

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

ADHAM AMIN HASSOUN,

Petitioner,

v.

JEFFREY SEARLS, in his official capacity
Acting Assistant Field Office Director and
Administrator of the Buffalo Federal
Detention Facility,

Respondent.

Case No. 1:19-cv-00370-EAW

**MOTION FOR LEAVE TO SUPPLEMENT RECORD IN SUPPORT OF EMERGENCY
MOTION FOR TRANSFER TO HOME INCARCERATION AND MOTION TO
EXPEDITE**

Petitioner hereby moves for leave to supplement the record in support of his Emergency Motion for Transfer to Home Incarceration (ECF No. 122) and expedited treatment of this motion. Specifically, Petitioner seeks leave to file a supplemental declaration of Dr. Jaimie Meyer, an expert on infectious diseases in carceral settings. Dr. Meyer has reviewed updated guidance from the Buffalo Federal Detention Facility (“BFDF”) on its measures to address the threat of COVID-19, evaluated Mr. Hassoun’s particular risk of complications from the virus, and provided her professional opinion on the dangers of his current conditions. Dr. Meyer’s proposed supplemental declaration with supporting exhibits is attached hereto as Exhibit A.

Petitioner was unable to file this declaration with his original motion for two primary reasons. First, updated guidance on BFDF’s efforts to address COVID-19 only became available on April 4, the day after Petitioner filed his emergency motion. On April 2, the district court in *Jones v. Wolf*, a habeas petition seeking the release of a group of individuals detained at BFDF who pose a high risk of severe illness or death from COVID-19, ordered ICE to implement social

distancing measures within the facility and to report these efforts to the court by April 4 at 5 p.m. No. 20-CV-361, 2020 WL 1643857, at *15 (W.D.N.Y. Apr. 2, 2020). Pursuant to this order, on April 4, ICE filed a declaration from Captain Abelardo Montalvo, M.D. describing certain steps the facility has taken to address COVID-19 since March 30. *See* Declaration of Captain Abelardo Montalvo, M.D. (Apr. 3, 2020), *Jones v. Wolf*, No. 20-CV-361, ECF No. 45 (W.D.N.Y.). On April 5, ICE filed a supplemental declaration from BFDF Officer in Charge Jeffrey Searls adding further information about the logistical difficulties of moving vulnerable individuals within BFDF to facilitate social distancing. *See* Supplemental Declaration of Jeffrey Searls (Apr. 4, 2020), *Jones v. Wolf*, No. 20-CV-361, ECF No. 47 (W.D.N.Y.). These declarations provided more current insight into Mr. Hassoun's conditions than the March 30 declaration from Mr. Searls the government had filed with its Motion to Adjourn the Evidentiary Hearing. *See* Declaration of Jeffrey Searls (Mar. 30, 2020), ECF No. 120. While Petitioner expected these declarations after April 3, given the urgency of his emergency motion, he did not want to delay its filing to include them initially.

Second, because Petitioner needed to file his emergency motion as soon as possible, Dr. Meyer was unable to prepare a declaration in time. Developing her expert opinion required reviewing rapidly changing CDC guidance, Mr. Hassoun's health records,¹ the BFDF Handbook, and declarations regarding BFDF conditions and Mr. Hassoun's housing placement. This comprehensive review was not possible on such short notice. Moreover, Petitioner expected ICE

¹ Petitioner's counsel tried to obtain Mr. Hassoun's current health records, but they were in his possession at BFDF. Due to travel and logistical difficulties associated with the pandemic, Petitioner's counsel could not pick up the records in person. Mr. Hassoun mailed them to his attorneys but by the time of filing they had not arrived. Instead, Dr. Meyer reviewed his health records from 2018, which Petitioner's counsel had on file.

to submit updated guidance in *Jones* after April 3 that would inform Dr. Meyer's opinion and ultimately require a supplemental declaration in any event.

Finally, for similar reasons as the emergency motion itself, Petitioner seeks expedited consideration of this motion because he faces a grave threat of severe illness or death from being infected with the novel coronavirus while detained at BFDf. Petitioner asks the Court to maintain the current briefing schedule requiring the government to respond to his emergency motion by April 7. Respondent's counsel states that it opposes this motion unless Petitioner consents to an extension for the government's opposition through Thursday, April 9, 2020; Petitioner has not consented.

Respectfully submitted,

Jonathan Hafetz
Brett Max Kaufman
Charlie Hogle*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2500
jhafetz@aclu.org
*not admitted to WDNy

Judy Rabinovitz
Celso Perez
American Civil Liberties Union Foundation
Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2616
jrabinovitz@aclu.org

Victoria Roeck
Christopher Dunn
New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor
New York, NY 10004
212-607-3300
cdunn@nyclu.org

/s/Jonathan Manes
Jonathan Manes
Roderick & Solange MacArthur Justice Center
160 E. Grand Ave., 6th Floor
Chicago, IL 60611
312-503-0012
jonathan.manes@law.northwestern.edu

A. Nicole Hallett
Supervising Attorney
Brian Zagrocki
Samantha Becci
Student Attorneys
Mandel Legal Aid Clinic
University of Chicago Law School
6020 S. University Avenue
Chicago, IL 60637
773-702-9611
nhallett@uchicago.edu

Erin Barry
Colton Kells
Marline Paul
Student Attorneys
University at Buffalo School of Law
507 O'Brian Hall, North Campus

Buffalo, NY 14260
716-645-2167

Counsel for Petitioner

Dated: April 6, 2020
Chicago, IL