facilities is probably far greater than those
14 discovered through the extremely limited testing to date.

17 ¹⁶ See Dooling, *supra* note 2; Centers for Disease Control and Prevention, *supra*
note 2.

18 ¹⁷ U.S. Customs and Border Protection, *CBP COVID-19 Updates and*
19 *Announcements* (Jun. 4, 2020), <https://www.cbp.gov/newsroom/coronavirus#>.

19 ¹⁸ Seville & Rappleye, *supra* note 5.

20 ¹⁹ *Id*; U.S. Customs and Border Protection Immigration and Customs
Enforcement, *supra* note 417.

- - ²⁰ Wallace et al., *supra* note 13.

1 20. The Otay Mesa Detention Center, one of the targets of the FOIA
2 request, is the site of the largest COVID-19 outbreak of any ICE detention facility
3 in the nation.²¹ At least 160 ICE detainees and 11 ICE employees had tested
4 positive as of June 4, 2020, and one immigrant has died of the virus.²² By May 8,
5 2020, the facility was responsible for almost half of all cases in the 92154 zip code,
6 making it the largest COVID-19 hot spot in San Diego.²³

7 21. Despite the fact that the pandemic spread through the United States
8 months ago, detention facilities have failed to adequately respond. In addition to
9 the severely limited testing described above, which make it impossible to identify
10 and isolate COVID-19 cases, facilities have failed to implement other measures to
11 prevent the spread of the virus. Continued overcrowding in many facilities makes
12

13 ²¹ Judy Stone, FORBES, *ICE Is Fueling Coronavirus Outbreaks, Ignoring CDC*
14 *Guidelines* (Jun. 4, 2020),

14 <https://www.forbes.com/sites/judystone/2020/06/04/ice-is-fueling-coronavirus-outbreaks-ignoring-cdc-guidelines/#5cd5771b5ad4>.

15 ²² U.S. Customs and Immigration Enforcement/Immigration and Customs
16 Enforcement, *supra* note 417; Kelly Hessedal, *Protesters Demand Otay Mesa*
17 *Detention Center Release Detainees amid COVID-19 Outbreak* (May 24, 2020),
17 <https://www.cbs8.com/article/news/health/coronavirus/protesters-demand-otay-mesa-detention-center-release-detainees-amid-covid-19-outbreak/509-ac88d922-942d-4659-a378-ada455cf7118>.

18 ²³ Kate Morrissey, SAN DIEGO UNION-TRIBUNE, *65 More Medically Vulnerable*
19 *ICE Detainees Released from Otay Mesa Detention Center after Judge's Order*
20 (May 8, 2020),
20 <https://www.sandiegouniontribune.com/news/immigration/story/2020-05-08/65-more-medically-vulnerable-ice-detainees-released-from-otay-mesa-detention-center-after-judges-order>.

1 effective social distancing impossible, and ICE has reportedly responded to
2 COVID-19 cases by quarantining potentially infected people in groups, risking
3 transmission between actually infected detainees and those who were not
4 infected.²⁴ Other reports describe inadequate treatment of sick detainees, including
5 long waits to receive care or serious illness treated only with ibuprofen.²⁵ Further,
6 continued transfers of immigrants between detention centers have reportedly led
7 to outbreaks in facilities throughout the country, including Texas, Ohio, Florida,
8 Mississippi, and Louisiana.²⁶ Detainees transferred between facilities have
9 described being crowded into buses with sick detainees.²⁷ Nobody wore masks,
10 and because detainees were handcuffed, they could not even cover their mouths.²⁸

11 22. Even though the outbreak in the Otay Mesa Detention Center began
12 in early April, ICE did not begin releasing vulnerable detainees until early May,
13 and only did so in response to a court order from a federal judge.²⁹ Despite the

14 _____
15 ²⁴ Fernanda Echavarri and Noah Lanard, MOTHER JONES, *A Doctor on ICE's*
16 *Response to the COVID-19 Pandemic: "You Could Call It COVID-19 Torture*
(Apr. 13, 2020), [https://www.motherjones.com/politics/2020/04/a-doctor-on-ices-
response-to-the-pandemic-you-could-call-it-covid-19-torture/](https://www.motherjones.com/politics/2020/04/a-doctor-on-ices-response-to-the-pandemic-you-could-call-it-covid-19-torture/).

