



August 26, 2021

Via Email and First-Class Mail

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David Gersten
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Office of the Immigration Detention Ombudsman
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, D.C. 20528

Re: First Amendment Retaliation Against Individuals in Immigration Detention in California

Dear Officer Culliton-Gonzalez:

Joe Mejia Rosas, Jonny Vasquez Rodriguez, Donovan Grant, A.M.¹, Lilian Marquez, Anthony Alexandre, Enrique Cristobal Meneses, and Edgar Sanchez (collectively, “Complainants”), through the undersigned organizations, submit this complaint to the Office of Civil Rights and Civil Liberties (“CRCL”). They seek redress for retaliation committed by the San Francisco, Los Angeles, and San Diego Field Offices of Immigration and Customs Enforcement (“ICE”) and their respective contractors at immigration detention facilities in

¹ This individual has been granted a pseudonym for his protection, as he fears further retaliation. Additional details about A.M. are available upon request for investigation.

California. ICE and its contractors have violated the First Amendment rights of the individuals detained at Yuba County Jail (operated by the Yuba County Sheriff's Office); Mesa Verde Detention Facility (operated by the GEO Group); Otay Mesa Detention Center (operated by CoreCivic); Adelanto Detention Center (operated by GEO); and Golden State Annex (operated by GEO).

The United States has the largest immigration detention system in the world, and is notorious for caging noncitizens in abysmal conditions.² The severity of ICE's widespread misconduct and conditions violations came to light last year, when ICE detention centers became "some of the most dangerous places in the United States when it comes to Covid-19 outbreaks."³ As a result of ICE's pervasive and persistent transgressions, detained noncitizens across the country have regularly sought redress, and have consistently been met with retaliation.⁴

As detailed below, Complainants attempted to denounce the appalling and dangerous conditions of their confinement by filing grievances and complaints, engaging in peaceful protests such as hunger strikes, labor strikes, sit-ins, and prayer, and raising public awareness of the unlawful conduct by ICE and its contractors through communication with media representatives, attorneys, and advocates. In response to their activities, ICE and its contractors retaliated against Complainants and others with whom they were detained by: inflicting pepper-spray and shooting pepper bullets, and subsequently restricting shower access; perpetrating sexual harassment, physical assault, and beatings; exploiting solitary confinement; shutting off access to lawyers, advocacy organizations, and family members; denying medical care, revoking medical accommodations, confiscating prescription medication and walking canes, and refusing to clean and sanitize detention units (including during COVID-19 outbreaks); cutting off the ability to file grievances; threatening deportation, denying release requests, officially disciplining protesters so as to affect their legal cases, and restricting the right to seek asylum; denying access to food and hygiene products purchased through commissary accounts; increasing body and property searches, and destroying personal property and bedding areas; engaging in routine verbal abuse and intimidation; and cutting off air conditioning during extreme heat.

CRCL's stated mission is to "[i]nvestigat[e] civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel."⁵ Complainants and the undersigned organizations urge CRCL to exercise its authority and investigate the brutal and unlawful retaliation ICE and its contractors committed to quash Complainants' First Amendment rights.⁶

² Global Detention Project, United States Immigration Detention Profile (May 2016), <https://www.globaldetentionproject.org/countries/americas/united-states>.

³ Isabelle Nui & Emily Rhyne, *4 Takeaways From Our Investigation Into ICE's Mishandling of COVID-19*, NEW YORK TIMES (Apr. 25, 2021), <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html>.

⁴ See, e.g., ACLU and Physicians for Human Rights, *Behind Closed Doors: Abuse and Retaliation Against Hunger Strikers in U.S. Immigration Detention* (2021), <https://www.aclu.org/report/report-behind-closed-doors-abuse-retaliation-against-hunger-strikers-us-immigration-detention>.

⁵ Department of Homeland Security, Office for Civil Rights and Civil Liberties, <https://www.dhs.gov/office-civil-rights-and-civil-liberties> (last visited Aug. 3, 2021).

⁶ Complainants have provided express consent authorizing us to share their information with CRCL and authorizing

I. YUBA COUNTY JAIL IN MARYSVILLE, CALIFORNIA

A. Individuals Have Long Protested Dangerous and Unconstitutional Conditions at Yuba County Jail

ICE confines individuals in civil removal proceedings at the Yuba County Jail (“YCJ”) despite the well-documented absence of safe, humane, and constitutional living conditions at the facility. Since 1979, YCJ has been under a federal consent decree after a lawsuit alleged conditions there failed to meet constitutional standards.⁷ In 2008, ICE entered into an Intergovernmental Services Contract (“IGSA”) with the Yuba County Sheriff’s Office. Pursuant to the IGSA, YCJ contains up to 200 beds for individuals in ICE custody.

People in ICE custody at YCJ have frequently protested the many conditions there that violate constitutional standards and ICE’s Performance-Based National Detention Standards (“PBNDS”): lack of appropriate and timely medical and mental health care; broken toilets, showers, and sinks; mold and insects; spoiled food; and excessive and unjustified use of solitary confinement and “lock downs.”⁸ In 2018, approximately twenty people detained in ICE custody at YCJ engaged in a hunger strike to protest inadequate medical care; the unjustified failure to provide access to programs and religious services; and lack of working toilets and lights.⁹ The most recent inspection report by the Office of Detention Oversight notes that YCJ was in compliance with just half of the eighteen PBNDS (2019) standards, documenting 31 deficiencies—nine of those deficiencies repeat ones identified in prior inspections and involving critical concerns such as the appropriate licensure and training of providers of mental and dental care.¹⁰

Just last year, a report released by the court monitors for YCJ confirmed the Sheriff’s ongoing deficiencies and practice of ignoring grievances. The Sheriff engaged in “persistent delays in providing medical and mental health care” and “inadequate medical and mental health staffing generally.”¹¹ Grievances related to medical and mental health care were often closed without a required hearing or evidence the grievant was notified of a proposed resolution.¹² More troublingly, grievances that alleged violations of state or federal law were not properly investigated. In April 2020, an individual filed a grievance alleging that they had been subjected to excessive force by a guard. Because the grievance alleged a violation of federal law, YCJ was

CRCL to share information with us about this complaint. We attach signed privacy waivers from all Complainants who have consented to the use of their full name in this complaint.

⁷ *Hedrick v. Grant*, Case No. 2:76-cv-00162-EFB (E.D. Cal.).

⁸ Letter from ACLU Foundation of Northern California to Wendell Anderson and Erik Bonnar (Sept. 14, 2018) (on file with authors).

⁹ *Id.*

¹⁰ Office of Detention Oversight, Compliance Inspection: Yuba County Jail, Marysville California (Apr. 5-9, 2021), https://www.ice.gov/doclib/foia/odo-compliance-inspections/yubaCoJailMarysvilleCA_Apr5-9_2021.pdf.

