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**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

JOSE ORLANDO CANCINO
 CASTELLAR, et al.,

Plaintiff-Petitioners,

v.

CHAD WOLF, Acting Secretary, U.S.
 Department of Homeland Security, et
 al.,

Defendant-Respondents.

Case No. 3:17-cv-00491-BAS-AHG

**PLAINTIFF-PETITIONERS' REPLY
 IN SUPPORT OF RENEWED
 MOTION FOR CLASS
 CERTIFICATION**

Date: Dec. 7, 2020

Time: 1:00 p.m.

Courtroom: 4B

Judge: Hon. Cynthia A. Bashant

1 I. INTRODUCTION

2 The central dispute here is uncomplicated. Defendants crystallize it by stating:
 3 “[a]s a preliminary matter, for civil immigration detainees, no right to prompt
 4 presentment exists at all.” Opp. at 25:9–11. Plaintiffs disagree and assert that civil
 5 immigration detainees do have such a right. Because the record is undisputed that
 6 Defendants impose systemic delays before presenting class members to a judge, this case
 7 presents a purely legal question of whether those delays violate the law across the board.
 8 This is a quintessential class action because the Court can decide this controlling question
 9 of law in one fell swoop.

10 The Court retains jurisdiction to certify the class. Defendants cite statutes that do
 11 not apply here. Under controlling precedent, 8 U.S.C. § 1252(f)(1) does not apply to class
 12 certification. *Padilla v. Immig. & Customs Enft.*, 953 F.3d 1134 (9th Cir. 2020). Similarly, 8
 13 U.S.C. § 1252(e) does not apply because it only bars certification in challenges to the
 14 expedited removal process, which Plaintiffs do not challenge here.

15 Plaintiffs satisfy the Rule 23 requirements. Defendants do not dispute numerosity.
 16 The record establishes commonality and typicality because all class members assert the
 17 same right to prompt presentment before a judge, regardless of whether the outcomes
 18 of their individual immigration matters might vary subsequent to that initial presentment.
 19 Even if some class members have some different administrative rights, they all share a
 20 common claim to be promptly presented for meaningful advisal of those rights. In a case
 21 Defendants simply ignore, the Ninth Circuit rejected the position that the existence of
 22 different detention statutes defeats commonality in a case materially indistinguishable
 23 from this one. *Rodriguez v. Hayes*, 591 F.3d 1105, 1122–23 (9th Cir. 2010) (“*Rodriguez I*”).
 24 The record also establishes adequacy. Defendants properly waived any claim that
 25 Plaintiffs are not adequate based on their individual claims becoming moot, ECF No. 19,
 26 because class certification in this inherently transitory case relates back to the filing of
 27 the complaint. And when the complaint was filed, Plaintiffs were certainly adequate.
 28

1 Certification is appropriate under Rule 23(b)(2) because the Court can issue a single order
 2 granting injunctive or declaratory relief that cures a classwide problem.

3 The complaint need not be amended to allow a minor modification to the class
 4 definition derived from facts uncovered in discovery that were known to Defendants.
 5 The modification requires no additional discovery and does not prejudice Defendants.
 6 Accordingly, the Court should certify the proposed class.

7 **II. ARGUMENT**

8 **A. This Court Has Jurisdiction to Certify a Class.**

9 **1. 8 U.S.C. 1252(f)(1) Does Not Bar Certification.**

10 Under, 8 U.S.C. § 1252(f)(1), “no court (other than the Supreme Court) shall have
 11 jurisdiction or authority to enjoin or restrain the operation of [8 U.S.C. §§ 1221–1232],
 12 other than with respect to the application of such provisions to an individual alien against
 13 whom proceedings under such part have been initiated.” The statute says nothing about
 14 certification, and thus does not bar certification.

15 The Ninth Circuit has expressly rejected “the government’s invitation to read into
 16 the text” of § 1252(f)(1) “a broad but silent limitation on the district court’s powers
 17 under Federal Rule of Civil Procedure 23” because “Congress knows how to speak
 18 unequivocally when it wants to alter the availability of class actions in immigration cases.
 19 It did not do so here.” *Padilla*, 953 F.3d at 1149–50. Defendants may believe *Padilla* was
 20 “wrongly decided,” Opp. at 5 n.9, but it is controlling and may not be wished away.

21 In addition, although the propriety of ultimate injunctive relief is not yet at issue,
 22 § 1252(f)(1) would not bar certification even if it did “broadly restrict” future injunctive
 23 relief in this case, Opp. at 4:16-20, because it “does not affect classwide declaratory
 24 relief.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). Declaratory relief is not “the
 25 functional equivalent of injunctive relief,” Opp. at 7 n.10, as the Ninth Circuit has
 26 confirmed. *Rodriguez I*, 591 F.3d at 1120.

27 In any event, *Padilla* confirms that § 1252(f)(1) does not bar an appropriate
 28 injunction in this case. As the Ninth Circuit held, § 1252(f)(1) was intended only “to

1 restrict courts’ power to impede the new congressional removal scheme on the basis of
 2 suits brought by organizational plaintiffs and noncitizens not yet facing proceedings
 3 under 8 U.S.C. §§ 1221–1232.” *Padilla*, 953 F.3d at 1150–51. Notably, the Court
 4 concluded that Congress preserved “a district court’s ability to address imminent rights
 5 violations,” such as those alleged here. *Id.* at 1150; *see also Al Otro Lado v. Wolf*, No. 17-
 6 CV-02366-BAS-KSC, 2020 WL 6384357, at *11 (S.D. Cal. Oct. 30, 2020) (“*AOL IP*”)
 7 (“§ 1252(f)(1) does not . . . categorically insulate immigration enforcement from ‘judicial
 8 classwide injunctions.’”) (citation omitted).

9 Although the propriety of ultimate injunctive relief is not yet at issue, § 1252(f)(1)
 10 would not apply here because an injunction requiring prompt presentment would not
 11 “enjoin or restrain the operation of” any statute, including “8 U.S.C. § 1229(b)(1).” *Opp.*
 12 at 6:14–16. Under that statute, which applies whether or not a person is detained, “In
 13 order that an alien be permitted the opportunity to secure counsel before the first hearing
 14 date in proceedings under section 1229a of this title, the hearing date shall not be
 15 scheduled earlier than 10 days after the service of the notice to appear, unless the alien
 16 requests in writing an earlier hearing date.” 8 U.S.C. § 1229(b)(1). However, the
 17 requirement of prompt presentment is triggered by extended detention following arrest,
 18 not service of a notice to appear, which may occur weeks after arrest. *Vakili Supp. Decl.*,
 19 Ex. 3 (DHS Resp. to Interrog. No 3). As Plaintiffs have argued, ECF No. 125-1 at 10:20–
 20 24, the “first hearing” in § 1229(b)(1), properly construed, refers to the first substantive
 21 hearing in removal proceedings, not a presentment hearing for meaningful advisals of
 22 rights, including the right specified in § 1229(b)(1) to waive the 10-day grace period,¹ and
 23 rights regarding custody issues that are distinct from removal issues.

24 An injunction requiring prompt presentment would also not enjoin or restrain the
 25

26 ¹ It is not clear Defendants actually implement such waivers, increasing the importance
 27 of meaningful advisal of the right. Plaintiff Hernandez Aguas did not sign the waiver,
 28 ECF No. 28-2, Exh. H, and spent 34 days in custody without a hearing. Plaintiff Cancino
 Castellar signed the waiver, indicating he wanted to proceed promptly to a substantive
 hearing, ECF No. 28-2, Exh. B, but he also spent 34 days in custody without a hearing.

operation of 8 U.S.C. § 1225(b)(1)(B)(III). Opp. at 5:10–20. That statute provides a “limited hearing” within “7 days” of a negative credible fear determination in expedited removal and permits Defendants to “order the [asylum seeker] removed from the United States without further hearing or review” thereafter. 8 U.S.C. § 1225(b)(1)(B)(III). Prompt presentment would likely take place prior to the negative credible fear determination, which does not occur for at least 27-30 days on average.² Vakili Supp. Decl., Ex. 3 (DHS Resp. to Interrog. No. 3). As Defendants note, the statutory clock for a credible fear review hearing does not begin “from the date of the [individual]’s arrest,” Opp. at 5:17-20, so the statute does not forbid a separate presentment hearing that does begin from that date. If a presentment hearing is not forbidden by § 1225(b)(1)(B)(III), then requiring one cannot restrain the operation of that statute. *See Onosamba-Ohindo v. Barr*, No. 1:20-CV-00290 EAW, 2020 WL 5226495, at *10 (W.D.N.Y. Sept. 2, 2020) (where injunction requiring bond hearing protections permits compliance with the text of 8 U.S.C. § 1226(a), “the statute’s operation would not be enjoined or restrained”).

2. 8 U.S.C. §1252(e) Does Not Bar Certification.

Defendants are incorrect that 8 U.S.C. § 1252(e) applies here. That statute prohibits courts from “certify[ing] a class under Rule 23” “in any action for which judicial review is authorized under a subsequent paragraph of this subsection.” § 1252(e)(1)(B) The only such paragraph Defendants rely on is subsection (e)(3), which covers only the legality of “sections” “regulations” or “written” policy “to implement” expedited removal. 8 U.S.C. § 1252(e)(3). However, that section does not apply because Plaintiffs are not “calling into question the legality of the expedited removal process itself.” *Al Otro Lado, Inc. v. McAleenan*, 423 F. Supp. 3d 848, 864, 867 (S.D. Cal. 2019) (“*AOL P*”).

The fact that some class members may be in expedited removal proceedings does not make this case a “systemic challenge[] to the implementation of 8 U.S.C. § 1225(b).” Opp. at 6:1-3. “The challenges that are subject to the circumscribed jurisdiction in

² If Defendants’ practices evolve to where a negative credible fear determination happens promptly, then the IJ review hearing of that determination would remove the person from the class because they will have been presented to an IJ.

subsection (e)(3)” do not include challenges that “target other circumstances incidental to removal,” such as detention without prompt presentment. *AOL I*, 423 F. Supp. at 867; *cf. E. Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1268-69 (9th Cir. 2020).

B. This Case Meets the Requirements of Rule 23.

1. Plaintiffs Satisfy Commonality and Typicality.

Defendants cannot defeat commonality and typicality by relying on irrelevant, technical variations in the administrative process that have no impact on the central question whether Defendants are systematically depriving class members of prompt presentment. Defendants do not deny that they incarcerate *all* class members for lengthy periods of time without judicial presentment, regardless of administrative posture or grounds for detention. The Court held Plaintiffs state a claim that presentment delays violate substantive due process despite differences in their administrative postures. ECF No. 63. Regardless of such differences, Plaintiffs establish commonality and typicality because this case presents “a single common question” whether delayed presentment violates substantive due process for the entire class and Plaintiffs suffered a “similar injury” to the class “based on conduct which is not unique to the named plaintiffs.” *Parsons v. Ryan*, 754 F.3d 657, 675, 685 (9th Cir. 2014).

