

EXHIBIT

A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ADHAM AMIN HASSOUN,

Petitioner,

Case No. 1:19-cv-370-EAW

v.

JEFFREY SEARLS, in his official capacity
as Acting Assistant Field Office Director and
Administrator, Buffalo Federal Detention
Center,

Respondent.

DECLARATION OF CAPTAIN ABELARDO MONTALVO, M.D.

Pursuant to 28 U.S.C. § 1746, I, Captain Abelardo Montalvo, M.D., hereby declare and state as follows:

1. I am a medical doctor with a Board Certification in Family Medicine. I make this declaration in response to Adham Hassoun's motion for transfer to home incarceration. The information provided herein is based upon my personal knowledge, review of U.S. Department of Homeland Security ("DHS") records, and information provided to me by the United States Attorney's Office.

2. I am employed by DHS, Immigration and Customs Enforcement ("ICE"), and currently serve as the Eastern Regional Clinical Director with ICE Health Service Corps ("IHSC"). I have held this position since February 24, 2012. Previously, I served as Clinical Director for the Krome Service Processing Center from July 2003 through February 2012. I have also served as Clinical Director and Health Service Administrator at the Aguadilla

Service Processing Center from January 1997 through July 2003 and as Clinical Director at the Port Isabel Service Processing Center June 1995 through January 1997.

3. My current duties include serving as the regional medical authority for IHSC facilities in my region. I provide orientation, oversight and ongoing mentoring of the Clinical Directors, thereby ensuring health care delivery in accord with IHSC's established scope of services and the mission, vision, and goals of the organization. My oversight includes the Batavia Federal Detention Facility ("BFDF").

4. IHSC comprises a multidisciplinary workforce consisting of U.S. Public Health Service Commissioned Corps ("USPHS") officers, federal civil servants, and contract health professionals.

5. Since the onset of reports of Coronavirus Disease 2019 ("COVID-19"), ICE epidemiologists have been tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to field staff on screening and management of potential exposure among detainees.

6. In testing for COVID-19, IHSC is also following guidance issued by the Centers for Disease Control and Prevention ("CDC") to safeguard those in its custody and care.

7. Each detainee is screened for disabilities upon admission. Identified disabilities are further evaluated and reasonable accommodations are provided as medically appropriate.

8. At the BFDF, during intake medical screenings, detainees are assessed for fever and respiratory illness. They are asked to confirm whether they have had close contact with a person with laboratory-confirmed COVID-19 in the past 14 days, and whether they have traveled from or through areas with sustained community transmission in the past two weeks.

Upon arrival at the garage bay and before they enter the facility, all detainees are checked with a thermometer for fever. This process has been in place since as early as March 12, 2020.

9. All new arrivals to BFDF are quarantined for 14 days after their intake screenings. Incoming detainees are held in the quarantine unit, kept on minimum movement, and evaluated during the 14 day period to ensure that they do not have symptoms of the COVID-19 virus. Detainees who are moved out of the quarantine unit for any type of emergency are required to wear N-95 masks and gloves.

10. The BFDF manages both males and females, provides daily access to sick calls in a clinical setting, and has an onsite medical infirmary and mental health services with the ability to admit patients at the local hospital for mental health care. Sick call is currently being utilized to screen detainees with any complaints related to the COVID-19 virus. Detainees arriving at the facility will be placed in quarantined dorms and separated from the general population for 14 days until cleared. If new persons are added, or someone becomes ill, then the 14-day quarantine restarts.

11. As of April 8, 2020, there are zero confirmed cases of COVID-19 at BFDF.

12. The BFDF is at approximately half-capacity. As of April 8, 2020 at 6:30 p.m., it has capacity for 716 detainees¹ and is detaining 390 individuals.

13. BFDF has increased sanitation frequency and thoroughness amid this medical emergency, including cleaning the facility several times daily throughout housing units and common work areas. Paid detainee workers clean common areas and hallways with Fresh Breeze, a viricide/disinfectant/fungicide/tuberculocide. PF 3 Hi-Con, a

¹ The general capacity of the BFDF is 636 detainees, using regular beds only. There are also 48 moveable “boat beds” and 32 beds in the Special Housing Unit.

viricide/disinfectant/fungicide/tuberculocide, is used in cleaning housing areas. The use of detainee workers reduces the contact rate between ICE staff and detainees and helps limit any exposure between populations. Detainee workers are provided goggles, gloves, and other personal protective equipment (“PPE”) as directed by safety data sheets and manufacturer requirements for chemicals.

14. Staff at BFDF has access to handwashing stations, alcohol-based hand sanitizer, disinfectant wipes, and full PPE. Detainees have continual access to handwashing stations. Soap is provided and regularly restocked at all handwashing stations.

15. Personal visits have been temporarily disallowed to prevent the introduction of COVID-19 into the BFDF. Detainees have been educated about the need to decrease exposure as a result of movement changes. Sick call education and staying healthy education is provided to all detainees through intake, the physical exam, and in the detainee handbook.

16. Access to legal counsel remains a paramount requirement. BFDF is mitigating the risk of exposure by allowing legal counsel visits in the no-contact room which features a plastic window barrier separating detainees from attorneys. Detainees have access to tablets, which can make collect calls, and additional policies have been put in place allowing detainees to make phone and video calls weekly without cost.