¹¹ Monitoring Tour Report – Yuba County Jail April 2020 to August 2020 at 1, <https://rbgg.com/wp-content/uploads/Monitoring-Tour-Report-Yuba-County-Jail-Apr-Aug-2020-10-9-2020.pdf>.

¹² *Id.* at 7.

required to refer the grievance to the Sheriff's Professional Standards Unit for further investigation by Internal Affairs.¹³

Joe Mejia Rosas ("Mr. Mejia") was forced to endure many of these conditions himself. He received cold and awful-smelling food. Laundry was available inconsistently and returned items that were still dirty. Mr. Mejia's jail area was frequently soiled with vomit, urine, and feces; Yuba sheriff deputies would force Mr. Mejia and others to be exposed to such substances for extended periods of time before proper clean-up occurred. Few cleaning supplies were provided and, on at least one occasion, a drain in the floor backed up with sewage and feces spread across people's shoes and personal property. Mr. Mejia and people in his jail area were forced to sit for over two hours in the odor, and then taken to the roof for air for several additional hours while the backup was fixed and other incarcerated people were forced to clean the mess. There were similar issues in other jail units. At the end of June 2020, residents of C Pod—one of the largest jail units for people in ICE detention at YCJ—were forced to use their blankets to mop up a sewage overflow. The blankets were laundered but returned to the men soiled, and at least one person reported to California Collaborative for Immigrant Justice (CCIJ) that he suffered a skin infection he believed was caused by contaminated bedding.

Mr. Mejia was treated inhumanely by YCJ deputies. Guards passing his housing area in the night would bang on the bars to wake people with no apparent reason. Mr. Mejia witnessed YCJ deputies intentionally destroying personal property, including photographs and personal radios, a precious link to the outside world. YCJ deputies destroyed Mr. Mejia's food, ostensibly because it was not in the original packaging. Food items purchased in the canteen were precious because of the poor quality of food served at YCJ. When Mr. Mejia and others submitted grievances about the conditions or mistreatment, they faced retaliation, including further destruction of personal property.

B. Jonny Vasquez and Joe Mejia Suffered Retaliation for their Protests and Advocacy Against Conditions at Yuba County Jail

Mr. Mejia, along with Jonny Vasquez Rodriguez, suffered severe retaliation in 2020 for engaging in a hunger strike to protest the increasingly dangerous conditions those at YCJ suffered through. At the time, Mr. Mejia and Mr. Vasquez were confined in D Pod.

As the COVID-19 pandemic set in, people in ICE custody, including Mr. Mejia and Mr. Vasquez, were shuffled throughout the jail. Many reported that as soon as they had made their new space relatively clean, they would be moved again to a different, filthy jail unit, suggesting that the facility was using detained people as free labor. On or about July 23, 2020, Mr. Mejia and Mr. Vasquez, along with individuals in several other jail units, launched a hunger strike. Simultaneously, the strikers released a call for action directed to Governor Gavin Newsom, then-California Attorney General Xavier Becerra, Sheriff Wendell Anderson, and ICE officials through advocates outside of the facility.¹⁴ They publicly demanded that ICE, along with elected

¹³ *Id.* at 10.

¹⁴ Undocumented Immigrants held in two different detention facilities host strikes, protesting inaction from state leaders as COVID-19 spreads (July 23, 2020), <https://www.centrolegal.org/wp-content/uploads/2020/07/PR->

officials, redress the failures to provide safe and hygienic living conditions, take adequate measures to prevent the spread of COVID-19, and stop transferring individuals from state and local custody to ICE custody.¹⁵ Anticipating retaliation, the strikers also called for ICE and YCJ deputies to “cease all retaliation from guards, including excessive and arbitrary write-ups and the practice of placing in solitary confinement those who exercise their First Amendment right to freedom of speech.”¹⁶

Even during the COVID-19 pandemic, individuals were required to purchase hygiene products, such as soap or dental floss, from the commissary. Only hotel-sized bars of soap and miniature toothbrushes were provided in hygiene kits for indigent detained people. Commissary order forms were distributed twice per week. However, upon commencement of the hunger strike, jail officials ceased to distribute order forms, denying strikers the right to purchase even hygiene products. After two missed commissary days, Mr. Vasquez filed a grievance alleging that the jail was retaliating against them for speaking out. Although the jail acknowledged the issue and informed the strikers they would be permitted to purchase items like soap, postage stamps, and liquids going forward, Mr. Vasquez continued to be targeted because he had submitted the grievance: he was not given an order form two or three more times, even after the hunger strike ended. Only after filing another grievance was his access to purchase commissary items finally restored.

Throughout the hunger strike, YCJ deputies retaliated against strikers in myriad ways. Deputies confiscated or destroyed their commissary food; phones were shut off temporarily even for legal calls; and individuals did not receive mail that they knew had been sent to them, while others’ legal mail had been opened without them present. On several occasions, YCJ deputies entered D Pod and ripped up people’s mattresses, pulled out stuffing and left individuals without mattresses for hours. As Mr. Mejia encouraged his comrades to remain peaceful, officers appeared aggravated by the lack of reaction to their aggressions, insults, and racial remarks. Retaliation by YCJ deputies escalated, with televisions shut off randomly, commissary and laundry skipped, lockdown initiated early, and recreation time denied. Some hunger strikers were isolated by YCJ deputies in bare concrete rooms and told that they needed to eat again.

Men in the housing units C Pod and G Tank also joined the hunger strike and implemented a work stoppage. A man detained in C Pod reported to the California Collaborative for Immigrant Justice (CCIJ) that shortly after the hunger strike commenced, YCJ sergeants and deputies took the commissary items and personal belongings of everyone in C Pod. Hot water was shut off in C Pod later that evening. The individual who spoke with CCIJ reported that his items were returned only after he agreed to eat a single piece of fruit, thus breaking his hunger strike.

On July 24th, YCJ deputies assaulted and pepper-sprayed three strikers detained in G Tank. Mr. Mejia witnessed the assault on video, as he could see into the guards’ “bubble” and

MV_YCJ-Strikes-3.pdf.

¹⁵ JMR, *Detention Pandemic* (May 25, 2020), <https://medium.com/@detentiondigestycj/detention-pandemic-ac64bfecf777>.

¹⁶ See *supra* note 14.

watched several guards replay a recording of the events shortly after they occurred. Mr. Mejia described seeing officers enter G Tank and then handcuff, assault, and pepper spray those inside. He described the first person to be handcuffed as visibly compliant, turning his back to the guard and putting his hands behind his back before being “slammed into a bunk” according to Mr. Mejia. The individual Mr. Mejia saw suffer the harshest assault was later charged with assault himself, though Mr. Mejia is vehement that the sergeant was the aggressor and that other guards watched what occurred without intervening, indicating that they didn’t believe there was any danger to their deputy, Sergeant Cordray.

