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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANGEL DE JESUS ZEPEDA RIVAS,
BRENDA RUBI RUIZ TOVAR, LAWRENCE
KURIA MWAURA, LUCIANO GONZALO
MENDOZA JERONIMO, CORAIMA
YARITZA SANCHEZ NUÑEZ, JAVIER
ALFARO, DUNG TUAN DANG, JUAN JOSE
ERAZO HERRERA, RAJNISH RAJNISH, and
WILLIAN MATIAS RAUDA,

Petitioners-Plaintiffs,

v.

DAVID JENNINGS, Acting Director of the
San Francisco Field Office of U.S. Immigration
and Customs Enforcement; MATTHEW T.
ALBENCE, Deputy Director and Senior
Official Performing the Duties of the Director
of the U.S. Immigration and Customs
Enforcement; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; GEO GROUP,
INC.; NATHAN ALLEN, Warden of Mesa
Verde Detention Facility,

Respondents-Defendants.

CASE NO. 3:20-CV-02731-VC

**SECOND SUPPLEMENTAL
DECLARATION OF AKIKO
IWASAKI, PH.D.**

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SECOND SUPPLEMENTAL DECLARATION OF AKIKO IWASAKI, PH.D.

I, Akiko Iwasaki, declare as follows:

1. I am the Waldemar Von Zedtwitz Professor of Immunobiology and Molecular, Cellular and Developmental Biology at Yale University School of Medicine, where I have been a professor for the past twenty years. I am also an Investigator at the Howard Hughes Medical Institute, one of the world's most renowned medical research organizations. I supervise a lab dedicated to immunological research and currently researching immune response to SARS-CoV-2.
2. On May 22, 2020, I submitted a declaration in this case. *See* Dkt. 229-16. My relevant expertise is further detailed in that initial declaration. On September 17, 2020, I submitted a supplemental declaration in this case regarding the risk of reinfection with COVID-19. I am providing my expertise in this case pro bono.
3. I have previously expressed my opinion about conditions in the two facilities at issue in this litigation in the context of the COVID-19 pandemic. *See* Dkt. 229-16, ¶ 34. I understand that, despite significant depopulation of both facilities, there was a COVID-19 outbreak at the Mesa Verde Detention Facility (MVDF). I have been informed that:
 - a. a total of approximately 60 percent of detainees and 25 percent of staff at MVDF have tested positive for COVID-19;
 - b. GEO Group later determined that all current detainees and on-duty staff who had COVID-19 at MVDF have been deemed "recovered" from COVID-19;
 - c. MVDF has four dormitories and five isolation spaces suitable for housing detainees;
 - d. during the July-August 2020 outbreak, MVDF faced serious space constraints which led to the creation of a combined dorm of COVID contacts from two other dorms;
 - e. also because of a shortage of isolation spaces, symptomatic people remained in this combined dorm of COVID contacts; and
 - f. approximately 90% of the combined contact dormitory became infected with COVID-19 within three weeks of the start of the outbreak.
4. I have now been asked to update the information provided in my previous declarations, to evaluate the plan put forward by the defendants in this case for intake procedures at MVDF, and to comment on the plaintiffs' request for additional injunctive relief. In support of this declaration, I have relied on my scientific and specialized knowledge, skill, experience, training, and education. In connection with these requests, I have been provided:
 - a. the defendants' "Mesa Verde ICE Processing Center (MVIPC) Detainee Intake Procedures" (Doc. No. 786-10), and
 - b. the plaintiffs' proposed second preliminary injunction.

Updated Information About COVID-19 Transmission

5. In my initial declaration in this case, I explained how the virus causing COVID-19 is spread. I noted that it is primarily transmitted through respiratory droplets. This remains true.
6. I also explained my belief that the virus causing COVID-19 is also likely transmitted by airborne small droplet nuclei ($\leq 5 \mu\text{m}$ in diameter, and sometimes referred to as aerosols). Many viruses are spread through aerosols, which are so small that their buoyancy overcomes gravity, allowing the droplet nuclei to stay suspended in the air and travel relatively long distances. This is often referred to as airborne transmission.
7. Since I first submitted that declaration, the case supporting the airborne transmission of the virus causing COVID-19 has become stronger. Over 200 scientists have signed this statement calling for international bodies to recognize the potential for airborne spread of COVID-19.¹
8. Major public health bodies now recognize that the virus causing COVID-19 spreads through aerosolized particles. The World Health Organization explains the risk of airborne transmission:

Aerosol transmission can occur in specific settings, particularly in indoor, crowded and inadequately ventilated spaces, where infected person(s) spend long periods of time with others, such as restaurants, choir practices, fitness classes, nightclubs, offices and/or places of worship. More studies are underway to better understand the conditions in which aerosol transmission is occurring outside of medical facilities where specific medical procedures, called aerosol generating procedures, are conducted.²

The CDC similarly recognizes that the virus causing COVID-19 can be transmitted through aerosolized particles in “special circumstances,” including:

- “Enclosed spaces within which an infectious person either exposed susceptible people at the same time or to which susceptible people were exposed shortly after the infectious person had left the space.”
- “Prolonged exposure to respiratory particles, often generated with expiratory exertion (e.g., shouting, singing, exercising) that increased the concentration of suspended respiratory droplets in the air space.”