Plaintiffs do not seek “an initial hearing within 48 hours of arrest.” Opp. at 1:3-6. They seek presentment promptly *after* 48 hours in Defendants’ custody. ECF Nos. 33 at 2:4-11; 35 at 2:24-25; 50-1 at 9:22-10:4; 55 at 1:10-12, 5:15-16. This initial period allows Defendants to complete booking, decide what enforcement action to take, and determine whether they will continue incarceration for that enforcement action. ECF No. 125-1 at 6:9-7:4. Thus, after 48 hours, regardless of the apprehending agency or action chosen, Defendants know whether they will (a) refer someone for criminal prosecution or initiate removal proceedings, (b) impose regular or expedited removal proceedings, (c) provide a credible fear interview, and, (d) critically, continue the person in custody. *Id.* Once those steps have been completed, all class members are in the same boat, facing weeks or months of confinement without judicial presentment.

1 It is this extended detention that triggers the presentment rights Plaintiffs assert,
 2 not Defendants' administrative processing choices. Whatever differing rights may exist
 3 in various immigration processes, Plaintiffs claim all class members must be promptly
 4 presented to a judge to receive advisals of those rights "from a neutral source" and be
 5 afforded an opportunity to take any "appropriate legal action" for which they may be
 6 eligible. *Armstrong v. Squadrito*, 152 F.3d 564, 573 (7th Cir. 1998). For example, class
 7 members may seek release from custody, whether by bond hearing, 8 C.F.R. § 236.1(d),
 8 or hearing on designation under 8 U.S.C. § 1226(c), *In re Joseph*, 22 I. & N. Dec. 660 (BIA
 9 1999). People detained under 8 U.S.C. §1225(b) may also assert they were wrongfully
 10 classified, many will be eligible for bond hearings if they pass their credible fear
 11 interviews, *Padilla*, 953 F.3d at 1152, and all may seek parole, Opp. at 15:11-12.

12 Class members also have rights in whatever removal process Defendants have
 13 chosen to initiate, whether ordinary or expedited. 8 U.S.C. §§ 1225(b)(1)(B), 1229(b),
 14 1229a(b)(4); 8 C.F.R. §§ 235.3, 208.30. But whatever the removal process, all class
 15 members have a common right to be promptly presented to a neutral adjudicator to
 16 receive meaningful notice and advisal of rights.

17 Defendants do not cite much less distinguish *Rodriguez I*, even after Plaintiffs noted
 18 it is directly on point. ECF No. 125-1 at 19:1-17. The Ninth Circuit rejected the position
 19 that different statutory grounds for detention defeat commonality in a class action
 20 seeking procedural protections against prolonged detention. *Rodriguez I*, 591 F.2d. at
 21 1122-23. Although it is possible "[t]he nature of the particular statute authorizing the
 22 detention of individual class members will play some role" in the unfolding of the
 23 custody or removal processes for individual class members, "the constitutional issue at
 24 the heart of each class member's claim" to prompt judicial presentment at the outset of
 25 those processes "is common" to the class. *Id.*

26 Thus, despite any "divergent factual predicates" in their respective administrative
 27 processes, the presentment claims of the class "center on shared legal issues" and "a
 28 common core of salient facts." *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir.

2014). “The different factual circumstances between each class member’s particular experience does not destroy commonality because there is still a common underlying legal question regarding whether each and every class member was illegally denied” prompt judicial presentment based on “Defendants’ overarching” policies and practices for people in civil immigration custody. *AOL II*, 2020 WL 6384357 at *7.

2. Plaintiffs Satisfy the Adequacy Requirement.

Defendants waived their arguments that Plaintiffs are inadequate because their individual claims are moot. Opp. at 22:16-23. The Court approved Defendants’ stipulation that they “will not oppose . . . Class Certification on the grounds that the named Plaintiffs-Petitioners, or any additional named Plaintiff(s)-Petitioner(s) who may be added in the future, lack standing or are inadequate class representatives because their claims became moot when they each appeared before an immigration judge or were released from custody.” ECF Nos. 18, 19.

In any event, Defendants are wrong because this case is “a classic example of a transitory claim” involving “a constantly changing putative class that will become subject to these allegedly unconstitutional conditions.” *Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997). When a case presents “inherently transitory” claims, “the termination of a class representative’s claim does not moot the claims of the unnamed members of the class,” and “the ‘relation back’ doctrine is properly invoked to preserve the merits of the case for judicial resolution.” *County of Riverside v. McLaughlin*, 500 U.S. 44, 51–52 (1991). Because Plaintiffs made “a timely motion for class certification” at the outset of this case, ECF No. 2, which the Court has deferred to now, class certification “relates back to the filing of the complaint.” *Pitts v. Terrible Herbst*, 653 F.3d 1081, 1090–92 (9th Cir. 2011). Under “the relation back doctrine,” the question is “whether adequacy was satisfied at the filing of the complaint,” which Defendants cannot seriously dispute. *Doe v. Wolf*, 424 F. Supp. 3d 1028, 1043 (S.D. Cal. 2020).

Plaintiffs submitted declarations with the class certification motion, a clear indication of their willingness to participate in the case. ECF No 2-2, Exs. 1-3. Though

Defendants lament those declarations did not contain magic words stating “their desire or ability to litigate a complicated class action,” Opp. at 23:19-23, “there is no requirement that a named plaintiff submit a declaration specifically affirming their interest, willingness, and understanding of the need to participate.” *Padilla v. US Immig. & Customs Enft.*, No. C18-928 MJP, 2019 WL 1056466, at *5 (W.D. Wash. Mar. 6, 2019). Nevertheless, Plaintiffs submit new declarations renewing their commitment to representing the class. Vakili Supp. Decl., Exs. 1, 2.1-2.2.

Cases that do not involve inherently transitory class actions are irrelevant. Opp. at 22-24. Defendants’ own authority recognizes “that when class claims are inherently transitory and all of the named plaintiffs’ claims have been mooted, certification may be deemed to relate back to the filing of the complaint in order to avoid mootng the entire controversy.” *Unthaksinkun v. Porter*, No. C11-0588JLR, 2011 WL 4502050, at *14 (W.D. Wash. Sept. 28, 2011). That court merely found it unnecessary to apply the doctrine when only one plaintiff’s case was moot because several others still had live claims. *Id.*

Finally, Defendants cite no authority for their argument that a detention class action must have a representative from every facility within the class and detained under every potentially applicable statute. Opp. at 24:14-21. Once again, *Rodriguez I* forecloses this argument. 591 F.3d at 1121 (finding “no authority or rationale for the proposition” that a case does not “meet[s] the requirements for certification merely because class members are in the immediate custody of different facilities.”). For purposes of prompt presentment, detention is detention, and each Plaintiff is adequate to represent the entire class regardless of their detention location or precise statute authorizing their detention.

3. This Civil Rights Case Satisfies Rule 23(b)(2).

Defendants destroy their own arguments that Rule 23(b)(2) is not met with their blanket statement that, “[a]s a preliminary matter, for civil immigration detainees, no right to prompt presentment exists at all.” Opp. at 25:9-11. As noted above, that assertion presents a prototypical issue for resolution under Rule 23(b)(2). Plaintiffs say that people in civil immigration custody have a due process right to prompt presentment. Defendants

say they do not. Defendants’ position “appl[ies] generally to the class,” and therefore “final injunctive and corresponding declaratory relief” would be “appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

C. The Slight Modifications to the Class Definition Should be Permitted.

Defendants take issue with the inclusion of San Luis Detention Center and Theodore Newton and George Azrak Border Patrol Station (“Murrieta Station”) in the modified class definition, though they do not dispute the modified class is considerably smaller.³ Opp. at 8:2-3. As Defendants acknowledge, modifications to a class definition are permissible when they are “minor” and “won’t prejudice the defendant.” Opp. at 7:21-24, 9:12-9:16. That is undoubtedly the case here. The new definition removes one Border Patrol station (the Blythe Station, operated by Yuma Sector of Border Patrol) and adds a different one, Murrieta Station. That one-for-one swap is undoubtedly minor. Similarly, the addition of San Luis is minor because it is an overflow facility for ICE’s San Diego Field Office, which has held a small percentage of class members in the last three years, including Ms. Hernandez Aguas. ECF No. 125-1 at 6:10-15.

Struggling to articulate some prejudice from the alterations, Defendants object to hypothetical additional class discovery that Plaintiffs do not seek. Discovery thus far has focused on Defendants’ San Diego Field Offices and Sectors, not county lines or Yuma Sector. ECF No. 125-16 (DHS Resp. to 2nd Set of Interrogs., Nos. 12-13, 16). Removing Blythe and adding Murrieta only makes things easier for Defendants by removing a third

³ To address aspects of the class definition about which there appears to be confusion, Plaintiffs’ prior use of Defendants’ term “criminal aliens” was not meant to exclude individuals in *civil* custody who have criminal histories from the class. Opp. at 18 n.20. Plaintiffs meant only to state that people detained in connection with *criminal* charges are excluded. In addition, individuals detained with their family members are included in the class, regardless whether Defendants’ label such individuals as parts of “units.” Opp. at 8 n.11. It is not unusual for Border Patrol to detain individuals in families for extended periods before transfer to ICE, despite there being no family residential center in Southern California. Vakili Supp. Decl., Ex. 4 (Border Patrol Dep. Tr. at 133:12-133:21, 138:4-140:15, 146:17-147:12).

1 Border Patrol Sector from the case and avoiding discovery into Yuma Sector operations,
2 which Plaintiffs have not sought but will be forced to do if Blythe is included.⁴

3 Most cases cited by Defendants simply state a general rule that a class definition
4 should ordinarily not be amended without amending the complaint, without analyzing
5 whether the exception applies. Their authorities that do support Plaintiffs' position. In
6 *In re TFT-LCD (Flat Panel) Antitrust Litig.*, movants changed the definition during class
7 briefing to extend the temporal scope of the class 20 days and expand the geographic
8 scope to include individuals "who have since moved out of" its geographic limits. 267
9 F.R.D. 583, 591 (N.D. Cal. 2010). The court allowed "the proposed modifications"
10 because they were "minor, require no additional discovery, and cause no prejudice to
11 defendants." *Id.* at 591. The same is true here, where Plaintiffs slightly modified the class's
12 geographic scope to more squarely fit Defendants' operations.