On July 27th individuals at YCJ decided to end the hunger strike, though none of their demands had been met. Even after the strike ended, Mr. Vasquez and other participants were subjected to closer scrutiny and given write-ups for insignificant things that others were not penalized for. For instance, after the men launched a second hunger strike, officers entered the dorm to conduct a “shakedown” and singled out Mr. Vasquez, who, like many others, had hung hand-washed clothes to dry using the handles of disposable plastic razors in violation of a policy that prohibited hand-washing of clothing. Mr. Vasquez was accused of possessing a weapon and written up, while others’ similar set-ups remained untouched. YCJ deputies indicated that Mr. Vasquez was targeted because he had filed grievances and was therefore seen as a hunger strike leader. Just prior to the “shakedown,” YCJ deputies entered the pod and asked to speak to Mr. Vasquez directly. When he asked why, YCJ said that he was the one organizing the strike. Also during the second hunger strike, men in D Pod were again barred from purchasing commissary food, and this time, liquids like coffee or Kool-Aid were not permitted either.

Up until his release on June 24, 2021, Mr. Vasquez reported that he continued to face insidious hostility from jail officials for his perceived leadership in the hunger strikes, such as more frequent and probing searches of his bunk.

II. MESA VERDE DETENTION FACILITY IN BAKERSFIELD, CALIFORNIA

A. ICE and GEO Consistently Fail To Provide Adequate Care to Individuals Confined at Mesa Verde

ICE contracts with the GEO Group to confine individuals at the Mesa Verde Detention Center (“Mesa Verde”) in Bakersfield, California, which is owned and operated by GEO. Mesa Verde has the capacity to detain 400 people in civil removal proceedings. When Mesa Verde was opened in 2015, advocates immediately noted the dangers in confining individuals in carceral settings in the region, where coccidioidomycosis, a disease known as “cocci” or “Valley Fever” is prevalent.¹⁷ Since then, GEO’s failures to provide appropriate medical care have only increased. Internal audit reports from 2017 to 2019 revealed that the medical team was understaffed, individuals with mental health needs were not being consistently monitored or treated, and medical screenings, annual examinations, prescribed medical care, lab treatments,

¹⁷ See, e.g., Anoop Prasad & Julia Harumi Mass, *Exposing Immigrants to Death Dust? No Thanks* (Apr. 8, 2015), <https://www.aclunc.org/blog/exposing-immigrants-death-dust-no-thanks>; Letter from ACLU Foundations of Southern California and Northern California to Erik Bonnar, Monte LeFave, & Nathan Allen re: Denial of Access to Legal Resources (July 13, 2018), (on file with authors).

and follow-up appointments were not provided.¹⁸ In one egregious case, GEO staff shackled a pregnant woman who needed urgent medical care at an outside hospital.¹⁹ After GEO staff placed her in handcuffs, ankle cuffs, and waist chains, and while being forced into a vehicle in a downpour, the woman tripped and fell hard on her stomach, unable to break the fall. Tragically, she began bleeding and lost her baby. GEO staff denied her post-miscarriage medical care and critical mental health services.

ICE and GEO's systemic failures in ensuring the safety and health of individuals at Mesa Verde culminated in the COVID-19 outbreaks at the facility in 2020. In August 2020, a court found ICE to have acted with medical indifference towards the detained people at Mesa Verde and ordered that it be closed for intake.²⁰ Noting that ICE had "avoided widespread testing, not for lack of tests, but for fear that positive test results would require them to implement safety measures that they apparently felt were not worth the trouble," the court ordered the facility to halt intake of new individuals.

In addition to their failures to provide adequate medical care, ICE and GEO fail to respond to grievances in the required time frame.²¹

B. COVID-19 Spurred Concerted Advocacy by Donovan Grant, A.M., and Lilian Marquez, for Which They Suffered Retaliation

ICE and GEO's inability to provide adequate care to individuals confined at Mesa Verde meant that, when the COVID-19 pandemic began, they were utterly unprepared to address complaints and moved quickly to retaliate instead of addressing the concerns.

Donovan Grant, A.M., and Lilian Marquez were detained at Mesa Verde as the COVID-19 pandemic began. Quickly realizing that ICE and GEO staff were failing to take the necessary measures to prevent COVID-19 from entering and spreading through the facility, they and other individuals at Mesa Verde used a variety of methods to raise public awareness regarding the life-threatening conditions inside the facility and to obtain changes in their treatment. While they spoke with reporters, advocates, and attorneys outside of the facility, the people detained at Mesa Verde also filed grievances, spoke with ICE and GEO staff, and engaged in a variety of organized and concerted measures to protest their treatment and seek redress.

¹⁸ The Trump Administration's Mistreatment of Detained Immigrants: Deaths and Deficient Medical Care by For-Profit Detention Contractors at 29, Staff Report, Comm. On Oversight and Reform and Subcomm. On Civil Rights and Civil Liberties, U.S. House of Reps. (Sept. 2020), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-09-24.%20Staff%20Report%20on%20ICE%20Contractors.pdf>.

¹⁹ Katie Traverso & Michael Kaufman, *Shackle a Pregnant Woman, Risk a Foreseeable Tragedy*, (June 18, 2015), <https://www.aclunc.org/blog/shackle-pregnant-woman-risk-foreseeable-tragedy>.

²⁰ See *Zepeda Rivas v. Jennings*, No. 20-CV-02731-VC, 2020 WL 4554646 (N.D. Cal. Aug. 6, 2020).

²¹ Office of Detention Oversight, Compliance Inspection: Mesa Verde ICE Processing Center, Bakersfield, California at 9 (Jan. 25-28, 2021), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2021-MesaVerdeIPC-BakersfieldCA-Jan.pdf>.

April Hunger Strike. In late March 2020, 85 men detained in Dorms C and D, including A.M. and Mr. Grant, wrote letters to ICE, decrying their custody in immigration detention and the unsuitable living conditions during the pandemic that they feared would turn their “detention into a death sentence.”²² They spoke out against the detention of vulnerable individuals, crowded sleeping and eating quarters that made social distancing impossible, “ineffective” cleaning supplies and sanitation, and a lack of a screening process for new transfers and current detained people in the facility.