¹ Lidia Morawska & Donald J. Milton, *It Is Time to Address Airborne Transmission of Coronavirus Disease 2019 (COVID-19)*, CLINICAL INFECTIOUS DISEASES (July 6, 2020), available at <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa939/5867798>.

² WHO, *Coronavirus disease (COVID-19): How is it transmitted?* (Oct. 20, 2020), available at https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-how-is-covid-19-transmitted?gclid=EA1aIQobChMIgv_E5cz07AIVuD6tBh0n6guBEAAYASAAEgJhp_D_BwE.

- “Inadequate ventilation or air handling that allowed a build-up of suspended small respiratory droplets and particles.”³
9. I believe that public health officials have been reluctant to make public the likelihood of airborne transmission, even as the evidence for it became stronger, because of the policy implications that would follow. COVID-19 will be harder to contain if it is spread through aerosols and indoor activities than look riskier even with social distancing measures in place. This is particularly true in the colder, drier months, because airborne viruses generally become more stable when humidity drops below 30 or 40 percent.
 10. The CDC recommends certain interventions to avoid airborne transmission of COVID-19. These include “social distancing, use of masks in the community, hand hygiene, and surface cleaning and disinfection, ventilation and avoidance of crowded indoor spaces are especially relevant for enclosed spaces, where circumstances can increase the concentration of suspended small droplets and particles carrying infectious virus.”⁴
 11. Enclosed spaces where people are exposed to one another for extended periods of time are particularly risky, especially where there is poor ventilation. This is true even if the virus is spread only by respiratory droplet transmission. However, if the virus causing COVID-19 is also transmitted through aerosolized particles, enclosed spaces present further risk factors. The dormitories at MVDF are spaces where COVID-19 could spread rapidly through both droplet and aerosolized transmission, given that many people are living in the same space day-in-day out. In fact, the extent to which COVID-19 spread quickly through the population in the “combined dorm” at MVDF may indicate airborne transmission in addition to droplet transmission.

The Defendants’ Proposed Intake Plan

12. I have reviewed the proposed intake plan that the defendants filed with the court in this case as docket entry 786-10. I have significant questions and concerns about that plan given the lack of details about how certain people would be isolated or quarantined.
13. *Failure to specify where people will be isolated or quarantined:* One overarching concern has to do with the mismatch between the layout of MVDF and the need to have multiple spaces available for isolation or quarantine. I understand that the only spaces available for housing people at MVDF are four dormitories, two medical isolation rooms, and three special housing cells typically used for administrative and disciplinary segregation. A facility cannot be ready to safely respond to positive COVID-19 tests, symptomatic people, test refusers, and those with known exposures to COVID-19 without having dedicated spaces to house people in each of these categories. That is because each of those groups must be separately housed, while symptomatic people (especially) and test refusers should be individually housed for 14 days or until confirmatory testing shows them to be COVID-19 negative. The defendants’ proposed intake plan does not provide

³ CDC, *Scientific Brief: SARS-CoV-2 and Potential Airborne Transmission* (Oct. 5, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html>

⁴ *Id.*

for mandatory cohorting (or separation and grouping) of these different groups but leaves this to the discretion of the Facility Administrator. The proposed intake plan also leaves to the discretion of the Facility Administrator where individuals will be housed. Based on the information that I have been provided concerning the facility layout and the facility's experience with the July-August outbreak, it is my opinion that it is unreasonably risky to fail to designate clearly where individuals will be isolated or cohorted.