13 **III. CONCLUSION**

14 For the reasons above, the Court should certify the proposed class.

16 Dated: November 20, 2020

ACLU FOUNDATION OF SAN DIEGO
& IMPERIAL COUNTIES

18 By: /s/ Bardis Vakili

BARDIS VAKILI

Attorney for Plaintiff-Petitioners

21 _____
22 ⁴ Defendants speculate that a hypothetical presentment case for people detained in San
23 Luis or Murrieta would impose "prejudices" on "other district courts." Opp. at 9:17-21.
24 This is a red herring, as courts routinely certify multi-district immigration detention cases.
25 See, e.g., *Padilla*, 953 F.3d at 1140. Moreover, Defendants are wrong that the "immediate
26 custodian" rule would require any such case to be brought in those districts. Opp. at
27 10:8-10. The Supreme Court "declined to address" whether the rule applies to
28 immigration detention cases where its logic does not neatly apply, *Rumsfeld v. Padilla*, 542
U.S. 426, 435 n.8 (2004), "and there is no conclusive Ninth Circuit authority on the
issue." *Singh v. Barr*, No. 20-CV-02346-VKD, 2020 WL 2512410, at *4 (N.D. Cal. May
15, 2020). In any event, conjecture about hypothetical cases does not constitute prejudice,
and the Court may grant relief under its equitable jurisdiction under 28 U.S.C. § 1331
without necessarily invoking its habeas authority.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 20, 2020 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civ LR 5.4(d). Any other counsel of record will be served by U.S. mail or hand delivery.

/s/ Bardis Vakili

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22 **UNITED STATES DISTRICT COURT**
23 **SOUTHERN DISTRICT OF CALIFORNIA**

24 JOSE ORLANDO CANCINO
25 CASTELLAR, et al.,

26 Plaintiff-Petitioners,

27 v.

28 CHAD WOLF, Acting Secretary, U.S.
Department of Homeland Security, et al.,

Defendant-Respondents.

Case No. 17-cv-00491-BAS-AHG

**SUPPLEMENTAL DECLARATION
OF BARDIS VAKILI IN SUPPORT
OF RENEWED MOTION FOR
CLASS CERTIFICATION**

1 I, Bardis Vakili, hereby declare as follows:

2 1. I have personal knowledge of the facts set forth below and if called to
3 testify, I could and would do so competently.

4 2. I am a Senior Staff Attorney with the ACLU of San Diego & Imperial
5 Counties.

6 3. Attached hereto as Exhibit 1 is a true and correct copy of the
7 Supplemental Declaration of Plaintiff-Petitioner Jose Orlando Cancino Castellar,
8 dated November 16, 2020.

9 4. Attached hereto as Exhibit 2.1 is a true and correct copy of the
10 Supplemental Declaration of Plaintiff-Petitioner Ana Maria Hernandez Aguas, dated
11 November 16, 2020.

12 5. Attached hereto as Exhibit 2.2 is a true and correct copy of the English
13 Translation of Exhibit 2.1 (the Supplemental Declaration of Plaintiff-Petitioner Ana
14 Maria Hernandez Aguas, dated November 16, 2020).

15 6. Attached hereto as Exhibit 3 is a true and correct copy of Defendant
16 Department of Homeland Security's Supplemental Responses to Plaintiffs' First Set
17 of Interrogatories to Defendant Chad F. Wolf, Acting Secretary of Homeland
18 Security, dated May 1, 2020.

19 7. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from
20 the transcript of the September 23, 2020 Deposition of Rule 30(b)(6) Witness for
21 U.S. Customs and Border Protection, United States Border Patrol.

22
23 I declare under penalty of perjury of the laws of the State of California and the United
24 States that the foregoing statements are true and correct.

25 Executed this 19th day of November, 2020, in San Diego, California.

26 /s/ Bardis Vakili

27 Bardis Vakili

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Exhibit 1

1 I, Jose Orlando Cancino Castellar, have personal knowledge of the facts set
2 forth below and if called to testify, I could and would do so competently.

3 1. I provide this declaration as an update to the declaration I submitted in
4 this case in March 2017. I was born on January 31, 1999. I am currently out of
5 detention. Since my release, I have gotten a good job in a restaurant that I've held for
6 a few years. I am so happy to be back living with my family. My younger sister is
7 now 15 years old, and my younger brother is now 13. I still help my parents with
8 them whenever I can, like getting them ready for school, which now is only part time
9 for them because of coronavirus. I have a new 11-month old baby brother too.

10 2. I am grateful to have been granted Deferred Action for Childhood
11 Arrivals, or DACA. Without it, I may have been deported from my home country,
12 the United States, where I've lived since I was 5. I don't know what I would have
13 done. If DACA is rescinded, I am nervous that ICE could come re-arrest me and that
14 I will have to go through the same ordeal of being detained again.

15 3. I understand the importance of a prompt first appearance for people in
16 custody. On the night of Wednesday February 15, 2017, a few weeks after my 18th
17 birthday, I walked out of the apartment where I live with my parents and siblings, to
18 move the car from where it was parked. El Cajon police pulled me over. They
19 suspected I had been drinking, and they arrested me. They took me to downtown San
20 Diego that night and held me in a holding tank, and then the next morning I was taken
21 for my first appearance on the charges in the El Cajon courthouse. At that first
22 appearance, the judge told me the case was going to be dismissed. I was very happy
23 to hear that.

24 4. After that, I was taken back downtown, and I thought I would be
25 released back to my family. But instead, while I was processing out of the San Diego
26 jail facility, ICE officers came into the room and said, "take off your shoelaces." I
27 didn't know what was going on. They took me into custody and to another building
28 that must have also been downtown because it was only 5 minutes away.

6 6. But I did not see an immigration judge the next day or even that week.
7 Some other people in the facility told me they had been there months and not seen an
8 immigration judge. I thought that was crazy. I went more than a month before I saw
9 an immigration judge too.

16 8. When I decided to participate in this lawsuit, I knew that it was mostly
17 for the purpose of helping other people in the same situation as me. I could only
18 imagine what people before and after me were going through. Even though I've been
19 out of custody for a few years, I'm as committed to fighting for them as I was when
20 this case began. Nobody should have to wait in detention for weeks or months before
21 seeing a judge for the first time.

25 Executed this 16 day of November 2020 in San Diego, California.

Exhibit 2.1

DECLARACION DE ANA MARIA HERNANDEZ AGUAS

Yo, Ana Maria Hernandez Aguas, tengo conocimiento personal de los hechos establecidos a continuación y si llamada a testificar pudiera hacerlo competentemente.

1. Esta declaración es una actualización de la declaración que presente en este caso en marzo de 2017. Ya no estoy detenida y vivo con mis dos hijas de nuevo. Mis hijas ahora tienen 12 y 6 años. Yo tengo un permiso de trabajo y un buen trabajo trabajando por un florista. Mi caso de inmigración esta cerrado administrativamente, lo que significa que se pudiera reabrir en el futuro.

2. El mes que pasé bajo custodia antes de ver a un juez fue muy difícil para mí. Ser trasladada de una instalación a otra y preocuparme constantemente por mis hijas fue muy estresante.

3. También fue difícil para mis niñas. Hasta la fecha, dicen que les preocupa que me vayan a llevar. Les aseguro que estoy siguiendo las reglas y comportándome bien, y que no deben preocuparse por eso. Quiero que se concentren en otras cosas, pero aún sienten el trauma del mes en que estuvimos separadas. Su padre ha sido deportado, así que yo soy la única quien les queda aquí. Si me volvieran a tomar bajo custodia por tanto tiempo, no sé qué harían.

4. Mi hija mayor me escribió una carta mientras estuve detenida, la cual se presentó en apoyo en mi audiencia de fianza. Ella explicó lo que estaba viviendo, cuanto me extraño y lo triste que estaba. Ella mencionó que perdí su viaje escolar y no pude ayudarla a arreglarse para la escuela ni recogerla de la escuela. Tenía 8 años. Me rompe el corazón al pensar todo lo que vivió durante el mes que estuve separada de ella. Incluyo su carta a esta declaración, como Prueba A.

5. Recuerdo que otras personas detenidas conmigo pasaban por un dolor similar. Cuando me enviaron al centro de detención en Arizona, muchos de nosotros estábamos esposados de manos y rodillas. Recuerdo que una de las mujeres preguntó por qué nos trataban de esta manera. Nadie entendía y todos estábamos tan

1 traumatizados. Intentamos consolarnos y, aunque muchos de nosotros éramos de
2 diferentes países, nos dijimos que estábamos en esto juntos.

3 6. Cuando pienso en ser parte de esta demanda, pienso en las otras mujeres
4 con las que estuve encerrada y en mis hijas. Por eso estoy tan comprometida a ser
5 parte de esta demanda y luchar por los derechos de las personas ahora detenidas. Pasé
6 un mes detenida antes de ver a un juez de inmigración, y durante ese tiempo no se
7 me permitió guardar los papeles de inmigración que llenaron durante mi
8 procesamiento. Las personas no deberían de pasar tanto tiempo con tan poca
9 información sobre el proceso en el que están. Si pudieran ver a un juez de inmigración
10 más rápido, tal vez podrían encontrar formas de salir de esos horribles centros de
11 detención más rápido también. Incluso si lo único que hiciera fuera ayudarlos a
12 comprender mejor lo que les está pasando y lo que podrían hacer para salir, sería de
13 gran ayuda.

14
15 Declaro bajo pena de perjuicio bajo las leyes del Estado de California and los Estados
16 Unidos que lo anterior dicho es verdadero y correcto.

17
18 Ejecutado este día 16 de noviembre 2020 en San Diego, California.

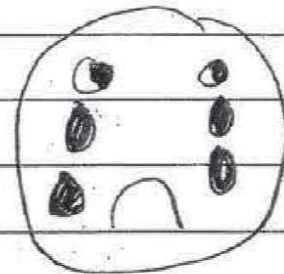
19
20 
21 Ana Maria Hernandez Aguas

Exhibit A

Rashell

To: MOM

MOM I miss you a lot. I need you because I need you to help me with my homework, to wash my cloths for school, I need you because I want to hug you all the days I want you to kiss you all the days, I need you to go on my field trip on may. I miss you a lot on valentines day february 14th. I miss you a lot. And I don't want you to take you to Mexico. I don't want to live separated from you. And you didn't go to pick me up at school. I felt sad. I don't want to go to school but my aunt says I have to go. In the morning I feel very sad. My little sister keeps on saying that my mom went to work but she still dosen't understand. I miss you mom.



007

Exhibit 2.2

[TRANSLATION]

I, Ana Maria Hernandez Aguas, have personal knowledge of the facts set forth below and if called to testify, I could and would do so competently.

1. This declaration is an update to the declaration I submitted in this case in March 2017. I am no longer in detention, and I am back living with my two daughters. My daughters are now 12 and 6 years old. I have a work permit and a good job working for a florist. My immigration case is administratively closed, which means it could be reopened in the future.

2. The month I spent in custody before seeing a judge was so difficult for me. Being moved from facility to facility and constantly worrying about my daughters was very stressful.