Nine days later, following ICE’s failure to respond to the life-threatening conditions, Mr. Grant, A.M., and Ms. Marquez, along with over 100 people in Dorms B, C, and D, launched a hunger strike on April 10, 2020. For the next few days, strikers refused to visit the cafeteria and eat their meals, and some spoke to the media about the hunger strike and their demands.²³

Donovan Grant, who was detained in Dorm C, states that staff revoked his dorm’s recreation time after the strike was declared. Lilian Marquez, who was detained in Dorm B, notes that all the phones in her dormitory, including those used to make legal calls, were cut for several hours. Throughout the women’s strike in Dorm B, GEO staff threatened to take disciplinary action against strikers; attempted to monitor strikers’ phone and computer use by regularly asking strikers who they were on the phone with and by looking over their shoulders when they used computers; and singling out and interviewing individual women in the dorm to ask who organized the strike and why. Strikers from all three dorms reported to Centro Legal that staff threatened to record participation in the hunger strike in the strikers’ “files,” which they understood would affect their efforts at getting released as well as the outcomes of their deportation proceedings.

Following the strike announcement, multiple strikers, including Ms. Marquez, reported to Centro Legal and to CCIJ that Warden Nathan Allen and other GEO staff threatened to withhold access to their commissary if the strike were to continue.²⁴ Detained people regularly rely on their commissary to purchase essential toiletries (such as toothpaste, soap, and deodorant), food, and, particularly crucial during the pandemic, hygiene products (including shampoo, soap, toilet paper, washcloths, and sponges). On April 13, 2020, the strikers in Dorms C and D prematurely suspended their hunger strike in response to these threats of retaliation of being deprived of access to commissary. Meanwhile, ICE continued to transfer in unscreened noncitizens, and the facilities remained dangerously crowded.

²² See Letters from Dorms C and D at the Mesa Verde Detention Facility (March 24 and 17, 2020), <https://www.centrolegal.org/wp-content/uploads/2021/06/April-1-Dorms-C-and-D-letters.pdf>. See also Interfaith Movement for Human Integrity (@4humanintegrity), Twitter (Mar. 31, 2020, 10:26 AM), <https://twitter.com/4humanintegrity/status/1245039663301054464> (highlighting video recording members of Dorm C reading their letter aloud). Centro Legal e-mailed these letters on behalf of the dorms to Warden Nathan Allen and ICE Acting Field Office Director David Jennings on April 1, 2020.

²³ See, e.g., Sam Morgan, *100 immigrant detainees hold hunger strike at Mesa Verde in response to COVID-19 measures*, THE BAKERSFIELD CALIFORNIAN (Apr. 11, 2020), https://www.bakersfield.com/news/100-immigrant-detainees-hold-hunger-strike-at-mesa-verde-in-response-to-covid-19-measures/article_4bc2c88e-7b88-11ea-bf82-c3fcec598e57.html.

²⁴ See also Andrea Castillo, *Advocates say hundreds of immigrants detained in California are on hunger strike. ICE says only two*, LA TIMES (Apr. 19, 2020), <https://www.latimes.com/california/story/2020-04-19/advocates-say-hundreds-of-immigrants-detained-in-california-are-on-hunger-strike-ice-says-just-two-are>.

April Prayer Vigil in Women's Dorm and Resumed Hunger Strike. The hunger strike in Dorm B, the women's dorm, ended on Sunday, April 12, one day before the men's strike ended. Approximately two days later, Ms. Marquez and a couple of other women in Dorm B resumed their strike. A majority of women in the dorm did not join the strike out of fear that Mesa Verde staff would act on their threats to take disciplinary action and to take away and withhold commissary purchases, which were their only means to protect their health and safety throughout the pandemic.

On April 17, 2021, two women in Dorm B independently reported to Centro Legal that another woman in the dorm attempted suicide by hanging during the early morning. Later that day, women in the dorm attempted to hold a prayer vigil during their outdoor recreation time. As they were lining up to go outside, a protest began outside the facility, and Mesa Verde staff abruptly refused to permit the women to go outside to hold their prayer vigil, as planned. Ms. Marquez and others urged staff that they were only seeking to pray in the yard, but staff still refused to let the women go outside. A man detained in Dorm C called Centro Legal later that day and reported that staff cancelled outdoor recreation time for all dorms.

Ms. Marquez and the other women shared with the media a copy of their written prayer, which denounced conditions including their inability to socially distance and delays in receiving medical attention and prescription medication.²⁵ Ms. Marquez and a few others continued their hunger strike, and throughout it, Mesa Verde staff continued to threaten disciplinary action and withholding commissary purchases. On May 7, 2020, ICE released 15 out of the 16 women at Mesa Verde, effectively ending the strike.

May Hunger Strike. On April 30, 2020, Mr. Grant and A.M., along with others detained in Dorm C, relaunched their hunger strike in an effort to bring attention to the life-threatening dangers of their detention amidst the ongoing COVID-19 pandemic. They publicly denounced the overcrowded facility that made social distancing impossible, citing the close proximity in which detained people slept and ate together, the lack of access to disinfectant cleaning supplies, and the fact that some Mesa Verde staff refused to wear masks.²⁶ GEO staff threatened Mr. Grant, saying they would take away access to commissary, outdoor recreation time, and access to computer tablets (which detained people use to request nonurgent medical care and make phone calls to family). Another detained person in Dorm C reported to Centro Legal that officers entered Dorm C that day and confiscated at least two peoples' walking canes, citing safety concerns. Strikers also reported to Centro Legal that in response to the hunger strike, officers separated a few people from their dormmates in Dorm C and moved them into Dorm A. The strikers ended their hunger strike on May 3, 2020.

²⁵ See Rebecca Plevin, *Immigrants in California detention centers launch hunger strikes to call for COVID-19 protections, advocates say*, THE DESERT SUN (Apr. 19, 2020), <https://www.desertsun.com/story/news/health/2020/04/19/immigrants-california-detention-centers-launch-hunger-strikes-call-covid-19-protections-advocates-sa/5162354002/>; Dorm B at the Mesa Verde Detention Facility, Petition to the Lord (April 12, 2020), <https://www.centrolegal.org/wp-content/uploads/2021/06/Dorm-B-letter.pdf>.

²⁶ See Press Release, Centro Legal de la Raza, *Immigrants at Mesa Verde Detention Facility resume COVID-19 hunger strike after threats of retaliation* (Apr. 30, 2020), <https://www.centrolegal.org/immigrants-at-mesa-verde-detention-facility-resume-covid-19-hunger-strike-after-threats-of-retaliation/>.

June Hunger Strike. On June 4, 2020, A.M., along with over seventy people detained in Dorms A, C, and D, launched a third hunger strike during dinner time. They released a public statement, explaining that they were protesting: the death of their friend Choung Woong Ahn, who died while in solitary confinement at Mesa Verde on May 17, 2020²⁷; the death of Carlos Mejia, who was detained at Otay Mesa and died after contracting COVID-19 there on May 6, 2020²⁸; the inadequate medical care at Mesa Verde; ICE’s mischaracterizations about the facility’s conditions in court; and the continued inability to practice social distancing.²⁹ They began their protest in memory of George Floyd, Breonna Taylor and other Black people killed by police, expressing solidarity with the Black Lives Matter movement and connecting the racism of the criminal justice system to their current detention.