17 ²⁵ Bryn Stole and Matt Sledge, NOLA, *Coronavirus Cases Explode in*
18 *Louisiana's Immigration Lock-ups; What Is ICE Doing about It?* (May 2, 2020),
[https://www.nola.com/news/coronavirus/article_ae470c36-8c9f-11ea-8450-
af1b6c53da5c.html](https://www.nola.com/news/coronavirus/article_ae470c36-8c9f-11ea-8450-af1b6c53da5c.html).

19 ²⁶ Seville & Rappleye, *supra* note 5.

20 ²⁷ Seville & Rappleye, *supra* note 5.

²⁸ *Id.*

²⁹ Order Granting Plaintiff-Petitioners' Emergency Ex Parte Motion for Subclass-
Wide Temporary Restraining Order, *Alcantara v Archambeault*, No. 3:20-cv-

1 rapid spread of the infection and the risk of death to vulnerable detainees, ICE only
 2 released two detainees within three days of the court order,³⁰ and released 65 over
 3 the next week, though it had identified 131 medically vulnerable individuals.³¹

4 23. At the same time, alarming reports suggest that detention center staff
 5 have retaliated against detainees for seeking protection from COVID-19.
 6 Throughout the country, detainees and advocates have reported detention center
 7 guards using tear gas, pepper spray, solitary confinement, and physical violence to
 8 respond to detainees speaking out about poor conditions or seeking better
 9 protection from the spread of COVID-19.³²

10 _____
 11 00756-DMS-AHG (S.D. Cal. Apr. 30, 2020), available at
 12 <https://www.aclusandiego.org/wp-content/uploads/2020/04/2020-04-30-38-ORD-Granting-TRO.pdf>; Morrissey, *supra* note 1. A federal court issued a similar
 13 injunction for the Adelanto Detention Center, which is currently stayed pending
 14 appeal. See *Roman v. Wolf*, No. 5:20-cv-00768-TJH-PVC (C.D. Cal., Apr. 23,
 2020), available at
 15 https://www.aclusocal.org/sites/default/files/aclu_social_roman_20200423_order_grantingpi.pdf.

16 ³⁰ *Id.*

17 ³¹ Morrissey, *supra* note 23.

18 ³² Noah Lanard, MOTHER JONES, *ICE Detainees Terrified of the Coronavirus
 19 Wanted to Be Deported. Guards Pepper-Sprayed Them* (Apr. 23, 2020),
 20 <https://www.motherjones.com/politics/2020/04/ice-detainees-terrified-of-the-coronavirus-wanted-to-be-deported-guards-pepper-sprayed-them/>; Debbie
 Nathan, THE INTERCEPT, *Women in ICE Detention Face Reprisals for Speaking
 Up about Fears of COVID-19* (Apr. 28, 2020),
<https://theintercept.com/2020/04/28/ice-detention-coronavirus-videos/>; Cho,
supra note 15 (solitary confinement used to punish Louisiana detainee who spoke
 with journalist about facility conditions); José Olivares, THE INTERCEPT, *ICE's
 Immigration Detainees Protested Lack of Coronavirus Precautions — and
 SWAT-like Private-Prison Guards Pepper-Sprayed Them* (May 5, 2020),

1 24. At the Adelanto Detention Center, one of the detention centers
2 targeted by this request, staff have recently been spraying dangerous amounts of a
3 toxic disinfectant called HDQ throughout the facility.³³ Detainees report that the
4 facility is using HDQ to retaliate against past detainee complaints regarding the
5 facility's inadequate response to COVID-19.³⁴ Staff spray the toxic chemical over
6 50 times each day in poorly-ventilated areas.³⁵ Detainees have reported blistered
7 skin, nosebleeds lasting over five hours, coughing or sneezing blood, fainting, and
8 nausea.³⁶ It is coming into contact with individuals' eyes, noses, mouths, skin,
9 clothing, bedding, food, and drinking water,³⁷ even though it should not be used

10
11 [https://theintercept.com/2020/05/05/ice-stewart-immigration-detention-](https://theintercept.com/2020/05/05/ice-stewart-immigration-detention-coronavirus-protest-pepper-spray/)
12 [coronavirus-protest-pepper-spray/](https://theintercept.com/2020/05/05/ice-stewart-immigration-detention-coronavirus-protest-pepper-spray/); Shannon Dooling, WBUR, *ICE Detainees*
13 *Allege Assault, Isolation Used As Retaliation at Bristol County; Sheriff Denies*
14 *Claims* (May 6, 2020), [https://www.wbur.org/news/2020/05/06/bristol-sheriff-](https://www.wbur.org/news/2020/05/06/bristol-sheriff-hodgson-altercation-recording)
15 [hodgson-altercation-recording](https://www.wbur.org/news/2020/05/06/bristol-sheriff-hodgson-altercation-recording) (Massachusetts detainees allege assault and use of
16 tear gas, paper spray, K9 unit, and solitary confinement against detainees seeking
17 better detention center response to COVID-19).