3. It was also difficult for my little girls. To this day, they say they are worried that I am going to be taken away. I reassure them that I am following the rules and behaving well, and that they should not worry about that. I want them to focus on other things, but they still feel the trauma of the month we were separated from each other. Their father has been deported, so I am the only one they have left here. If I was taken into custody again for so long, I don't know what they would do.

4. My older daughter wrote a letter while I was in detention, which was filed in support of my bond hearing. She explained what she was going through, how much she missed me and how sad she was. She mentioned how I missed her field trip and could not help her get ready for school nor pick her up from school. She was 8. It breaks my heart to think about all she went through while I spent that month separated from her. I have attached her letter as Exhibit A to this declaration.

5. I remember that other people detained with me were going through similar pain. When I was sent to the detention center in Arizona, many of us were cuffed by the hands and knees. I remember one of the women asking why they were treating us this way. Nobody understood, and we were all so traumatized. We tried to comfort each other and, even though many of us were from different countries, we

1 told each other we were in this together.

2 6. When I think about being part of this lawsuit, I think of the other women
3 I was locked up with and my children. They are why I am so committed to being a
4 part of this lawsuit and fighting for the rights of people who are in detention now. I
5 spent a month detained before I saw an immigration judge, and during that time I was
6 not allowed to keep the immigration papers they filled out during my processing.
7 People should not have to go so long with such little information about the process
8 in which they are in. If they could see an immigration judge quickly, maybe they
9 could find ways to get out of those horrible detention centers quickly as well. Even
10 if all it did was help them understand better what is happening to them and what they
11 could do to get out, it would be a huge help.

12
13 I declare under penalty of perjury of the laws of the State of California and the United
14 States that the foregoing statements are true and correct.

15
16 Executed this 16 day of November 2020 in San Diego, California.

17
18 [signature]

19 Ana Maria Hernandez Aguas
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CERTIFICATE OF TRANSLATION

I, Jacqueline Ramos, certify that I am fluent in Spanish and English and that I am competent to translate between these languages. I further certify that I have translated Ana Maria Hernandez Aguas' declaration from Spanish into English. I further declare that I am competent to render this translation and that I would testify to the same under the penalty of perjury if I were called upon to do so.

Executed: November 18, 2020

/s/Jacqueline Ramos
Jacqueline Ramos

Exhibit 3

JOSEPH H. HUNT
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Civil Division, U.S. Dep't of Justice
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE ORLANDO CANCINO
CASTELLAR, ANA MARIA
HERNANDEZ AGUAS, MICHAEL
GONZALEZ,

Plaintiffs-Petitioners,

vs.

CHAD F. WOLF, Acting Secretary of
Homeland Security, *et al.*,

Defendants-Respondents.

Case No. 17-cv-00491-BAS-BGS

**DEFENDANT DEPARTMENT OF
HOMELAND SECURITY'S
SUPPLEMENTAL RESPONSES TO
PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO DEFENDANT
CHAD F. WOLF, ACTING SECRETARY
OF HOMELAND SECURITY**

PRELIMINARY STATEMENT

In accordance with the Court's March 23, 2020 Order, granting in part and denying in part Plaintiffs' Motion to Compel, and granting in part and denying in part Defendants' motion for protective order, *see* ECF No. 97, Defendant Department of Homeland Security ("DHS"), hereby submits the following supplementary responses to Plaintiffs' First Set of Interrogatories to Defendant Chad F. Wolf, Acting Secretary, DHS.

The following supplementary responses should not be construed as a waiver of any objections set forth by Defendant DHS in its initial responses to Plaintiffs' First Set of Interrogatories, or of any arguments set forth in Defendants' Motion for Protective Order, *see* ECF No. 89. Furthermore, Defendants answer herein without, in any manner, admitting or implying that Plaintiffs' Interrogatories (or Defendants' responses) are relevant to any party's claim or defense and proportionate to the needs of the case.

Defendants' Objections are based on the information known to Defendants at this time, and are made without prejudice to assertion of additional objections should Defendants identify additional grounds for objection. Defendants reserve the right to further supplement, clarify, revise, or correct any or all of its responses to Plaintiffs' Interrogatories.

Defendant DHS also notes that many data fields in its systems of records required for analysis in order to respond to Plaintiffs' interrogatories are non-mandatory fields and are not tracked in a statistically reportable manner.

OBJECTIONS WHICH APPLY TO ALL INTERROGATORIES

1. Defendants object to all of Plaintiffs' Interrogatories to the extent that they seek information about individuals that are not parties to this lawsuit.
2. Defendants object to all of Plaintiffs' Interrogatories to the extent that they seek information and statistics about individuals who were not detained at the Otay Mesa Detention Center ("OMDC"), where each of the three named Plaintiffs were detained.
3. Defendants object to the extent that the number of interrogatories, when the subparts are included, exceed the number of interrogatories that may be propounded without leave of court. Fed. R. Civ. P. 33(a)(1).

4. Defendants object to Plaintiffs' Interrogatories to the extent that they purport to impose any obligations other than those required by the Federal Rules of Civil Procedure or the Local Rules of this Court. Defendants further object to the extent that the Interrogatories seek information which is not "relevant to any party's claim or defense and proportionate to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1).

5. Defendants object to Plaintiffs' definition of the terms "YOU," "DEFENDANT," or "DHS" on the grounds that the definition is overbroad, vague, unduly burdensome, and disproportional to the needs of the case. Specifically, Plaintiffs' definition includes "all the components, entities, affiliates, divisions, within [U.S. Immigration and Customs Enforcement ("ICE") and Customs and Border Protection ("CBP")] and all the present and former officers, directors, employees, attorneys, agents, investigators, representatives, or other persons acting or purporting to act on behalf of [ICE and CBP]." Plaintiffs' definition is overly broad and disproportional to the needs of the case in that it would include ICE and CBP subcomponents that are not relevant to the claims and defenses in this case. Asking Defendant DHS to search and produce documents from all subcomponents of ICE and CBP would be unduly burdensome, as ICE employs more than 20,000 people, and CBP employees more than 60,000 people, many of whom are not relevant to the claims or defenses in this case. See ice.gov/about and cbp.gov/about, respectively. Accordingly, Defendant DHS does not interpret the definition of "ICE" and "CBP" to include all component agencies of ICE and CBP or to include all employees of ICE and CBP and their respective component agencies. Defendant DHS interprets "ICE" to refer to ICE Enforcement and Removal Operations ("ERO") and the Office of the Principle Legal Advisor ("OPLA") within the Southern District of California and any other components, offices, and personnel directly at issue in this case, and interprets "CBP" to refer to CBP

Office of Field Operations (“OFO”) within the Southern District of California and any other components, offices, and personnel directly at issue in this case.

6. Defendants object to Plaintiffs’ definition of the term “DETAINEE” because it calls for information beyond the scope of this lawsuit. Particularly, Plaintiffs define “DETAINEE” to mean “[any] individual who spent or has spent longer than 48 hours in the physical custody of the Department of Homeland Security in the Southern District of California without a hearing before an immigration judge.” Defendants aver that this lawsuit is not a class action and is currently limited to three individual named Plaintiffs. Accordingly, Defendants object to this term as it seeks information which is disproportionate to the needs and scope of this lawsuit, unduly burdensome, and concerns individuals who are not parties to this lawsuit and whose information may be protected from disclosure under law, including the Privacy Act, 5 U.S.C. § 552a *et seq.*, and other statutes and regulations.

7. Defendant DHS also objects to the definition of “DETAINEE” as vague, unduly burdensome and disproportional to the needs of the case insofar as it excludes those who “have pending federal criminal charges” and those who have “an unexecuted final removal order.” In the San Diego area of responsibility, CBP reported 33,080 inadmissible aliens in Fiscal Year (FY) 2014, 40,455 in FY 2015, and 47,660 in FY 2016. In the same area of responsibility, ICE detained, in Fiscal Year (FY) 2014 - 22,158 aliens; in FY 2015, 26,158 aliens, in FY 2016, 40,860 aliens. *See* [ice.gov/doclib/foia/dfs/Detained-Population-Report-California.xlsx](https://ice.dhs.gov/doclib/foia/dfs/Detained-Population-Report-California.xlsx). Identifying individuals who meet Plaintiffs’ definition of “DETAINEE” would require Defendant DHS to manually review and screen an unascertainable amount of individual records to determine whether both qualifiers are met.

8. Defendants object to the term “DETAINED DOCKET” as ambiguous and overly broad in scope. Defendants reiterate that Plaintiffs have not filed a renewed motion for class certification and this lawsuit is currently limited to three individual named Plaintiffs. Accordingly, Defendants object to this term as it seeks information about “individuals detained in the Otay Mesa Detention facility or the Imperial Regional Detention Facility”

which is disproportionate to the needs and scope of this lawsuit, unduly burdensome, and about individuals who are not parties to this lawsuit and whose information may be protected from disclosure under law, including the Privacy Act, 5 U.S.C. § 552a *et seq.*, and other statutes and regulations.

Defendants further object to this term to the extent it seeks information about immigration court cases at the Imperial Immigration Court, which is beyond the scope of this lawsuit. Defendants further state that an individual's placement on the "detained docket" may change during the course of proceedings (for example, if the individual is released during proceedings, or, conversely, taken into custody after proceedings have commenced). Accordingly, Defendants object to this term as being ambiguous, overly broad, and calling for information beyond the scope of this lawsuit.

9. Defendants object to the term "CUSTODY HEARING" to the extent that it calls for information about custody hearings conducted for individuals that are not parties to this lawsuit—e.g. calls for information beyond any custody hearings conducted for the three named Plaintiffs: Jose Orlando Cancino Castellar, Ana Maria Hernandez Aguas, and Michael Gonzalez. Defendant further objects to Plaintiffs' definition of "CUSTODY HEARING" as including hearings conducted under *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999). None of the three named Plaintiffs requested or received a "custody hearing" in accordance with *Matter of Joseph*—e.g. a hearing at which an immigration judge determine whether an individual is subject to detention under 8 U.S.C. § 1226(c). Accordingly, Plaintiffs inclusion of "hearings" conducted under *Matter of Joseph* is beyond the scope of this lawsuit.

10. Defendants object to Plaintiffs' definition of the term "CONCERNING" as being facially overbroad, unduly burdensome, and as invading the attorney/client privilege, attorney work product doctrine, and/or violating the Privacy Act, 5 U.S.C. § 552a *et seq.* and other statutes and regulations protecting privacy.

11. Defendants object to Plaintiffs' definition of the term "PLAINTIFFS" as overbroad and speculative to the extent it calls for information about any additional individuals "added

or substituted as named plaintiffs in this case, as well as any members of any subsequently certified class of similarly situated individuals they seek to represent in this case.” Defendants reiterate that the only Plaintiffs to this lawsuit are Jose Orlando Cancino Castellar, Ana Maria Hernandez Aguas, and Michael Gonzalez. The Court has not certified a class, and Plaintiffs have not filed a renewed motion for class certification.