After the strike began, GEO staff asked A.M. and every member of his dorm (C) whether they were on strike. Mesa Verde’s Chief of Security pulled A.M. out of the dorm and informed him that: (1) staff would take away detained people’s commissary purchases and prevent them from making future purchases; and (2) once the strikers missed nine meals, staff had the right to place strikers in isolation. On June 7, Centro Legal received a call from a striker detained in Dorm B, who reported that a Mesa Verde staff member who identified himself as a lieutenant informed the striker that once the strikers missed their ninth meal, “ICE wants us to go in there and take away your commissary.” The Lieutenant also informed the striker in Dorm B that the strikers would be removed from the dorm at that time and each placed into solitary confinement.

On June 5, ICE spokesperson Jonathan Moor publicly alleged that the strike was borne of “potential internal and external coercion” but declined to provide any information as to his source.³⁰ That same day, a hunger strike leader spoke to media and released a statement in response:

I think ICE always puts forth very inaccurate info to defend their own organization. I think they believe a lot of made up information in order to derail or discourage the cause of liberation. We’re doing this on our own, and no one coerced us to do this. We are doing this because of the recent deaths in ICE custody of Choung Woon Ahn and Carlos Mejia. We are doing this because of ICE’s continuous lies in front of federal judges about how they have made it safe for us to be detained here during the coronavirus pandemic when it’s really not safe at all.³¹

²⁷ See Press Release, Disability Rights Advocates, DRC and Advocates File Complaint Responding to Death at Mesa Verde Detention Facility (Apr. 20, 2021), <https://www.disabilityrightsca.org/press-release/drc-and-advocates-file-complaint-responding-to-death-at-mesa-verde-detention-facility>.

²⁸ Ryan Devereaux, *ICE detainee who died of COVID-19 suffered horrifying neglect*, THE INTERCEPT (May 24, 2020), <https://theintercept.com/2020/05/24/ice-detention-coronavirus-death/>.

²⁹ See Press Release, Centro Legal de la Raza, Detained immigrants launch hunger strike urging Gov. Newsom to protect lives of Black immigrants, others in ICE detention amid COVID-19 threat (June 5, 2020), <https://www.centrolegal.org/ices-false-claims-over-hunger-strike-racist-attempt-to-undermine-leadership-of-black-immigrants/>.

³⁰ See Brittny Mejia, *ICE alleges coercion behind California hunger strike; detainee calls agency officials ‘liars’*, LA TIMES (June 6, 2021), <https://www.latimes.com/california/story/2020-06-06/ice-alleges-coercion>.

³¹ See *id.*; Press Release, Centro Legal de la Raza, ICE’s false claims over hunger strike: Racist attempt to undermine leadership of Black immigrants (June 5, 2020), <https://www.centrolegal.org/ices-false-claims-over-hunger-strike-racist-attempt-to-undermine-leadership-of-black-immigrants/>. See also Maria Dinezo, *Judge Leans on*

Due to the threats to take away commissary and to place strikers in isolation after missing their ninth meal, A.M. and the other strikers decided to end their strike on June 8, 2020. Later that day, they released a video speaking out in solidarity with the Black Lives Matter movement, “to give a voice to protesters who are immigrants . . . who want to stand up against this country’s racism but are scared.”³²

On June 11, 2020, staff searched the personal belongings of the strikers in Dorm C, where A.M. was detained, while they were at outdoor recreation. Staff confiscated a striker’s inhaler, another striker’s washcloth (that he used to clean and sanitize his sleeping area) and prescription medication, one striker’s toilet paper (which detained people were authorized to keep on their persons), and A.M.’s prescription medication and cleaning sponge (that he used to clean and sanitize his dishes). Staff additionally cut the dorm’s recreation time short by 40 minutes that day. A.M. reports that he and his dormmates repeatedly asked staff why they conducted the search and why their medications and cleaning supplies were confiscated, but received no answers.

July Hunger Strike. On June 19, ICE publicly announced that a staff person at Mesa Verde had tested positive for COVID-19. On July 3, A.M. along with people detained in every dorm, declared a hunger strike. They publicly released a statement explaining that they were protesting: (1) GEO staff failing to wear gloves and masks; (2) the continued transfer of people into Mesa Verde, without testing or segregation before being placed into the populated dorms; (3) unsanitary conditions, including bathroom floors filled with standing water, crickets, mosquitos, and “the smell of dead animals”; and (4) the lack of adequate and nutritious food.³³ Strikers in each dorm reported to Centro Legal that they delivered the statement to staff at the start of the strike. At the same time, strikers in two dorms reported to Centro Legal that their outdoor recreation time was cancelled that day.

A.M. along with individuals from other dorms met with Warden Nathan Allen, who informed them that if the strike continued, staff would deny them the ability to make commissary purchases. Warden Allen informed A.M. that they were taking away commissary purchases “to make sure you’re doing hunger strike properly.” Strikers in each dorm reported to Centro Legal

ICE to Improve Health Conditions at Detention Facilities, COURTHOUSE NEWS SERVICE (June 4, 2020), <https://www.courthousenews.com/judge-leans-on-ice-to-improve-health-conditions-at-detention-facilities/> (detailing how earlier in the week the ICE official responsible for overseeing Mesa Verde was forced to admit to a federal district judge that he had made false statements to the court); Jennie Neufeld, *Watch: former ICE spokesperson says he was asked to ‘flat-out lie’*, VOX (June 28, 2018), <https://www.vox.com/2018/6/28/17514964/ice-spokesperson-flat-out-lie> (uncovering that in 2018 an ICE spokesperson in Northern California resigned over having been asked by ICE to ‘flat out lie.’).

³² Interfaith Movement for Human Integrity (@4humanintegrity), Twitter (June 8, 2020, 4:14 PM), <https://twitter.com/4humanintegrity/status/1270132229273014273>; Sam Morgan, “Hunger strike at Mesa Verde ends after four days,” THE BAKERSFIELD CALIFORNIAN (June 9, 2020), https://www.bakersfield.com/news/hunger-strike-at-mesa-verde-ends-after-four-days/article_490b6ee6-aa92-11ea-97a0-938736416877.html.