18 ³³ Canela López, INSIDER, *Report Finds ICE Detention Center is Using a*
19 *Disinfectant over 50 Times a Day that Causes Bleeding and Pain* (Jun. 5, 2020),
20 [https://www.insider.com/report-detention-centers-use-disinfectant-causing-](https://www.insider.com/report-detention-centers-use-disinfectant-causing-bleeding-and-pain-2020-6)
21 [bleeding-and-pain-2020-6](https://www.insider.com/report-detention-centers-use-disinfectant-causing-bleeding-and-pain-2020-6).

22 ³⁴ *Id.*

23 ³⁵ *Id.*

24 ³⁶ Martin Estacio, DAILY PRESS, *Rally Protests Conditions at Adelanto ICE*
25 *Center* (May 28, 2020), [https://www.vvdailynews.com/news/20200528/rally-](https://www.vvdailynews.com/news/20200528/rally-protests-conditions-at-adelanto-ice-center)
26 [protests-conditions-at-adelanto-ice-center](https://www.vvdailynews.com/news/20200528/rally-protests-conditions-at-adelanto-ice-center); López, *supra* note 33.

27 ³⁷ Chantal da Silva, NEWSWEEK, *Over 250,000 Sign Petition to Stop ICE Using*
28 *Powerful Disinfectant as Detainees Allegedly Suffer Serious Side Effects* (Jun. 3,
29 2020), [https://www.newsweek.com/over-250000-sign-petition-stop-ice-using-](https://www.newsweek.com/over-250000-sign-petition-stop-ice-using-powerful-disinfectant-detainees-allegedly-suffer-1508326)
30 [powerful-disinfectant-detainees-allegedly-suffer-1508326](https://www.newsweek.com/over-250000-sign-petition-stop-ice-using-powerful-disinfectant-detainees-allegedly-suffer-1508326).

1 without protective gear, should never be inhaled, and can cause severe skin burns
2 and irreversible eye damages.³⁸

3 25. Despite the grave risks posed by immigrant detention centers during
4 the COVID-19 pandemic, the large number of cases already reported, the
5 inadequate response by government officials, and the troubling reports of
6 retaliation, the public has limited access to information about detention centers'
7 response to the pandemic.³⁹ The records requested – including records regarding
8 the administration of medical care; available medical resources and hygiene
9 products; precautions taken in response to the pandemic; and numbers of detainees
10

11 ³⁸ Spartan Chemical Company, Inc., *Safety Data Sheet* (Sep. 10, 2019),
12 <https://www.spartanchemical.com/sds/downloads/AGHS/EN/1202.pdf>.

13 ³⁹ Eunice Cho, ACLU, *ICE's Lack of Transparency about COVID-10 in*
14 *Detention Will Cost Lives* (May 22, 2020),
15 [https://www.aclu.org/news/immigrants-rights/ices-lack-of-transparency-about-](https://www.aclu.org/news/immigrants-rights/ices-lack-of-transparency-about-covid-19-in-detention-will-cost-lives/)
16 [covid-19-in-detention-will-cost-lives/](https://www.aclu.org/news/immigrants-rights/ices-lack-of-transparency-about-covid-19-in-detention-will-cost-lives/); Alan Gomez, Maria Clark & Rebecca
17 Plevin, USA TODAY, "*Terrified of Dying*": *Immigrants Beg to Be Released from*
18 *Immigration Detention as Coronavirus Spreads* (Apr. 7, 2020),
19 [https://www.usatoday.com/story/news/nation/2020/04/07/covid-19-hits-ice-](https://www.usatoday.com/story/news/nation/2020/04/07/covid-19-hits-ice-detention-migrants-say-they-cant-clean-stay-safe/2953170001/)
20 [detention-migrants-say-they-cant-clean-stay-safe/2953170001/](https://www.usatoday.com/story/news/nation/2020/04/07/covid-19-hits-ice-detention-migrants-say-they-cant-clean-stay-safe/2953170001/) (describing
limited information regarding ICE's COVID-19 policies); Molly Parker & Brian
Munoz, *Officials Tight-Lipped on Pulaski County Detention Center Outbreak as*
Detainees Fear for Their Lives, THE SOUTHERN ILLINOISAN (Apr. 25, 2020),
[https://thesouthern.com/news/local/officials-tight-lipped-on-pulaski-county-](https://thesouthern.com/news/local/officials-tight-lipped-on-pulaski-county-detention-center-outbreak-as-detainees-fear-for-their-lives/article_b1805d49-6d56-53c6-a650-229ed70aed4f.html)
[detention-center-outbreak-as-detainees-fear-for-their-lives/article_b1805d49-](https://thesouthern.com/news/local/officials-tight-lipped-on-pulaski-county-detention-center-outbreak-as-detainees-fear-for-their-lives/article_b1805d49-6d56-53c6-a650-229ed70aed4f.html)
[6d56-53c6-a650-229ed70aed4f.html](https://thesouthern.com/news/local/officials-tight-lipped-on-pulaski-county-detention-center-outbreak-as-detainees-fear-for-their-lives/article_b1805d49-6d56-53c6-a650-229ed70aed4f.html); USA: AMNESTY INTERNATIONAL, *Amid*
COVID-19 Pandemic, Authorities Must Release Immigration Detainees, (Apr. 7,
2020), available at [https://www.amnesty.org/en/latest/news/2020/04/usa-covid19-](https://www.amnesty.org/en/latest/news/2020/04/usa-covid19-pandemic-authorities-must-release-immigration-detainees/)
[pandemic-authorities-must-release-immigration-detainees/](https://www.amnesty.org/en/latest/news/2020/04/usa-covid19-pandemic-authorities-must-release-immigration-detainees/) (noting lack of
information about COVID-19 risks at ICE detention centers).