12. Defendant DHS objects to these interrogatories to the extent the requested information is not stored electronically in the manner Plaintiffs request and would therefore need to be manually queried on a case-by-case basis at great cost and burden to Defendant DHS that outweighs any benefit likely to be gained by Plaintiffs.

Subject to and without waiving the foregoing objections, Defendants provide the following responses:

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

For each fiscal year SINCE 2016, please state the mean and median number of days that elapsed between when DETAINEES were taken into custody and when they had their INITIAL MCH on the DETAINED DOCKET, broken down to also show such mean and median number of days for subcategories of DETAINEES based on the statutory authority for their detention (*e.g.*, 8 U.S.C. §§ 1225(b), 1226(a), 1226(c)) and the facility in which they were detained at the time of their INITIAL MCH, as well as the number of DETAINEES in each category or subcategory. Per Instruction Number 1, if YOU lack complete information based on the date DETAINEES were taken into custody, provide the mean and median number of days elapsed until the INITIAL MCH from the earliest date for which YOU have information and state any facts CONCERNING the time periods covered and the information YOU lack.

RESPONSE TO INTERROGATORY NO. 1:

Notwithstanding its previously-raised objections, Defendant DHS supplements its response to Interrogatory 1 as follows:

The following chart reflects the mean number of days between initial book-in by ERO and the initial master calendar hearing for detention stays that include some period of detention at the Otay Mesa Detention Facility or the Imperial Regional Detention Facility at the time of the initial master calendar hearing from March 1, 2017 through November 16, 2019, when the data was run. Fiscal Year is based on the Initial Book In date.

Detention Facility	Detention Facility Code	2015	2016	2017	2018	2019	2020
Overall Mean		60.00	78.86	44.40	36.54	56.29	27.00
IMPERIAL REGIONAL ADULT DET FAC	IRAD FCA	-	76.13	41.88	39.68	57.08	24.14
OTAY MESA DETENTION CENTER	CCAS DCA	60.00	80.04	46.91	33.56	55.79	29.08
SAN LUIS REGIONAL DET CENTER	SLRD CAZ	-	-	52.50	14.00	-	-
SND DISTRICT STAGING	SNDH OLD	-	-	42.00	-	-	-
THEO LACY FACILITY	TLAC YCA	-	-	11.00	-	-	-

The following chart reflects the median number of days between initial book-in by ERO and the initial master calendar hearing for detention stays that include some period of detention at the Otay Mesa Detention Facility or the Imperial Regional Detention Facility at the time of the initial master calendar hearing from March 1, 2017 through November 16, 2019,¹ when the data was run. Fiscal Year is based on the Initial Book In date.

¹ Defendant DHS notes that mean and median data is being provided for 2015 and 2016 insofar as certain individuals who were detained at some point from March 1, 2017 through November 16, 2019 were initially taken into custody during these years. Given the limited sample size, however, these mean and median figures do not accurately represent the true mean and median for all cases in those years. The same applies to all tables below that also report mean and median data for 2015 and 2016.

Detention Facility	Detenti on Facility Code	2015	2016	2017	2018	2019	2020
Overall Median		60.0	71.5	38.0	36.0	57.0	23.0
IMPERIAL REGIONAL ADULT DET FAC	IRADF CA	-	70.0	36.0	37.0	55.0	20.0
OTAY MESA DETENTION CENTER	CCAS DCA	60.0	72.5	41.0	32.0	59.0	26.0
SAN LUIS REGIONAL DET CENTER	SLRDC AZ	-	-	52.5	14.0	-	-
SND DISTRICT STAGING	SNDH OLD	-	-	42.0	-	-	-
THEO LACY FACILITY	TLAC YCA	-	-	11.0	-	-	-

The following chart reflects the number of detainees at each facility by fiscal year that include a detention stay with some period of detention at the Otay Mesa Detention Facility or the Imperial Regional Detention Facility at the time of initial master calendar hearing from March 1, 2017 through November 16, 2019, when the data was run. Fiscal Year is based on the Initial Book In date.

Detention Facility	Detenti on Facility Code	2015	2016	2017	2018	2019	2020
Total		1	152	2,785	3,396	2,648	88
IMPERIAL REGIONAL ADULT DET FAC	IRADF CA	-	46	1,386	1,657	1,026	37
OTAY MESA DETENTION CENTER	CCASD CA	1	106	1,395	1,738	1,622	51
SAN LUIS REGIONAL DET CENTER	SLRDC AZ	-	-	2	1	-	-
SND DISTRICT STAGING	SNDHO LD	-	-	1	-	-	-
THEO LACY FACILITY	TLACY CA	-	-	1	-	-	-

ICE understands that EOIR queried its database to create the charts contained in its Supplemental Response, and that EOIR then shared the underlying data (in the form of an Excel spreadsheet) with ICE. ICE then used the information contained in the spreadsheet

to query its own database to produce information responsive to the DHS Interrogatories. In Response to DHS Interrogatory No. 1, ICE is producing certain information concerning “the mean and median number of days that elapsed between when DETAINEES were taken into custody and when they had their INITIAL MCH on the DETAINED DOCKET. . . .” See ECF 97 at 19. ICE is aware that there is a discrepancy between the number of cases that EOIR used to produce its responses to the DOJ Interrogatories (11,774) and the number of cases that ICE used to respond to DHS Interrogatory No. 1 (9,070). ICE understands that the difference between the number of cases that EOIR used to respond to the DOJ Interrogatories and the number of cases used to respond to DHS Interrogatory No. 1 may be due, in part, to the fact that the ICE list does not include cases where the individual was initially placed on the detained docket but was released before their initial MCH. Because that detention and release information is “not available in [EOIR’s] databases”, see ECF 97 at 47, EOIR’s data may be over inclusive to the extent it includes some individuals that were actually released by the time of their initial MCH. For that same reason, the mean and median figures listed in the table above may overstate the true mean and median figures for only those individuals who remained detained up until the time of their initial MCH.

Defendant DHS further responds that much of the information requested by Plaintiffs is not statistically tracked for cross-reference within ICE’s reporting capabilities. ICE does not statistically track U.S.C. detention authority in its database systems, so it is not possible to report on detainees by statutory authority for detention without manual review. This data reflects when individuals came into ICE ERO custody, rather than DHS custody as a whole. ICE has relied on hearing data provided to ICE by EOIR. Hearing data is based on the Alien File Number and cannot be directly related to a particular detention stay without manual review. An Alien File Number can have multiple detention records and/or multiple hearing records. The earliest occurring Initial Master Calendar Hearing Date relevant to a detention stay has been included in the calculations.

INTERROGATORY NO. 2:

For each fiscal year SINCE 2016, please state the mean and median number of days that elapsed between when YOU issued an NTA to a DETAINEE and when the NTA for that DETAINEE was filed with the immigration court, broken down to also show such mean and median number of days for subcategories of DETAINEES based on the statutory authority for their detention (*e.g.*, 8 U.S.C. §§ 1225(b), 1226(a), 1226(c)) and the immigration court where the NTA was filed, as well as the number of DETAINEES in each subcategory.

RESPONSE TO INTERROGATORY NO. 2:

Notwithstanding its previously-raised objections, Defendant DHS supplements its response to Interrogatory 2 as follows:

The following chart reflects the mean number of days between when the creation of an NTA was recorded in an ICE database, and when the NTA was received by an immigration court for detention stays that include some period of detention at Otay Mesa Detention Facility or the Imperial Regional Detention Facility from March 1, 2017 through November 16, 2019, when the data was run. Fiscal Year is based on the NTA Creation date, and locations are based on the hearing locations provided by EOIR.

Hearing Location	2016	2017	2018	2019	2020
Overall Mean	77.41	7.89	5.41	5.19	7.68
IMPERIAL DETAINED	223.83	17.00	15.20	12.68	14.80
OTAY MESA, CA	35.57	6.12	3.73	3.76	3.72

The following chart reflects the median number of days between when the creation of an NTA was recorded in an ICE database, and when the NTA was received by an immigration court for detention stays that include some period of detention at Otay Mesa Detention Facility or the Imperial Regional Detention Facility from March 1, 2017 through November 16, 2019, when the data was run. Fiscal Year is based on the NTA Creation date, and locations are based on the hearing locations provided by EOIR.

Hearing Location	2016	2017	2018	2019	2020
Overall Median	6.0	5.0	4.0	4.0	4.5
IMPERIAL DETAINED	3.5	14.0	15.0	16.0	18.0
OTAY MESA, CA	6.0	4.0	3.0	3.0	2.5

The following chart reflects the number of detention stays between the creation of an NTA and when an NTA received by an immigration court that include some period of detention at Otay Mesa Detention Facility or the Imperial Regional Detention Facility from March 1, 2017 through November 16, 2019, when the data was run. Fiscal Year is based on the NTA Creation date and locations are based on the hearing locations provided by EOIR.

Hearing Location	2016	2017	2018	2019	2020
Total	27	609	765	530	28
IMPERIAL DETAINED	6	99	112	85	10
OTAY MESA, CA	21	510	653	445	18

Defendant further responds that much of the information requested by Plaintiffs is not statistically tracked for cross-reference within ICE's reporting capabilities. ICE does not statistically track U.S.C. detention authority in its database systems, so it is not possible to report on detainees by statutory authority for detention without manual review. This data reflects NTAs issued by ERO and does not include other components. ICE has reported a sampling of ERO-issued NTAs that represents 21.6% of all detentions reported in Interrogatory No. 1.

ICE does not track the date an NTA is issued to an individual in a statistically significant manner, as this field is a non-mandatory field. Thus, ICE has used the date an NTA was generated in the electronic database as a means of approximating when an NTA was issued to an individual. However, even this "NTA Create Date" data point is not a perfect proxy for when an NTA was issued. "NTA Create Date" is auto-populated by the system when an officer creates and saves the form, but that date can differ from when the form is reviewed by a supervisor and when the form is served on an alien.

ICE has relied on hearing data provided to ICE by EOIR. Hearing data is based on the Alien File Number and cannot be directly related to a particular detention stay. For cases with multiple NTAs, the data only reflects the latest occurring NTA. NTA Received records, as provided by EOIR, is based on Alien File Number and cannot be directly related to the Detention stay without manual review. For Alien File Numbers with multiple NTA Received Dates, the one related to the earliest Initial Master Calendar Hearing Dates is reflected in the calculations.

INTERROGATORY NO. 3:

For each fiscal year SINCE 2016, please state the mean and median number of days that elapsed for DETAINEES waiting for a Credible Fear Interview (“CFI”) to first receive the CFI, broken down to also show such mean and median number of days for subcategories of DETAINEES based on whether they presented themselves at a Port of Entry or allegedly entered the United States without inspection and on where they were detained at the time they received the CFI, as well as the number of DETAINEES in each subcategory.