³³ Press Release, Centro Legal de la Raza, Immigrants detained at Mesa Verde launch new hunger strike amid growing #COVID19 threat, disgusting and inhumane conditions (July 3, 2020), <https://www.centrolegal.org/immigrants-detained-at-mesa-verde-launch-new-hunger-strike-amid-growing-covid19-threat-disgusting-and-inhumane-conditions/>.

that no striker received any of their commissary purchases that week, even purchases for hygienic items such as antibacterial soap and toothpaste. In at least two dorms, no one received their purchases, even those who were not on hunger strike. A.M. reports that Mesa Verde still deducted money from their accounts for the purchases strikers had made but did not receive while on strike. A striker in Dorm B also reported that although they were scheduled to receive haircuts, they were denied access to the barbershop services. On July 7, Mesa Verde staff also informed A.M. that all commissary items that strikers already had in their possession would be confiscated if the strike continued.

A.M. and others ended the hunger strike on July 10, 2020, due to GEO and ICE's continued refusal to permit access to commissary purchases, including hygiene and sanitary products, amidst the fear that COVID-19 would rapidly spread throughout the dorm. Later that day, Mesa Verde staff delivered the outstanding commissary purchases to all strikers and non-strikers, and provided barbershop services to those in Dorm B.

July Work Stoppage and Count Strike. On July 22, 2020, A.M. and other people detained in all four dorms of Mesa Verde began a work stoppage.³⁴ They announced the strike through a statement to ICE and GEO:

Mesa Verde runs off of our labor. We are the ones who prepare and serve the food who clean the bathrooms and the dorms. We are paid \$5 per week for our official jobs, and the rest we do for free. We will not work and we will not collaborate with GEO. We refuse to make it easier for you to continue unnecessarily caging and murdering us.³⁵

On July 23, strikers in Dorms B, C, and D reported to Centro Legal that their computer tablets were turned off the day prior after they announced the strike, and that they remained off the following day. Detained people at Mesa Verde require tablets to make requests for medical attention and prescription medication, commissary purchases, and make video calls to family.

Strike leaders in Dorms B, C, and D also reported that Mesa Verde staff refused to clean the dormitory bathrooms once the strike began. By July 26, strikers in Dorms C and D reported to Centro Legal that the bathrooms were in abysmal conditions: trash had piled up, the toilets were producing repulsive smells, and although strikers in both dorms had alerted staff to the conditions, staff still refused to clean.

On July 27, A.M. spoke to Warden Allen and expressed concerns about the unsanitary conditions in the bathrooms and asked whether staff could do something. Warden Allen responded, "You guys can go back to work." Meanwhile, A.M. and other detained people continued to see new transfers being brought into their dorms, without first being tested for COVID-19 or quarantined. On August 1, strike leaders in Dorms B, C, and D reported to Centro

³⁴ See Jack Herrera (@jherrerrx), Twitter (July 23, 2020, 5:04 PM), <https://twitter.com/jherrerrx/status/1286452248084492288>.

³⁵ See Letter from Dorms A, B, C, and D at the Mesa Verde Detention Facility (July 22, 2020), https://www.centrolegal.org/wp-content/uploads/2021/06/MVDF-Strike-Announcement-7_22-.pdf.

Legal that they were stopping the strike. A strike leader from Dorm C explained, “I think we have to suspend it for our health—we need them to clean the dorms, we need access to commissary. It’s for our lives.” Another strike leader from Dorm D added that strikers were also concerned that the disciplinary write-ups would affect their chances of being released.

III. OTAY MESA DETENTION CENTER IN SAN DIEGO, CALIFORNIA

A. There Is a Well-Documented History of Retaliation Against the People Detained at the Otay Mesa Detention Center

Retaliation by ICE’s private contractors is pervasive and long-standing at the Otay Mesa Detention Center (“OMDC”), located about 25 miles southeast of downtown San Diego, California.³⁶ OMDC is owned and operated by CoreCivic, a for-profit prison company that contracts with the federal government to confine people in ICE and U.S. Marshals Service (“USMS”) custody at OMDC. OMDC has the capacity to detain almost 2,000 people—about 1,200 in ICE custody and about 800 in USMS custody. The population of the facility ranges from adults seeking asylum after presenting at a port of entry to long-time, lawful permanent residents in ICE custody who are charged with being removable from the U.S., in addition to noncitizens and U.S. citizens in USMS custody who are charged criminally and awaiting trial or sentencing.

People detained at OMDC consistently disclose a fear of reporting instances of illegal conduct or substandard conditions because they will likely suffer harassment, solitary confinement, or worse from the facility’s employees. In 2020, people detained at OMDC faced retaliation from facility staff when seeking redress for the conditions in the facility that led to a COVID-19 outbreak. Carlos Ernesto Escobar Mejia was the first person in ICE custody to die from COVID-19 on May 6, 2020. Prior to his death, Mr. Escobar Mejia and other people at OMDC initiated a hunger strike in order to protest CoreCivic’s failure to implement the protective measures necessary to prevent COVID-19 from sweeping through the facility. Facility staff retaliated against Mr. Escobar Mejia by placing him in solitary confinement. In other instances, facility employees punished women who provided declarations to attorneys and those who filed grievances describing the horrific conditions inside the facility by placing them in medical isolation or solitary confinement.

CoreCivic’s retaliatory practices are not new. In 2019, two individuals reported that they had suffered retaliation from CoreCivic after reporting sexual assaults in the facility. In February 2008, CoreCivic employees interrogated a group of women who shared information with attorneys about mistreatment and poor conditions at the facility, later searching their cells and placing their units on lockdown. In September 2006, CoreCivic deployed pepper spray inside three detention pods, and later beat residents who were sitting peacefully inside their cells; the

³⁶ The sources for the information regarding instances of retaliation at OMDC contained within Section III.A of this complaint can be found in the following report: ACLU of San Diego & Imperial Counties, CoreCivic’s Decades of Abuse: Otay Mesa Detention Center (Apr. 2021), <https://www.aclusandiego.org/en/publications/corecivics-decades-abuse-otay-mesa-detention-center>.

trigger for the excessive force was a group's attempt to speak to an ICE official about CoreCivic's plan to require three people to be confined in cells meant only for two.

Alongside retaliatory measures consisting of excessive force, verbal intimidation, and isolation, CoreCivic employees have sought to block people at OMDC from communicating with outside advocates. CoreCivic has repeatedly attempted to impose upon visitors and volunteers burdensome non-disclosure agreements, which effectively prevent people in OMDC from speaking to outsiders. Most recently, in June 2020, CoreCivic blocked the telephone numbers of two advocacy organizations at the direction of ICE.

