

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

VERNON JONES, et al.

Petitioners,

v.

20-CV-00361 LJV

CHAD WOLF, in his official capacity as Acting Secretary,
U.S. Department of Homeland Security;

THOMAS E. FEELEY, in his official capacity as Field
Office Director, Buffalo Field Office, U.S. Immigration
& Customs Enforcement; and

JEFFREY SEARLS in his official capacity as
Administrator, Buffalo Federal Detention Facility.

Respondents.

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 opposition to the Petition brought by 22 individuals seeking immediate release from immigration detention. The information provided herein is based upon my personal knowledge, review of Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”) records, and information provided to me by the United States Attorney’s Office.

2. On April 7, 2020, this Court ordered that an opinion be provided as to the following question: “Whether individuals with epilepsy and/or those who are over 50 years

of age and confined to detention facilities similar to BFDF meet the CDC's criteria for vulnerable individuals and explaining the reasons for that conclusion.” ECF No. 54 at 4.

3. The Buffalo Federal Detention Facility (“BFDF”) follows the Centers for Disease Control (“CDC”) recommendations in relation to COVID-19 preparedness and response. The CDC is considered one of the major operating components of the United States Department of Health and Human Services. The CDC works constantly to protect America from health, safety and security threats, both foreign and in the U.S. Whether diseases start at home or abroad, are chronic or acute, curable or preventable, human error or deliberate attack, CDC fights disease and supports communities and citizens to do the same. The CDC increases the health security of our nation. As the nation’s health protection agency, CDC saves lives and protects people from health threats. The CDC conducts critical science and provides health information that protects our nation against expensive and dangerous health threats, and responds when these arise.

4. COVID-19 is a new disease and, as such, there is limited information regarding risk factors for this severe disease. Based on currently available information and clinical expertise to date, those at high-risk for severe illness from COVID-19 include:

- a. People 65 years and older
- b. People who live in a nursing home or long-term care facility
- c. People of all ages with underlying medical conditions, particularly if not well controlled, including:
 - i. People with chronic lung disease or moderate to severe asthma
 - ii. People who have serious heart conditions
 - iii. People who are immunocompromised

- iv. Many conditions can cause a person to be immunocompromised, including:
 - 1. Cancer treatment
 - 2. Smoking
 - 3. bone marrow or organ transplantation
 - 4. immune deficiencies
 - 5. poorly controlled HIV or AIDS, and
 - 6. prolonged use of corticosteroids and other immune weakening medications
- v. People with severe obesity (body mass index [BMI] of 40 or higher)
- vi. People with diabetes
- vii. People with chronic kidney disease undergoing dialysis
- viii. People with liver disease

5. In my opinion, people with epilepsy and/or a seizure disorder do not meet the CDC's criteria for individuals with an increased vulnerability to COVID-19. Based upon my review and analysis of CDC guidelines and information, epilepsy and seizure disorder sufferers do not meet the "vulnerable individual" criteria.

6. As noted in the Petitioner's Memorandum of Law, dated April 7, 2020, there is only "some *theoretical* evidence" that viral infection could increase the risk for epilepsy or seizure disorder sufferers. Pet. Memo., Dkt. No. 53, at pg. 10.¹ Importantly, when asked in the videoconference if there is "any knowledge or research right now about different seizure

¹ Citing Videoconference Interview by Dr. Laura Lubbers, Chief Sci. Officer, Citizens United for Research in Epilepsy, with Dr. Michael Carrithers, Dr. Douglas Norli & Dr. Jeffrey Loeb (Mar. 18, 2020), available at: <https://www.cureepilepsy.org/wp-content/uploads/2020/03/COVID-19-and-Epilepsy.pdf>

types and their susceptibility to COVID-19?” Dr. Jeffrey Loeb, an adult epileptologist, responded that he was not aware of any, but that general practice is that systemic viral infection may cause seizures despite medication. Dr. Michael Carrithers, a neuro immunologist, notes that he is unaware if COVID-19 could trigger seizures in susceptible individuals and that there have been only “a few limited case studies” conducted.

