

**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

DECLARATION OF JONATHAN MANES

1. I am an attorney for the Petitioner, Adham Hassoun. I submit this declaration to convey new developments that have just been conveyed to me by Mr. Hassoun that are directly relevant to the pending Motion for Transfer to Home Incarceration.
2. This afternoon at approximately 5:30pm ET I received a phone call from Mr. Hassoun.
3. Mr. Hassoun related that this morning he was in extreme gastrointestinal distress, suffering from vomiting and diarrhea, shaking, and nearly fainting. I understand that the diarrhea and vomiting persisted for a long time.
4. Mr. Hassoun told me that he had only once before in his life experienced such violent pain and diarrhea/vomiting, when he got food poisoning from a tuna sandwich many years ago.
5. Medical providers came to Mr. Hassoun's room to check on him because of the diarrhea and vomiting. Mr. Hassoun says that the providers came to see him in his cell

approximately 10 or 15 minutes *after* they visited the individuals in the SHU who are infected with coronavirus.

6. It is not clear to me whether the medical providers changed their personal protective equipment after visiting the individuals who are infected with coronavirus and before tending to Mr. Hassoun. Mr. Hassoun told me that he understands that the medical providers are supposed to look after him and the other previously-uninfected people in the Special Housing Unit (SHU) *first*, before tending to those who are infected, but that this did not happen today.

7. The medical providers asked Mr. Hassoun if he wanted to take a test for coronavirus. He agreed. They took a nasal swab and have apparently sent it for testing. No results have yet been provided.

8. Mr. Hassoun sounded extremely weak and unwell on the phone. I was unable to understand everything he was saying because his voice was uncharacteristically weak. He was obviously unwell.

9. Mr. Hassoun can readily identify the people who tested positive for coronavirus and are being held in the Special Housing Unit. They were all brought to the SHU within the past day; they are held in cells with special “warning” stickers on the outside and some kind of plastic sheeting.

10. Mr. Hassoun relates that the detainees infected with coronavirus are housed on the same floor of the Special Housing Unit as he is, only a couple dozen feet away. He explains that their cells are adjacent to the “quiet room” that serves as the law library for the SHU and houses the computer terminals where Mr. Hassoun must review documents and discovery for his case. My understanding is that this “quiet room” is located directly between Mr. Hassoun’s cell and the cells that are being used to hold the people infected with coronavirus.

11. My understanding is that the cells in which the coronavirus-infected detainees are being held are ordinary SHU cells and are not the specially-designed “negative-pressure” cells meant to prevent the virus from escaping into the rest of the facility. Mr. Hassoun explains that there are gaps around the metal doors of the cells, and that a detention officer has tried, ineffectually, to cover those gaps with some kind of plastic sheeting or dust barrier.

12. The declaration filed by the government today in response to the Court’s Text Order (ECF No. 142) fails to provide a response to a crucial question that the Court asked: whether “the individuals who have been confirmed to have COVID-19 . . . are permitted to access any shared items.” *See* Declaration of Capt. Carlos M. Quinones, M.D. (ECF No. 148).

13. The Quinones Declaration states only that “Mr. Hassoun does not need to interact with any of these individuals.” ECF No. 148 ¶ 7. But whether Mr. Hassoun must “interact” with the infected detainees does not answer the question whether they can access any shared items or spaces. This response is especially incomplete given that Mr. Hassoun is now being held mere steps away from the COVID-19 infected detainees. Among other things, the Declaration does not explain whether and how the coronavirus-infected detainees are being prevented from using shared facilities, including the computer lab, telephone booth, microwave or other facilities. The facility does not explain if it is taking any measures to prevent contact with shared surfaces. It also does not explain what additional measures, if any, the facility is taking to prevent the infection from spreading within the close confines of the Special Housing Unit.

14. Moreover, given that the cells in the SHU are not designed to contain communicable disease, the virus may be spreading in the air.

15. This is especially troubling because the detainees held in the SHU who are infected with COVID-19 appear to be symptomatic, coughing, and presumably spreading virus

through the air. The government filed a declaration in another case *yesterday* explaining that the individuals who were being isolated in the SHU at the BDFD were suffering from symptoms including cough. *See* Declaration of Capt. Abelardo Montalvo ¶ 15, *Jones v. Wolf*, No. 20-cv-361 (filed April 8, 2020) (ECF No. 57) (“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.”) (Attached hereto as Exhibit A).

16. By contrast, the Declaration that Captain Montalvo filed in Mr. Hassoun’s case yesterday evening failed to mention that the detainees held with Mr. Hassoun in the SHU were symptomatic at all, and instead suggested that they were people who were being isolated as a preventive measure “after they indicated they were in close contact with the three [other] individuals” who were actually complaining of symptoms and isolated in the medical unit. *See* Decl. of Captain Abelardo Montalvo ¶¶ 30-31 (ECF No. 145).

17. The detainees who are infected with COVID-19 have been permitted to walk outside their cells within the SHU. During a phone call that I had with Mr. Hassoun yesterday, Mr. Hassoun told me he could see one of the new detainees walking directly past the room from which he was making the confidential call. Mr. Hassoun recognized the detainee as a person who served as the unofficial “barber” of the facility and who had cut Mr. Hassoun’s hair approximately 45 days ago when Mr. Hassoun was being held in a different unit of the facility. Mr. Hassoun recognized some of the other detainees now held in the SHU who are infected with COVID-19 as well.

18. For all of these reasons, including especially Mr. Hassoun’s sudden violent gastrointestinal distress today, Mr. Hassoun is in tremendous danger of contracting a deadly disease. The facility has put him directly in harm’s way by housing people infected with

COVID-19 mere steps from his cell, in circumstances that cannot contain the virus. The facility may not even be taking even commonsense measures to prevent spread of the virus to Mr. Hassoun, like ensuring that medical personnel treat uninfected patients in the SHU *before* seeing infected patients. More broadly, the facility is simply not equipped to take the reasonable steps necessary to protect Mr. Hassoun's life in these circumstances, and has in fact taken steps that put him in grave danger. We reiterate our request for emergency relief on behalf of our client.

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

/s/Jonathan Manes
Jonathan Manes

Executed on: April 9, 2020
Chicago, IL