B. Anthony Alexandre Suffered Retaliation For Protesting ICE and CoreCivic's Conditions Violations

Anthony Alexandre has faced retaliation from CoreCivic and ICE employees as a result of his sustained public advocacy on behalf of himself and the other detained individuals at OMDC. Since his arrival at OMDC on February 7, 2020, Mr. Alexandre has confronted life-threatening conditions imposed by CoreCivic and ICE employees. Mr. Alexandre has engaged in concerted protest inside the facility, along with communication with attorneys, advocates, and members of the press to seek redress and raise public pressure on facility administrators. In response, CoreCivic and ICE employees have denied his release, used excessive force in physical altercations, and most recently, they sexually harassed him.

During his first month at OMDC, Mr. Alexandre observed serious deficiencies in hygiene and food. Little soap and toilet paper was available. The food provided to detained people was expired or spoiled. Facility staff routinely berated detained individuals for no reason.

When the COVID-19 pandemic swept through OMDC in March 2020, Mr. Alexandre and other residents found themselves with little protection from the virus. Facility staff provided Mr. Alexandre only with single-use masks on an infrequent basis; they pepper-sprayed Mr. Alexandre and other detained people in his dorm when they cut the facility-provided clothing to make desperately-needed face coverings. CoreCivic staff's failure to follow CDC guidelines and to engage in the most basic protective measures quickly led to the first outbreak of COVID-19 in an ICE facility: by mid-April, dozens of people at OMDC had contracted COVID-19.

Mr. Alexandre and the other people in his dorm began a hunger strike on April 17, 2020 to protest the utter failure of CoreCivic and ICE staff to protect the people in their custody from COVID-19.³⁷ During their hunger strike, Mr. Alexandre and the other residents drank only water, but refused to eat breakfast, lunch, dinner, and any commissary food items. Upon learning of the hunger strike, Kelley Beckhelm, the Assistant Officer in Charge for the San Diego ICE ERO Field Office, entered Mr. Alexandre's detention pod and said, "Are you really going to do this? If you don't eat, we are going to make sure you get deported." On April 22, 2020, CoreCivic staff entered Mr. Alexandre's pod and told the people detained there that they would

³⁷ Max Rivlin-Nadler, *Immigration Detainees Launch Hunger Strike as Outbreak Grows At Otay Mesa Detention Center*, KPBS (April 17, 2020), <https://www.kpbs.org/news/2020/apr/17/immigration-detainees-launch-hunger-strike-respons/>.

be moved to a different pod in which people who had tested positive for COVID were confined. When Mr. Alexandre and the others protested the move, CoreCivic staff entered their cells, deployed pepper spray, and forcibly dragged them to a housing pod containing cells used to isolate people who had active COVID-19 infections.

As a result of the retaliation from CoreCivic and ICE, Mr. Alexandre contracted COVID-19 from other people with the virus in the new detention pod. He nevertheless continued speaking to advocates and reporters outside the facility.³⁸ He appeared by phone on Democracy Now, a widely-syndicated news program.³⁹

While the presence of COVID-19 at OMDC abated over the following months, Mr. Alexandre continued to suffer repercussions for his sustained public advocacy to protest ICE and CoreCivic's dangerous practices. Mr. Alexandre submitted multiple requests for release from detention pursuant to *Fraihat v. ICE*, a class action lawsuit in which court orders mandated the consideration of medically-vulnerable people for release. Though Mr. Alexandre has high blood pressure, mental depression, and anxiety—mental conditions that would qualify him for release—ICE has refused his requests. He has also observed other medically-vulnerable individuals being released from OMDC as a result of COVID-19 litigation, but he has not been released. On one occasion, Mr. Alexandre asked an ICE officer if Assistant Officer in Charge Beckhelm had seen his release request. The ICE officer responded by saying, “No, she doesn't have time to look at everyone's papers. But she knows you're here, and she's not going to release you.”

Most recently, Mr. Alexandre has been singled out for retaliation and harassment by CoreCivic Unit Manager Handsbur. Unit Manager Handsbur was one of the CoreCivic employees against whom Mr. Alexandre had submitted a grievance in approximately February or March 2020 for yelling at detained people in the dorm. After the grievance was filed, Handsbur revoked Mr. Alexandre's medical clearance to eat slowly and take food from the dining hall to his cell in order to finish his meal. Thereafter, she periodically entered Mr. Alexandre's dorm and accused him without basis of breaking rules. The retaliation escalated in May 2021, when Mr. Alexandre was moved to a dorm where she is the unit manager. Handsbur berated Mr. Alexandre for having a chair in his cell, another medical accommodation for which he had received medical clearance. On June 10, 2021, Mr. Alexandre's cell was searched while he was receiving medical attention. His chair was removed, along with a prayer blanket. When Mr. Alexandre returned and protested the removal of medical accommodation items as harassment, Handsbur issued him a write-up.

The next day, June 11, 2021, Mr. Alexandre left his detention pod to visit the medical unit for attention. He dressed in the red shirt and pants that individuals from his unit are required

³⁸ Dorian Hargrove & Tom Jones, *Detained Migrants Say Federal Immigration Officials Understating Extent of COVID Outbreak*, NBC SAN DIEGO (April 29, 2020), <https://www.nbcsandiego.com/news/investigations/detained-migrants-say-federal-immigration-officials-understating-extent-of-covid-outbreak/2314863/>.

³⁹ “Unmitigated Disaster”; Hunger Striker at Otay Mesa Detention Center Speaks Out as COVID-19 Spreads, DEMOCRACY NOW! (June 30, 2020), https://www.democracynow.org/2020/6/30/an_unmitigated_disaster_hunger_striker_jailed.

to wear when leaving the unit. When he returned to his detention pod, he made a phone call to his attorney. Mr. Alexandre then saw Handsbur enter the pod area. He hung up the phone, entered his cell, and closed the door. He took off his shirt, and was taking off his pants when Handsbur suddenly slid open the door to his cell. She stood at the entrance of his cell and looked at Mr. Alexandre, who was standing by his bed. Mr. Alexandre's boxers were visible because his pants were at his knees. Moreover, Mr. Alexandre's genital area was fully visible through an opening along the front his boxers. Mr. Alexandre insisted to Handsbur, "Please close the door, I'm getting undressed." Handsbur responded, "What did I tell you about having legal papers in your pillowcase?" Mr. Alexandre again protested, "No, I'm naked, please close the door." After about fifteen seconds, Handsbur left the doorway. Mr. Alexandre, stunned, took a moment and then pulled up his pants and put on his shirt. He attempted to call the PREA hotline while still in his dorm, but then was taken to see CoreCivic Captain Aryes. Mr. Alexandre was shaking, frightened, and startled by Handsbur's unwarranted intrusion and viewing of his genital area.

Mr. Alexandre then went to the medical area of OMDC to be evaluated. There ICE Officer Redcay listened as Mr. Alexandre told medical staff about the sexual harassment by Handsbur. The officer then accused Mr. Alexandre of lying. He said, "Why do you want to bite the hand that feeds you? We're not going to help you. You're going to stay here." The ICE officer alluded to another detained individual who had been detained for several years, but was recently released, making clear that Mr. Alexandre would not be released unless and until he ceased complaints.