14. *Group quarantine with no exit testing*: Another overarching concern is that the defendants' plan would seem to allow dynamic group quarantine of intakes without exit testing. COVID-19 could then be introduced into the group quarantine and from there into the general population. To illustrate this problem, imagine Group A and Group B, both containing five people who arrive at MVDF. The facility administrator places Group A into an empty dormitory for the prescribed 14 day quarantine. On day 7 of Group A's quarantine, Group B arrives and the facility administrator places Group B into that same dormitory to begin its own 14 day quarantine. Though both groups would have been tested on entry, the extended incubation period of COVID-19 would allow a member of Group B to infect one or more members of Group A, who could also then introduce the disease into the general population. Because the defendants' plan does not contemplate exit testing from the intake quarantine, there would be no way to detect the introduction of COVID-19 in this manner. This heightens the risks of transmission and infection for all of the individuals placed in routine intake quarantine as well as the general population.
15. *Symptomatic People*: The defendants' plan does not identify whether symptomatic people must be isolated individually or could be isolated as a group. Because of the significantly higher risk of infection of symptomatic people, they should be separated from the group as quickly as possible and isolated individually.
16. *Refusers*: The defendants' plan requires that people who refuse tests be "quarantined separately." It is unclear whether this means that they would be quarantined individually or merely as a group of refusers. Unless refusers are quarantined individually, there is a risk that one refuser could infect the others in a refuser cohort – and that they could then infect the general population once released on the same basis described above with respect to the group quarantine.
17. *Transfers*: The defendants' plan leaves vague how they will respond to insufficient isolation or quarantine space in any one instance, stating only that "the detainee will not be admitted to the MVIPC" in such cases. To the extent that this plan relies on transfers to other facilities as the backup plan for the lack of appropriate isolation and quarantine space, that significantly heightens the risk of transmission for the individuals transferred, the individuals at a receiving facility, the staff involved in the transfers, and the general public.

The Plaintiffs' Proposed Injunction

18. I have reviewed the plaintiffs' proposed preliminary injunction. While I believe that it could go farther to protect people at MVDF, based on my knowledge about the way

COVID-19 spreads and testing, I believe it provides a reasonable degree of protection against the introduction and transmission of COVID-19 at MVDF.

19. *Limits on transfers into MVDF*: Even meaningful intake procedures still carry some risk that COVID-19 could be introduced to MVDF through a new arrival. As a result, when fewer people are transferred into MVDF, that risk is likely decreased. Limiting transfers into MVDF to occur only when particular criteria are met thus likely serves to make MVDF safer.
20. *Maintaining a dedicated cohort dorm*: As explained above with respect to the defendants' plan, it is imperative to create and maintain dedicated space for cohorting.
21. *Weekly staff and population testing*: Regular testing of all the staff and all of the people detained at MVDF is necessary to ensure that COVID-19 has not entered the facility and to enable a facility-wide response if it has. In order for this to be effective, it should be done through a test that returns results within two days. Beyond the two day window and any COVID-19 infection will likely have spread to others, creating a chain of transmission that can have escalating effect and then requires authorities to catch up. Regular staff testing is particularly important given that staff may contract COVID-19 in the larger community and introduce it into the facility. There is no epidemiological reason not to do regular and universal testing. The only reason that an entity would not want to do this is the cost.
22. *Population cap for each dormitory*: Congregate facilities have extraordinarily high risks of infection by their nature. Higher populations in dormitory spaces carry a heightened risk of transmission. This is particularly true if individuals are unable to practice safe social distancing practices within the dormitory. A population cap serves to increase the possibility of safe social distancing within any individual dormitory. To guard against droplet-based transmission, six feet of social distancing is required. With aerosolized transmission, no particular distance indoors is safe. With these principles in mind, it is critical for facilities like MVDF to keep the population of each dormitory as low as possible. While I have not attempted to independently calculate what the layout of the MVDF dormitories would suggest as to a specific population cap, the concept of such a cap is a good one to prevent even brief crowding that could exacerbate the spread of COVID-19.
23. *Intake procedures*: A number of the intake procedures suggested by the plaintiffs that go beyond the defendants' intake plan are likely to help prevent the introduction of COVID-19 into MVDF. These include:
 - a. The plaintiffs' proposal requires either that intake-related quarantine occur on an individual basis or the development of a court-approved plan that would identify where and how people would be quarantined at MVDF. As I explained above, the details about where and how people would be quarantined at MVDF are conspicuously absent from the defendants' intake plan. While it would be best for people to be safely quarantined alone, if any kind of group quarantine is going to

occur, the defendants should have to explain how it will be achieved without significant risk or transmission and where in MVDF it could occur. This is particularly important in light of the space constraints at Mesa Verde.

- b. The plaintiffs' proposal would also require that any group intake quarantine involve COVID-19 exit testing. This is imperative to prevent members of the group quarantine from introducing the disease into the general population, as discussed above. That exit testing should be done either through a single laboratory test or two consecutive point-of-care tests, with the second point-of-care test being necessary to protect against the possibility of a false negative.

Other Measures

24. There are other measures that I believe would also help mitigate the spread of COVID-19 at MVDF, including a process to ensure that there is adequate ventilation, a requirement that any windows at the facility be opened as much as the weather would allow, and humidification to levels of 40 to 60 percent. I would urge the defendants to adopt these measures as well.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information and belief.

Executed this 9th day of November, 2020 in New Haven, Connecticut.

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