RESPONSE TO INTERROGATORY NO. 3:

Notwithstanding its previously-raised objections, Defendant DHS supplements its response to Interrogatory 3 as follows:

The following chart reflects the mean number of days between an initial book-in with ICE and the date associated with the individual’s most recent² credible fear interview for detention stays that included a period of detention at the Otay Mesa Detention Facility or the Imperial Regional Detention Facility from March 1, 2017 through November 16, 2019, when the data was run, broken down according to whether or not the individual entered without inspection and admission by an immigration official (“EWI”) at the time

² USCIS recommended that ICE use the most recent credible fear interview date because it is more likely to align with the relevant detention stay. Manual review of an individual’s record would be required to confirm.

of the associated entry. “EWI Status” is based on the Entry Status associated with the Detention having a value of “Entry without Inspection” or “EWI” in ICE systems. Entry Status is a non-mandatory field and is inputted by the arresting entity. Entry Status is based on information claimed by a subject at the time of arrest and does not officially connote immigration status. Fiscal Year is based on the Initial Book In date.

	2015	2016	2017	2018	2019	2020
Overall Mean	38.17	17.09	15.58	15.08	29.09	16.13
EWI	-	-	-	-	26.15	-
Other	38.17	17.09	15.58	15.08	29.32	16.13

The following chart reflects the mean number of days between an initial book-in with ICE and the date associated with the individual’s most recent credible fear interview for detention stays that included a period of detention at the Otay Mesa Detention Facility or the Imperial Regional Detention Facility from March 1, 2017 through November 16, 2019, when the data was run, broken down according to the facility in which the individual was detained at the time of the credible fear interview.

Detention Facility	Detention Facility Code	2015	2016	2017	2018	2019	2020
Overall Mean		38.17	17.09	15.58	15.08	29.09	16.13
IAH SECURE ADULT DET. FACILITY	POLKCT X	-	-	-	12.54	-	-
IMPERIAL REGIONAL ADULT DET FAC	IRADFC A	-	12.47	11.97	13.80	27.46	13.85
OTAY MESA DETENTION CENTER	CCASD CA	38.17	19.63	15.65	15.44	30.43	19.99
SAN LUIS REGIONAL DET CENTER	SLRDC AZ	-	-	8.61	-	-	-
(Not Detained)		-	-	459.30	283.21	-	-

The following chart reflects the median number of days between an initial book-in with ICE and the date associated with the individual's most recent³ credible fear interview for detention stays that included a period of detention at the Otay Mesa Detention Facility or the Imperial Regional Detention Facility from March 1, 2017 through November 16, 2019, when the data was run, broken down according to whether or not the individual entered without inspection ("EWI") at the time of the associated entry. "EWI Status" is based on the Entry Status associated with the Detention having a value of "Entry without Inspection" or "EWI" in ICE systems. Entry Status is a non-mandatory field and is inputted by the arresting entity. Entry Status is based on information claimed by a subject at the time of arrest and does not officially connote immigration status. Fiscal Year is based on the Initial Book In date.

	2015	2016	2017	2018	2019	2020
Overall Median	38.17	14.41	11.06	11.55	27.48	18.33
EWI	-	-	-	-	24.44	-
Other	38.17	14.41	11.06	11.55	27.55	18.33

The following chart reflects the median number of days between an initial book-in with ICE and the date associated with the individual's most recent credible fear interview for detention stays that included a period of detention at the Otay Mesa Detention Facility or the Imperial Regional Detention Facility from March 1, 2017 through November 16, 2019, when the data was run, broken down according to the facility in which the individual was detained at the time of the credible fear interview.

Detention Facility	Detention Facility Code	2015	2016	2017	2018	2019	2020
Overall Median		38.17	14.41	11.06	11.55	27.48	18.33

³ Many individuals enter the United States several times and may have credible fear dates associated with each entry. USCIS recommended that ICE use the most recent credible fear interview date because it is more likely to align with the relevant detention stay. Manual review of an individual's record would be required to confirm.

IAH SECURE ADULT DET. FACILITY	POLKCT X	-	-	-	12.54	-	-
IMPERIAL REGIONAL ADULT DET FAC	IRADFC A	-	10.98	10.47	11.44	28.32	12.60
OTAY MESA DETENTION CENTER	CCASD CA	38.17	17.60	12.15	12.54	27.07	19.65
SAN LUIS REGIONAL DET CENTER	SLRDC AZ	-	-	9.15	-	-	-
(Not Detained)		-	-	445.3 2	253.8 7	-	-

Defendant DHS further responds that much of the information requested by Plaintiffs is not statistically tracked for cross-reference within ICE's reporting capabilities. Most fields are non-mandatory fields within ICE systems of records. ICE has relied on credible fear data provided by USCIS. The detention status at time of entry (EWI or Other) is a non-mandatory field in ICE databases and is manually inputted by the arresting officer. Manual review of an individual's record would be required to confirm. Credible Fear Interview data is based on Alien File Number and cannot be directly related to a Detention stay without manual review. For Alien File Numbers with multiple Credible Fear Interviews, the latest occurring Credible Fear interview is reflected in the calculations.

INTERROGATORY NO. 4:

For each fiscal year SINCE 2016, please state the mean and median number of days DETAINEES spent in CBP custody in the Southern District of California, broken down to also show such mean and median number of days for subcategories of DETAINEES at each CBP facility in the Southern District of California, as well as the number of DETAINEES in each subcategory.

RESPONSE TO INTERROGATORY NO. 4:

Notwithstanding its previously-raised objections, Defendant DHS supplements its response to Interrogatory 4 as follows:

Defendant DHS utilized ICE data as a starting point for generating case data rather than CBP data, because Border Patrol could not report on the number of days spent in CBP custody in the Southern District of California without engaging in manual review of each instance in which an individual was apprehended. Many individuals have been apprehended by CBP multiple times, which would have complicated efforts to link apprehension date data with ICE book-in data. Consequently, CBP would have been required to manually pull all apprehension dates for those individuals with multiple apprehension dates in order to link it to the particular ICE book-in date.

As per the Court's March 23, 2020 discovery order, Defendants are prepared to meet and confer with Plaintiffs to discuss the possibility of using a sample of the case data collected thus far in order to approximate the mean and median number of days detainees spent in CBP custody in the Southern District of California.

INTERROGATORY NO. 5:

For each fiscal year SINCE 2016, please state the number of DETAINEES released from YOUR custody after passing a Credible Fear Interview pursuant to YOUR parole authority under the ICE Parole Directive, ICE Directive 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 2009), as well as the total number of DETAINEES who passed their Credible Fear Interviews, broken down based on the DHS facility where the DETAINEE was in custody at the time of the Credible Fear Interview.

RESPONSE TO INTERROGATORY NO. 5:

Notwithstanding its previously-raised objections, Defendant DHS supplements its response to Interrogatory 5 as follows:

The following chart reflects the number of detention stays for cases with a period of detention at the Otay Mesa Detention Facility or the Imperial Regional Detention Facility from March 1, 2017 through November 16, 2019, when the data was run, where the individual was released after a positive credible fear finding by USCIS, broken down based on Fiscal Year of Final Book Out and reason for release.

Release Reason	2017	2018	2019	2020
Total	1,230	2,219	1,877	225
Bonded Out	1,067	1,648	1,095	61
Order of Recognizance	21	76	49	-
Order of Supervision	3	31	42	1
Other	123	385	556	72
Paroled	16	79	134	91
Prosecutorial Discretion	-	-	1	-

The following chart reflects the number of detention stays for cases with a period of detention at the Otay Mesa Detention Facility or the Imperial Regional Detention Facility from March 1, 2017 through November 16, 2019, when the data was run, where the individual was released after a credible fear interview, broken down based on Fiscal Year of Final Book Out and detention facility at the time of release.

Detention Facility	Detention Facility Code	2017	2018	2019	2020
Total		1,230	2,219	1,877	225
IAH SECURE ADULT DET. FACILITY	POLKCT X	-	-	1	-
IMPERIAL REGIONAL ADULT DET FAC	IRADFCA	828	1,404	882	54
OTAY MESA DETENTION CENTER	CCASDC A	398	815	994	171
SAN LUIS REGIONAL DET CENTER	SLRDCA Z	4	-	-	-

Defendant DHS responds that much of the information requested by Plaintiffs is not statistically tracked for cross-reference within ICE's reporting capabilities. ICE has relied on credible fear data provided by USCIS. ICE does not statistically track custody releases related to ICE Parole Directive 11002.1. Accordingly, in lieu of specifying the number of cases released pursuant to Parole Directive 11002.1, ICE has indicated where "Parole" was the release reason. Moreover, while ICE used release codes in order to provide the best approximation possible with respect to the information requested in this Interrogatory, ICE cannot generate accurate parole release statistics based on release codes. ICE officers do

not use consistent release codes to reflect a grant of parole and may designate a different release code in a case where parole was granted or instead provide summary information about the outcome of release without designating the grant of parole in the entry field. ICE would have to conduct manual review of each alien's case, including physical records such as the Alien file (A-file), to confirm. Credible Fear Interview data is based on Alien File Number and cannot be directly related to a detention stay without manual review. For Alien File Numbers with multiple Credible Fear Interviews, the latest occurring Credible Fear interview is reflected in calculations.

INTERROGATORY NO. 6:

For each fiscal year SINCE 2016, please state the number of DETAINEES in YOUR custody pursuant 8 U.S.C. § 1226(a), broken down to show the number of DETAINEES who, prior to any custody determination by an immigration judge, (a) YOU determined could be released without payment of bond, (b) YOU determined could be released with payment of bond, as well as the mean and median amount of that bond, and (c) YOU determined should remain in custody and that no bond could secure their release.

RESPONSE TO INTERROGATORY NO. 6:

Notwithstanding its previously-raised objections, Defendant DHS supplements its response to Interrogatory 6 as follows:

The following chart reflects the total detention stays for cases with a period of detention at the Otay Mesa Detention Facility or the Imperial Regional Detention Facility from March 1, 2017 through November 16, 2019, when the data was run, broken down by Final Book Out Fiscal Year and according to whether the individual: 1) was released from ICE custody without bond; 2) was released with bond; 3) remained in custody without bond; or 4) remained in custody based on some other bond scenario. "In Custody" reflects custody status on November 16, 2019, when the data was run.

	2017	2018	2019	2020	In Custody
Total	1,810	3,360	2,858	405	635
1) Released without Bond	512	1,306	1,294	184	-
2) Released with Bond	1,298	2,054	1,564	221	-
3) In Custody without Bond	-	-	-	-	570
4) In Custody with Other Bond Scenario	-	-	-	-	65

The following chart reflects the mean amount of bonds posted for those cases above who were released on bond.

	2017	2018	2019	2020
Mean	9,905.86	12,533.11	10,552.11	10,859.73

The following chart reflects the median amount of bonds posted for those who were released on bond.