17. Gatherings of detainees have been cancelled or are being completed in dorms and their respective outdoor areas. Recreation remains available outside. Social distancing is being practiced by staff to the fullest extent possible. This includes distancing between staff members as well as staff and detainees. No tours or outside visitors are allowed at the BFDF unless deemed necessary. Shift changes have been set at different times to further facilitate social distancing.

18. The facility has prioritized medical and hygienic services, while ICE staff have been reduced in areas that do not affect BFDF's ability to monitor and respond to COVID-

19. With respect to security personnel, BFDF has split up and holds several pre-briefing musters, rather than one main muster per shift, to keep staff from congregating in one area. Training sessions have been cancelled until further notice.

19. All staff and visitors have their temperatures taken at the main gate, before they even enter BFDF grounds. This includes all delivery persons.

20. Additional steps to help combat the introduction, and limit the spread, of COVID-19 to BFDF include:

- a. Decrease intake of new detainees;
- b. Consideration of release for non-criminal detainees and those with highest medical risks;
- c. Sanitizing of transport vehicles;
- d. Carrying of masks for detainee use and staff use during transports or pick-ups;
- e. Use of templates with increased screening questions, specifically for COVID 19, for new arrivals;
- f. Education material placed in intake/nursing station for quick reference;
- g. Education for medical staff on how to take a COVID-19 sample;
- h. Increased stock of PPE and cleaning supplies;
- i. Removal of option for custody staff to trade posts;
- j. Fit testing of PPE masks for custody staff and removal of facial hair that may interfere with tight seal of mask to face;

- k. Town hall in dorms by custody management to inform and educate detainees as to ongoing concerns and to educate detainees on safe practices, including social distancing and proper handwashing techniques;
 - l. Education of detainees during sick call in all dorms by nursing;
 - m. Weekly counting of PPE to monitor supplies;
 - n. Closer monitoring of detainee workers;
 - o. Purchase of new cleaning supplies that require less contact time;
 - p. All group gatherings that do not allow for social distancing have been cancelled, including art classes, barbering services, religious gatherings, and others;
 - q. No new custody hires in medical clinic;
 - r. Decrease in off-site appointments unless deemed a necessity, to decrease exposure of staff and detainees at outside facility;
 - s. Review of cleaning chemicals by custody staff;
 - t. Surgical masks for detainee use to reduce exposure;
 - u. Rounds performed by infection control officer to review processes and procedures currently being utilized;
 - v. Removal of all but 2 detainee workers from the kitchen;
 - w. Removal of all detainee workers who assisted with laundry folding;
 - x. Custody staff has been given an increased stock of PPE;
 - y. Detainees are encouraged to communicate with BFDF staff via the electronic request and grievance forms on the tablets and an increased number of staff are monitoring and responding more frequently; and

multiple documentations of refusal for [REDACTED] and of refusal to accept medical evaluation and examinations from certain providers.

24. Mr. Hassoun is presently in medical isolation in the special housing unit (“SHU”) due to [REDACTED]. He is placed in a single-person cell with a solid metal door and glass window, which keeps him away from others at the facility.

25. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

26. As a result of his placement in medical isolation in the SHU, Mr. Hassoun has minimal contact with other personnel at the facility. Specifically, Mr. Hassoun’s regular contact is due to medical checks and medical providers wear face masks when interacting with Mr. Hassoun and all detainees.

27. Mr. Hassoun’s minimal contact and the procedures taken within the BFDF will serve to minimize his potential exposure to COVID-19.

28. The assertion that Mr. Hassoun faces greater risk at BFDF than in home confinement does not account for the real-world conditions and circumstances Mr. Hassoun would face if released, such as access to medical care, exposure during travel, and controlled living conditions that would minimize outside contact.

29. At present, there are zero confirmed cases of COVID-19 among staff or detainees.

30. There are presently eight possible COVID-19 cases among detainees. Three individuals were complaining of symptoms that could be indicative of COVID-19 and were placed in isolation in the medical bay.

31. Another five detainees were placed in the SHU after they indicated that they were in close contact with the three individuals.

32. All eight individuals are in isolation presently; three are in the medical bay and five are in the SHU.

33. The facility has swabbed all eight individuals and expects to have test results in three to four days.

34. Until the facility receives the test results, these eight individuals will not be allowed to be in the presence of any other detainees.

35. These individuals are being monitored constantly by ICE medical staff. None have complained of shortness of breath or are suspected to have pneumonia, but, if such symptoms arise, or as is otherwise necessary, they will be transported to local hospitals.

36. The temperatures and respiratory conditions of these individuals are being monitored constantly.

37. All eight of the individuals are males who were housed in the B-2 Unit.

38. None of the eight individuals have any recent contact with Mr. Hassoun, who remains detained in a medical isolation cell in the SHU, where he was first placed on March 18th. Mr. Hassoun's cell is more than 150 feet from the cell of the nearest of the five individuals who ICE has placed in the SHU as a precaution.

39. While testing of Mr. Hassoun is not medically indicated due to his lack of proximity with any of the detainees who have been isolated, the facility can have him tested if needed.

I declare under penalty of perjury that the foregoing is true and correct based on my knowledge and belief.

Dated: April 8, 2020

CAPT Abelardo Montalvo, M. D.

CAPTAIN ABELARDO MONTALVO, M.D.