1 being tested, transferred to hospitals, released, or isolated – would allow the public
2 to understand the extent and the nature of the crisis clearly occurring within
3 Southern California detention centers and take informed steps to address and
4 mitigate that crisis. This is essential to protecting the health of detainees, detention
5 center staff, and the surrounding community, which suffers greatly when an
6 infectious disease is permitted to spread within it.

7 26. This information is all the more vital given the rapid spread of the
8 COVID-19 virus. Detainees and detention center staff are already losing their lives
9 as a result of COVID-19, and drastic steps must be taken quickly to minimize
10 further suffering and loss of life.

11 **STATEMENT OF FACTS**

12 A. **Requester's FOIA Request**

13 27. On May 5, 2020, Requesters submitted identical FOIA requests to
14 Defendants DHS, CBP, and ICE seeking records related to information in the
15 possession of these government agencies regarding the COVID-19 outbreak at the
16 facilities.

17 28. The request sought disclosure of records “that were prepared,
18 received, transmitted, collected, and/or utilized by ICE, CBP and/or DHS or
19 prepared, received, transmitted, collected, and/or utilized by private contractors
20 (including but not limited to CoreCivic, GEO, and Paragon) and that are now in
- -

1 the possession of ICE, CBP, and/or DHS at the following facilities (hereinafter the
2 “facilities”): Adelanto Detention Center (“Adelanto”), Otay Mesa Detention
3 Center (“Otay Mesa”), and all land ports of entry and Border Patrol stations in
4 California.” The records requested included, but were not limited to:

- 5 i. Medical files, with names and other personal identifying
6 information redacted, of detainees who have reported
7 respiratory or flu-like symptoms, or who have been tested for
8 or diagnosed with COVID-19 from February 1, 2020 to
9 present.
 - 10 ii. Records related to precautions taken at the facilities because of
11 the COVID-19 pandemic.
 - 12 iii. Records containing the number of detainees who have been
13 taken to the hospital, tested positive for COVID-19, been
14 placed in solitary confinement, or granted parole from February
15 1, 2020 to present.
 - 16 iv. Records regarding the management of hunger strikes within the
17 facilities.
 - 18 v. Policies and communications related to private contractors and
19 COVID-19.
- 20
--

1 vi. Records relating to detainee housing transfers in Otay Mesa
2 from April 10, 2020 to present.

3 29. In addition to the FOIA request, Requesters also requested a fee
4 waiver and that each Defendant expedite processing of the request.

5 30. A copy of the Request is attached as Exhibit 1.

6 **B. Defendants' Responses to Requests**

7 31. In a letter dated and received May 8, 2020, Defendant DHS
8 acknowledged that it received the FOIA request on May 6, 2020. DHS informed
9 Requesters that DHS's Privacy Office would coordinate a search with Defendants
10 CBP and ICE and respond to the FOIA request on behalf of DHS and its
11 components. It stated that it would respond to the request as expeditiously as
12 possible by locating all responsive records and reviewing them for releasability.

13 32. In the same letter, DHS also granted expedited treatment of the FOIA
14 request and conditionally granted the request for a fee waiver.