	2017	2018	2019	2020
Median	10,000	10,000	7,500	10,000

Defendant interpreted the category “Released without Bond” to include detainees released from ICE custody who had either a bond hearing and were released on their own recognizance or had no “Bond-Posted” records associated with their case. Defendant interpreted the category “Released with Bond” to include detainees released from ICE custody who had a “Bond Posted” record associated with their case. Defendant interpreted the category “In Custody without Bond” to include detainees in ICE custody (at the time the data was run) who had a bond hearing and received a decision of “No Bond” or detainees in ICE custody who do not have bond records associated with their case. Defendant interpreted the category “In Custody with other Bond Scenarios” to include detainees who canceled the bond request, the bond record was created but the detainee has not yet posted bond, or the detainee did not post bond by the set deadline.

Defendant DHS further responds that much of the information requested by Plaintiffs is not statistically tracked for cross-reference within ICE’s reporting capabilities. ICE has

relied on bond information provided by EOIR. ICE does not statistically track U.S.C. detention authority in its database systems, so it is not possible to report on detainees by statutory authority for detention without manual review. Cases may have multiple Bond records, the latest bond record is reflected in the calculations.

DATED: May 1, 2020

Respectfully Submitted,

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Assistant Attorney General
Civil Division, U.S. Dep't of Justice

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SAMUEL W. BETTWY
Assistant U.S. Attorney

Attorneys for Defendants-Respondents

VERIFICATION

I, Donna Vassilio-Diaz declare under penalty of perjury:

I am employed by U.S. Immigration and Customs Enforcement as the Unit Chief of the Statistical Tracking Unit ("STU") within Enforcement and Removal Operations ("ERO") Law Enforcement and Systems Analysis ("LESA").

I have read and know the contents of these responses. These responses were prepared after obtaining information available to ICE through its officers and employees and through its documents and records. These responses, subject to inadvertent and undiscovered errors, are based upon, and necessarily limited by, the records and information still in existence, able to be located, presently recollected, and thus far discovered in the course of preparing these responses. The responses regarding ICE are true and correct to the best of my knowledge, information, and belief.

Executed on 5/1/2020



Donna Vassilio-Diaz
Unit Chief, Statistical Tracking Unit
Law Enforcement and Systems Analysis
Enforcement and Removal Operations
Immigration and Customs Enforcement
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Attorneys for Defendants-Respondents

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE ORLANDO CANCINO
CASTELLAR, ANA MARIA
HERNANDEZ AGUAS, MICHAEL
GONZALEZ,

Plaintiffs,

vs.

KEVIN MCALEENAN, Secretary of
Homeland Security, *et al.*,

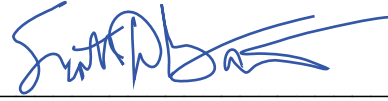
Defendants.

Case No. 17-cv-00491-BAS-BGS

DECLARATION OF SCOTT GARRETT

I, Scott Garrett, hereby declare that I am the Division Chief for San Diego Sector U.S. Border Patrol. In this capacity, I have read the foregoing responses to Plaintiffs' Interrogatories. Based upon reasonable inquiry and knowledge, information, and belief, these responses are true and correct.

DATED: 05/01/2020



SCOTT GARRETT

Division Chief, San Diego Sector Border Patrol

Exhibit 4

REDACTED VERSION OF DOCUMENT
PROPOSED TO BE FILED UNDER SEAL

9/23/2020

Jose Orlando Cancino Castellar, et al., v. Chad Wolf, et al.

30(b)(6)

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA -----X JOSE ORLANDO CANCINO) CASTELLAR, et al.,) Plaintiff-Petitioners,) v.) Case No. CHAD WOLF, acting Secretary,) 17-cv-00491-BAS-AHG U.S. Department of Homeland) Security, et al.,) Defendant-Respondents.) -----X CONFIDENTIAL UNDER PROTECTIVE ORDER VOLUME II VIDEOTAPED 30(b)(6) DEPOSITION OF U.S. CUSTOMS AND BORDER PROTECTION BY AND THROUGH [REDACTED] September 23, 2020 9:25 a.m., Pacific Reported by: Lori J. Goodin, RPR, CLR, CRR, RSA, California CSR #13959 ----- DIGITAL EVIDENCE GROUP 1730 M Street, NW, Suite 812 Washington, D.C. 20036 (202) 232-0646	1 REMOTE APPEARANCES (CONTINUED): 2 3 On Behalf of the Defendants: 4 U.S. DEPARTMENT OF JUSTICE 5 MATTHEW SEAMON, ESQUIRE 6 HUY LE, ESQUIRE 7 KATIE CONNOLLY, ESQUIRE 8 CATHY RENO, ESQUIRE 9 NELSON WONG, ESQUIRE 10 Ben Franklin Station 11 Washington, D.C. 20044 12 202-532-4737 13 matthew.seamon2@usdoj.gov 14 Huy.M.Le2@usdoj.gov 15 kathleen.a.connolly@usdoj.gov 16 Catherine.m.reno@usdoj.gov 17 Nelson.r.wong@cbp.dhs.gov 18 19 ALSO PRESENT: 20 Daniel Holmstock, Videographer/ 21 Document Technician 22
Page 2	Page 4
1 REMOTE APPEARANCES 2 3 On Behalf of the Plaintiffs: 4 FISH & RICHARDSON PC 5 JAMES YANG, ESQUIRE 6 12390 El Camino Real 7 San Diego, California 92130 8 858-678-5126 9 jyang@fr.com 10 11 12 And Co-counsel for Plaintiffs: 13 BARDIS VAKILI, ESQUIRE 14 MITRA EBADOLAH, ESQUIRE 15 JACQUELINE RAMOS, ESQUIRE 16 ACLU OF SAN DIEGO 17 P.O. Box 87131 18 San Diego, California 92138 19 619-232-2121 20 bvakili@aclusandiego.com 21 22	1 INDEX TO EXAMINATION 2 3 WITNESS: [REDACTED] 4 5 EXAMINATION BY PAGE 6 Mr. Vakili 7 7 * * * 8 9 INDEX TO EXHIBITS 10 [REDACTED] 11 Jose Cancino Castellar, et al., 12 vs. Chad Wolf, et al. 13 Wednesday, September 23, 2020 14 Lori J. Goodin, RPR, CLR, CRR, 15 RSA, California CSR #13959 16 [REDACTED] 17 EXHIBIT DESCRIPTION PAGE 18 Exhibit 107 Organizational Chart 22 19 San Diego Sector Border Patrol 20 7/19/2020, File 2, DHS-0007955 21 Exhibit 108 El Centro Sector org chart 31 22 File 3, DHS-0007848 Exhibit 109 E-mail, Asylum Office 104 File 13, DHS-00015310-15317

1 (Pages 1 to 4)

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1	EXHIBITS CONTINUED		
2	[REDACTED]		
3	EXHIBIT DESCRIPTION PAGE		
4	Exhibit 110 Modification to Required Documentation within A-Files Memo, 6/4/2019, File 15 DEF-00011863-865	123	
5	Exhibit 111 E-mail, G. Chavez, 11/17/2017 Updated Guidance, File 17 DEF-00016551-553	129	
6	Exhibit 112 E-mail, G. Chavez, 11/14/2017 Processing Guidance, File 18 DEF-00018850-851	138	
7	Exhibit 113 E-mail, R. Hastings, 1/12/2018 Tracking of ER Conversion File 113, DEF-00015543-544	142	
8	Exhibit 114 E-mail, C. Tiernan, 3/12/2018 USBP UAC, File 20 DEF-00011955	144	
9	Exhibit 115 E-mail, C. Briones, 7/27/2018 Processing of Detainees File 21, DEF-00019263	150	
10	Exhibit 116 E-mail, R. Hudson, 7/17/2018 Immediate Action, File 24 DEF-00019254-259	158	
11	Exhibit 117 E-mail, G. Chavez, 6/20/2018 Executive Order, File 26 DEF-00014730-733	188	
12	Exhibit 118 E-mails, R. Smith, 9/30/2019 Prioritization of Removal Pathways, File 27 DEF-00014433-434	193	
13	Exhibit 119 Excel spreadsheet, File 29 00015020	198	
14			
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1 VIDEOTAPED 30(b)(6) DEPOSITION OF [REDACTED]
2 PROCEEDINGS
3
4 THE VIDEOGRAPHER: The time is 12:25
5 p.m., eastern standard time, 9:25 a.m.
6 Pacific time on September 23, 2020.
7 This is Video 1, Volume II of the
8 30(b)(6) deposition of Customs and Border
9 Protection, the U.S. Border Patrol,
10 represented today by [REDACTED].
11 Will the court reporter please
12 administer the oath.
13 * * *
14 [REDACTED]
15 a witness called for examination, having been
16 first duly sworn, testified as follows:
17 * * *
18 EXAMINATION
19 BY MR. VAKILI:
20 Q. Good morning, [REDACTED]. My name
21 is Bardis Vakili. I am a lawyer for the
22 plaintiffs in this case. I want to thank you for

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1	PRIOR MARKED EXHIBITS		
2	FIRST REFERRAL		
3			
4	EXHIBIT FILE PAGE		
5	Exhibit 95, Ah Nee	1	15
6	Exhibit 97, OFO	4	64
7	Exhibit 98, OFO	5	64
8	Exhibit 3, Peraza	6	68
9	Exhibit 5, Peraza	7	70
10	Exhibit 2, Peraza	8	74
11	Exhibit 38, Ortiz	9	81
12	Exhibit 100, OFO	11	92
13	Exhibit 102, OFO	12	95
14	Exhibit 4, Peraza	14	122
15	Exhibit 91, ICE	25	169
16			
17			
18			
19			
20			
21	(All exhibits were provided		
22	electronically to the reporter.)		