7. In sum, and based on the CDC guidance—and even considering Petitioner’s evidence—it appears that there is a lack of scientific evidence proving that individuals with epilepsy or seizure disorders are at a higher risk of negative health consequences from COVID-19 than the average person.

8. With respect to individuals over 50 years of age and confined to detention facilities similar to the BPDF (*see* EFF No. 54 at 4), the BPDF follows the CDC criteria which lists individuals who are over age 65, even though this practice is above and beyond what the CDC recommends.

9. The CDC has issued special guidance for the management of COVID-19 in correctional and detention facilities.² This CDC guidance does not indicate that vulnerable individuals in such settings includes people younger than 65 years old, other than those with underlying conditions which would otherwise make them vulnerable individuals.

10. The CDC guidance with respect to correctional and detention facilities actually refers to individuals “who are at higher risk for severe illness from COVID-19.” This includes “older adults and persons of any age with serious underlying medical conditions such as lung

² Available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>. Additional information can be found at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

disease, heart disease, and diabetes.” The CDC’s list of “People Who Are at Higher Risk for Severe Illness” includes a section for Older Adults, which specifies that “8 out of 10 deaths reported in the U.S. have been in adults 65 years old and older.”³ No CDC guidance has advised that prisoner populations have a lower age at which individuals become subject to increased risk.

11. Guidance from the CDC entitled “Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)”⁴ notes that “[a]ge is a strong risk factor for severe illness, complications, and death.” It further advises that:

Among more than 44,000 confirmed cases of COVID-19 in China, the case fatality rate was highest among older persons: ≥ 80 years: 14.8%, 70–79 years: 8.0%, 60–69 years: 3.6%, 50–59 years: 1.3%, 40–49 years: 0.4%, <40 years: 0.2%.^{38,42} Early U.S. epidemiologic data suggests that the case fatality was highest in persons aged ≥ 85 years (range 10%–27%), followed by 3%–11% for ages 65–84 years, 1%–3% for ages 55–64 years, and <1% for ages 0–54 years.

12. This data shows that individuals with confirmed cases of COVID-19 between the ages of 50 and 64 have significantly lower —by a factor of three—fatality rates than similarly-situated older individuals do. The fatality rate for cases in China for such persons aged 50–59 years old was 1.3%. Notably, the fatality rate for cases in China for persons 60–69 years old was more than double that of the rates for persons aged 50–59 years old. Likewise, U.S. data suggests that fatality rates for persons aged 65–84 is almost three times as high as that for persons aged 55–64. And fatality rates for persons under 55 years old was less than 1%.

³ See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>

13. With respect to Petitioners' experts' opinions regarding physiological age of detained individuals versus the general population, I defer to the CDC criteria and guidance, which makes no such findings and is based on currently available information and clinical expertise to date, and not in anecdotal data and or opinions.

UPDATE TO CURRENT CONDITIONS AT THE BFD

14. At present, there are 0 confirmed cases of COVID-19 among staff or detainees.

15. There are there are presently two individuals who have a fever, and are complaining of body ache and persistent cough. They were placed in isolation in the medical bay, in the negative pressure rooms. Another 4 detainees were placed in SHU after they indicated that they were in close contact with the suspected individuals, and also had low grade fevers with cough.

- a. These individuals are being monitored 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 hospital(s).
- b. The temperatures and respiratory conditions of these individuals are being monitored closely.
- c. All six of the individuals are males who were housed in the B-2 Unit.
- d. None of the six are Petitioners in either the *Jones* or *Ramsundar* actions.
- e. Testing samples were taken from all 6 individuals and sent to the Department of Health for Testing. Results are expected within 3 to 5 days.

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

Dated: April 8, 2020

CAPT Abelardo Montalvo, M. D.

CAPTAIN ABELARDO MONTALVO, M.D.