15 33. A copy of the receipt and grant of expedited processing is attached as
16 Exhibit 2.

17 34. Defendants were then obligated, within 20 business days of receiving
18 the request, to make a "determination" of whether they would comply with the
19 request, and to notify requestors immediately. 5 U.S.C. § 552(a)(6)(A)(i). A
20 "determination" requires "more than merely acknowledging receipt of the request

1 and stating that the agency will produce any non-exempt records that it may later
2 locate.” *Electronic Privacy Information Center v. Department of Justice*, 15
3 F.Supp.3d 32, 40 (D.D.C. 2014). Rather, as the D.C. Circuit has stated, “in order
4 to make a ‘determination’ and thereby trigger the administrative exhaustion
5 requirement, the agency must at least: (i) gather and review the documents;
6 (ii) determine and communicate the scope of the documents it intends to produce
7 and withhold, and the reasons for withholding any documents; and (iii) inform the
8 requester that it can appeal whatever portion of the ‘determination’ is adverse.”
9 *Citizens for Responsibility and Ethics in Washington v. Federal Election*
10 *Commission*, 711 F.3d 180, 188 (D.C. Cir. 2013) (“*CREW*”).

11 35. The May 8 letter from DHS merely acknowledged receipt of the FOIA
12 request and stated that DHS would produce responsive records after determining
13 their releasability. It did not satisfy any of the *CREW* requirements.

14 36. Although the 20-day window to make a determination expired June
15 4, 2020, DHS has not made a determination as defined in *CREW*.

16 37. When an agency fails to make such a determination within the
17 statutory deadline, requestors are entitled to “immediate judicial supervision” of
18 the request. *Daily Caller v. U.S. Dep’t of State*, 152 F.Supp.3d 1, 10 (D.D.C. 2015).
19 Accordingly, requestors are entitled to judicial review regardless of any
20
-

1 administrative exhaustion requirements that might otherwise bar action in federal
2 court. *CREW*, 711 F.3d 711 F.3d at 189.

3 38. In cases where, as here, expedited processing has been granted, “the
4 district court’s supervision will aim to ensure that the agency is processing a
5 request with ‘due diligence’ and as quickly ‘as practicable.’” *Protect Democracy*
6 *Project, Inc. v. U.S. Dep’t of Def.*, 263 F.Supp.3d 293, 302 (D.D.C 2017) (quoting
7 5 U.S.C. § 552(a)(6)(E)(iii)).

8 **COUNT ONE**

9 **(Violation of the Freedom of Information Act for Failure to Make a**
10 **Determination Regarding Request by Statutory Deadline)**

11 39. Plaintiffs repeat each allegation in Paragraphs 1 – 39, as if fully set
12 forth herein.

13 40. On May 6, 2020, Plaintiffs made a request under FOIA to Defendants
14 DHS, CBP, and ICE for responsive records related to the spread of the COVID-19
15 virus in immigrant detention centers.

16 41. Defendants were obligated under 5 U.S.C. § 552(a)(6)(A)(i) to make
17 a determination regarding the request within 20 business days. At a minimum, that
18 determination was required to gather and review responsive documents, determine
19 and communicate the scope of the documents it intends to produce and withhold,
20 and provide reasons for withholding any documents.

1 42. Defendants failed to make this determination within the statutory
2 deadline, violating 5 U.S.C. § 552(a)(6)(A)(i).

3 43. As a result of Defendants' failure to make the required determination,
4 Plaintiffs are deemed to have exhausted administrative remedies with respect to
5 Defendants. Accordingly, Plaintiffs are entitled to judicial supervision of
6 Defendants' compliance with the FOIA request, as well as a presumption that they
7 have failed to process the request as soon as practicable. Even if Defendants can
8 show "exceptional circumstances" justifying the delay, the court may retain
9 jurisdiction while Defendants continue to process the request. 5 U.S.C.
10 § 552(a)(6)(C)(i).

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in its
13 favor:

- 14 i. Declaring that Defendants' failure to make the required
15 determination before the statutory deadline violates FOIA;
- 16 ii. Ordering Defendants to conduct a search for responsive records
17 with due diligence and as quickly as is practicable, and to
18 produce such records to plaintiffs;
- 19 iii. Awarding Plaintiffs reasonable attorneys' fees and costs
20 pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412; and
- -

1 iv. Granting all other such relief to Plaintiffs as the Court deems
2 just and proper.

3 DATED: June 11, 2020

4
5 /s/ Erika Pinheiro

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