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1 taking the time to join us today.
2 A. Good morning.
3 Q. Have you -- let's just start with,
4 have you ever been deposed before?
5 A. I have, one time.
6 Q. Okay. How long ago?
7 A. Approximately four years ago, I
8 believe.
9 Q. Okay. I'm going to go over some
10 basic ground rules with you. This may be
11 familiar with you to, from then, or from what
12 your counsel has probably already told you.
13 But essentially, for starters, one
14 thing we both should endeavor to do is to avoid
15 interrupting each other.
16 Ms. Goodin, here, is kind enough to
17 be taking our words down and it gets very
18 difficult for her when we speak on top of each
19 other.
20 So, I will endeavor, as much as I
21 can to let you finish your statements. And if
22 you will do the same that would make it easier on

2 (Pages 5 to 8)

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Jose Orlando Cancino Castellar, et al., v. Chad Wolf, et al. [REDACTED]
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Page 133 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 12 Q. Will, and Ms. Chavez' e-mail has a 13 subject line that references FMUAs, I have also 14 seen FAMU in those correspondence. Are those 15 interchangeable words to mean family units? 16 A. Yes, that's correct. 17 Q. And does Border Patrol in these two 18 sectors, El Centro and San Diego, attain a 19 substantial amount of family units? 20 A. During the time frame mentioned, 21 yes. 22 Q. Has there been, during the time	Page 135 1 Q. Is it always one or always the other 2 by a policy and practice for family units? 3 A. So, to my knowledge those are the 4 two that passed, yes. 5 Q. Okay. Will Border Patrol San Diego 6 sector and El Centro sector always process family 7 units as an NTA? 8 A. No. 9 Q. What determines whether Border 10 Patrol in San Diego or El Centro sectors will 11 process the family unit as an NTA versus an 12 expedited removal, assuming that they would meet 13 the criteria for expedited removal? 14 A. The capacity and open bed space at 15 the family residential centers, the FRCs. 16 Q. And the FRCs are ICE facilities that 17 are authorized to detain family units? 18 A. I don't know if they are ICE 19 facilities or if they are contracted. But 20 individual would be placed in there for 21 proceedings for ICE, yes. 22 Q. Why does the availability of bed
Page 134 1 frame, sort of reminding you that the time frame 2 on which you are here to testify is March 2017 3 until now, is there a period in that time frame 4 where there was a larger influx of family units 5 than other kinds of cases? 6 A. Yes. 7 Q. And what is that time period? 8 A. It was during the time frame when 9 the, for the term used, caravans were coming up 10 from Mexico with large groups of individuals 11 crossing into the United States border. 12 Q. Will family units who are in Border 13 Patrol custody who meet the criteria for 14 expedited removal, will they be all processed for 15 expedited removal? 16 A. No. 17 Q. How would those family units be 18 processed? 19 A. How else you asked? 20 Q. How will they be processed if not an 21 expedited removal? 22 A. As an NTA.	Page 136 1 space in those facilities dictate whether it will 2 be an NTA or an expedited removal? 3 A. Those centers will only accept the 4 family units or individuals processed as an 5 expedited removal, or with a complete, someone 6 with an order of removal. Whereas an NTA is 7 generally the beginning of a process and so they 8 would not have a final order at this point. 9 Q. Okay. So, family units that would 10 go to the family residential centers are being 11 processed, either they have a final order of 12 removal -- if they have a final order of removal, 13 does that mean an enforceable final order or does 14 that mean a final order where there is some 15 additional process like a reasonable fear 16 process? 17 A. I don't believe the reasonable fear, 18 credible fear cases would be accepted at FRC. 19 Each facility has their own criteria and we would 20 communicate with ICRO regarding acceptance or not 21 acceptance of family units for certain centers. 22 Q. Okay. But, if the ICE family

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Page 149 1 A. No. 2 Q. The last sentence of the highlighted 3 area says, "It may lengthen the time in 4 custody" -- well, I will start earlier. 5 The sentence before that begins, "I 6 don't want to process as a warrant NTA without 7 trying to get space for the family unit first. 8 It may lengthen the time in custody, but we may 9 miss out on getting some family unit placed." 10 Do you see that? 11 A. Yes. 12 Q. Does that indicate that there is a 13 priority in placing family units in detention 14 over reducing their time in Border Patrol 15 custody? 16 A. The preference is to detain for 17 immigration proceedings as opposed to release. 18 MR. VAKILI: Could we pull up the 19 second paragraph of that e-mail now? 20 Okay. 21 I will show you another document. 22 This one is going to be 21. We will mark it	Page 151 1 MR. VAKILI: That is what I want. 2 THE VIDEOGRAPHER: Yes, for future 3 reference it will work like 21A or 22B, if 4 you could give me the tabs. 5 MR. VAKILI: Okay. That is good to 6 know. 7 BY MR. VAKILI: 8 Q. Okay. So now we are looking at an 9 e-mail Bates Stamped 19263 that we will mark as 10 Exhibit 115. 11 And this is an e-mail from Carlos 12 Briones. Do you know who that is? 13 A. The e-mail has him as a Supervisor 14 for El Centro. I don't know him. 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]
Page 150 1 as Exhibit 115. 2 And this is Bates Stamped 00019263. 3 ([REDACTED] Exhibit 115 4 marked for identification.) 5 BY MR. VAKILI: 6 Q. It is a one-page e-mail. 7 MR. VAKILI: I think this may be, we 8 might have jumped one. We will come to this 9 one, Dan. Can we do the one before that? I 10 think you put up 21.1. And there should be 11 one that says -- 12 THE VIDEOGRAPHER: Hold on, this 13 should be 116, is this the one that you want 14 to talk about counsel? 15 MR. VAKILI: Yes. And this is Bates 16 Number 19 -- I'm looking for Bates 17 Number 19263. Do you see that one? 18 THE VIDEOGRAPHER: 19263. The 19 numbered documents I have -- I see. 1.21 do 20 not like to be crossed in the same number. 21 That is why. Okay. I think this is the one 22 you want.	Page 152 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]

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1 lower than they were before the pandemic? 2 A. Yes. 3 Q. Significantly so? 4 A. Yes. 5 Q. And does the time they spend in 6 Border Patrol stations, is that correspondingly 7 smaller compared to prior to the pandemic? 8 A. Yes. 9 Q. And is that because there is fewer 10 of them to process? 11 A. I believe it is because there is 12 fewer being referred for placement so there is 13 more placement readily available. 14 Q. With ICE you mean? 15 A. Correct. 16 Q. Does Border Patrol utilize other 17 places of confinement like hotels to process 18 people? 19 A. No. 20 Q. Does Border Patrol currently 21 anticipate when Title 42 authority will no longer 22 take place?	1 THE VIDEOGRAPHER: Okay, so, if 2 there are no other statements, stand by. 3 The time is 6:21[sic] p.m., 4 September 23, 2020. We are going off the 5 record completing the videotaped deposition. 6 (Whereupon, signature not having been 7 waived, the deposition ended at 3:21 p.m.) 8 * * * 9 10 11 12 13 14 15 16 17 18 19 20 21 22
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1 A. No. 2 MR. VAKILI: [REDACTED], I sincerely 3 would like to thank you for all of the time 4 you spent with us today. I don't have any 5 further questions for you at this time. 6 THE WITNESS: Thank you. 7 MR. SEAMON: Could we just do like a 8 five-minute break so I can confer. 9 MR. VAKILI: Yes. 10 THE VIDEOGRAPHER: The time is 11 3:15 p.m. and we are going off the record. 12 (Recess taken -- 3:15 p.m.) 13 (After recess -- 3:21 p.m.) 14 THE VIDEOGRAPHER: The time is 15 3:21 p.m. and we are back on the record. 16 MR. SEAMON: Okay. Defendants don't 17 have anything for direct. 18 MR. VAKILI: Okay. So, once again, 19 [REDACTED], I want to thank you for your 20 time. You will be provided a transcript of 21 this deposition for your review and you can 22 review it with counsel and get it back to us.	1 CERTIFICATE OF COURT REPORTER 2 I, LORI J. GOODIN, RPR, CLR, CRR, 3 CA CSR # 13959, the reporter before whom the 4 foregoing deposition was taken, do hereby certify 5 that the witness whose testimony appears in the 6 foregoing deposition was sworn by me; that the 7 testimony of said witness was taken by me in 8 machine shorthand and thereafter transcribed by 9 computer-aided transcription; that said 10 deposition is a true record of the testimony 11 given by said witness; that I am neither counsel 12 for, related to, nor employed by any of the 13 parties to the action in which this deposition was 14 taken; and, further, that I am not a relative or 15 employee of any attorney or counsel employed by 16 the parties hereto, or financially or otherwise 17 interested in the outcome of this action 18 19 20 21 22 13 LORI J. GOODIN, RPR, CLR, CRR 14 Notary Public in and for: 15 STATE OF FLORIDA, COUNTY OF SARASOTA 16 Notary Commission Number: GG987804 17 My Commission expires: May 12, 2024 18 STATE OF CALIFORNIA, CA CSR# 13959 19 My Commission expires: February 22, 2021 20 STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL 21 My Commission expires: August 2, 2021 22 DISTRICT OF COLUMBIA, WASHINGTON DC My Commission expires: May 14, 2021 COMMONWEALTH OF VIRGINIA, COUNTY OF FAIRFAX My Commission expires: February 28, 2022 STATE OF DELAWARE: COUNTY OF KENT My Commission expires: October 9, 2021 STATE OF PENNSYLVANIA, COUNTY OF LEHIGH My Commission expires: April 5, 2021

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1 [REDACTED] 30(b)(6), c/o U S DEPARTMENT OF JUSTICE 2 Ben Franklin Station Washington, DC 20044 3 4 Case: Jose Orlando Cancino Castellar, et al , v Chad Wolf, et al Date of deposition: September 23, 2020 5 Deponent: [REDACTED] 30(b)(6) 6 7 Please be advised that the transcript in the above 8 referenced matter is now complete and ready for signature 9 The deponent may come to this office to sign the transcript, 10 a copy may be purchased for the witness to review and sign, 11 or the deponent and/or counsel may waive the option of 12 signing Please advise us of the option selected 13 Please forward the errata sheet and the original signed 14 signature page to counsel noticing the deposition, noting the 15 applicable time period allowed for such by the governing 16 Rules of Procedure If you have any questions, please do 17 not hesitate to call our office at (202)-232-0646 18 19 20 Sincerely, Digital Evidence Group 21 Copyright 2020 Digital Evidence Group Copying is forbidden, including electronically, absent 22 express written consent	1 Digital Evidence Group, LLC 2 1730 M Street, NW, Suite 812 3 Washington, D C 20036 4 (202)232-0646 5 6 ERRATA SHEET 7 8 Case: Jose Orlando Cancino Castellar, et al , v Chad Wolf, et al 9 Witness Name: [REDACTED] 30(b)(6) 10 Deposition Date: September 23, 2020 11 Page No Line No Change 12 13 14 15 16 17 18 19 20 21 _____ 22 Signature Date
Page 218 1 Digital Evidence Group, L L C 1730 M Street, NW, Suite 812 2 Washington, D C 20036 (202) 232-0646 3 4 SIGNATURE PAGE Case: Jose Orlando Cancino Castellar, et al , v Chad Wolf, et al 5 Witness Name: [REDACTED] 30(b)(6) Deposition Date: September 23, 2020 6 7 I do hereby acknowledge that I have read 8 and examined the foregoing pages 9 of the transcript of my deposition and that: 10 (Check appropriate box): 11 () The same is a true, correct and complete transcription of the answers given by me to the questions therein recorded 12 () Except for the changes noted in the attached Errata Sheet, the same is a true, 13 correct and complete transcription of the answers given by me to the questions therein 14 recorded 15 16 17 _____ DATE WITNESS SIGNATURE 18 19 20 21 22 _____ DATE NOTARY	

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