Since this assault, Handsbur continues to retaliate against Mr. Alexandre for his attempts to protect himself from abusive conditions and harassment. She engages in multiple, invasive cell searches of Mr. Alexandre's cell, using her ungloved hands to touch his food and bedding and throwing bedding on the dirty floor.

IV. ADELANTO DETENTION FACILITY IN ADELANTO, CALIFORNIA

Adelanto ICE Processing Center ("Adelanto"), located in San Bernardino County, is the largest ICE detention center in California and one of the largest in the country. The City of Adelanto and ICE contract with the GEO Group to detain up to 1,940 noncitizens in the facility. Following a lawsuit challenging the unconscionably unsafe conditions during the COVID-19 pandemic, a federal judge ordered that ICE and GEO drastically reduce the facility's population.⁴⁰ As of October 2020, the facility was detaining 772 noncitizens.⁴¹ As of July 23, 2021, ICE reported that the population had been reduced to 99.⁴²

⁴⁰ *Hernandez Roman v. Wolf*, No. 20-00768, 2020 WL5797918, at *6 (C.D. Cal. Sept. 29, 2020) (affirmed in part, vacated in part, remanded by *Hernandez Roman v. Wolf*, 977 F.3d 935 (9th Cir. 2020)).

⁴¹ Rebecca Plevin, *Judge orders ICE to reduce population at Adelanto detention center amid COVID-19 outbreak*, THE DESERT SUN (Oct. 15, 2020), <https://www.desertsun.com/story/news/2020/10/15/judge-orders-ice-reduce-population-adelanto-detention-center-amid-covid-19-outbreak/3667578001/>.

⁴² *Hernandez Roman*, No. 20-00768, Dkt. 1232 (government daily status report July 23, 2021).

Extensive retaliation from ICE and GEO staff members at Adelanto Detention Facility is well-documented, including by the Office of Civil Rights and Civil Liberties itself.⁴³ In a 2017 report, experts from CRCL reported that the “[Adelanto] grievance system fails to conform to the PBNDS. Detainees suffer retaliation, verbal harassment, and [are] treated with disrespect by [Adelanto] staff.” CRCL recommended to ICE and Adelanto staff that they improve the grievance system and “hold facility staff accountable for substantiated abusive and disrespectful treatment of the detainees.”⁴⁴ These findings and recommendations were based on DHS experts’ visit to the facility and a review of complaints submitted to CRCL, including an April 19, 2017 complaint from a detained person alleging “delayed medical treatment, verbal abuse, and retaliation.” CRCL experts also noted in the report that ICE and Adelanto staff had not taken steps to address several recommendations previously made to ICE and Adelanto staff regarding improvements to the grievance system, and staff mistreatment had gone ignored.⁴⁵

The CRCL report also documents a June 26, 2017 complaint alleging that two detained individuals, after participating in a hunger strike to protest inhumane living conditions at the facility, were beaten, placed in administrative segregation (a form of solitary confinement), denied access to medical care and to their attorneys, denied grievance forms, and ignored by ICE when they requested credible fear interviews. Video footage and additional reporting of this incident confirms that a group of people seeking asylum and incarcerated in Adelanto faced retaliation and excessive force after commencing a hunger strike to protest facility conditions.⁴⁶ As part of the protest, they attempted to deliver a letter to a GEO guard and asked to speak to someone about their complaints. The guards attempted to disperse the group, but instead of returning to their cells, the protesters linked arms and stayed in place. In response, additional officers arrived, deployed pepper spray, and beat them. The CRCL experts found a “significant issue with the decontamination process,” exacerbating the burning effect of the pepper spray by forcing the detained persons into hot showers.⁴⁷ Seven of the hunger strikers targeted in this incident filed a lawsuit, which the parties settled for an undisclosed amount in January 2020.⁴⁸

⁴³ Tom Dreisbach, *Despite Findings of ‘Negligent’ Care, ICE To Expand Troubled Calif. Detention Center*, NPR (January 15, 2020), <https://www.npr.org/2020/01/15/794660949/despite-findings-of-negligent-care-ice-to-expand-troubled-calif-detention-center>; *see also* CIVIC report (2015), <https://www.documentcloud.org/documents/6278922-HQ-Part2-Copy#document/p10/a541902> (documenting examples of individuals being placed in solitary confinement in retaliation for filing a complaint against an ICE officer for “vulgar” behavior, and noting that nearly 55% of the detainees interviewed by CIVIC claimed that they had been retaliated against or had other troubles whenever they filed complaints with the facility).

⁴⁴ CIVIC Report, *supra* note 43, at 11.

⁴⁵ CIVIC Report, *supra* note 43, at 54-55; Tom Dreisbach, *Despite Findings of ‘Negligent’ Care, ICE To Expand Troubled Calif. Detention Center*, NPR (January 15, 2020), <https://www.npr.org/2020/01/15/794660949/despite-findings-of-negligent-care-ice-to-expand-troubled-calif-detention-center>.

⁴⁶ Tom Dreisbach, *Exclusive: Video Shows Controversial Use Of Force Inside An ICE Detention Center*, NPR (Feb. 6, 2020), <https://www.npr.org/2020/02/06/802939294/exclusive-video-shows-controversial-use-of-force-inside-an-ice-detention-center>; Paloma Esquivel, *‘We don’t feel OK here’: Detainee deaths, suicide attempts and hunger strikes plague California immigration facility*, LA TIMES (Aug. 8, 2017), <https://www.latimes.com/local/lanow/la-me-ln-adelanto-detention-20170808-story.html>; Rebecca Plevin, *Asylum-seekers allegedly pepper-sprayed at Adelanto detention center settle with GEO group*, THE DESERT SUN (Feb. 6, 2020), <https://www.desertsun.com/story/news/2020/02/06/asylum-seekers-allegedly-pepper-sprayed-adelanto-detention-center-settle-geo-group/4680659002/>.

⁴⁷ CIVIC Report, *supra* note 43, at 15.

⁴⁸ *Rivera Martinez v. GEO Group*, No. 5:18-cv-01125-SP (C.D. Cal. filed Aug. 2019), Dkt. 205 (Notice of

Notwithstanding CRCL's previous investigation and recommendations, retaliation persists inside Adelanto. In June 2020, officers in riot gear shot pepper bullets and pepper spray at individuals peacefully protesting continuing lockdown conditions.⁴⁹ The incident arose from ICE's unjustifiable response to a small, peaceful protest of approximately 50 people *outside* the facility on June 12, 2020. Just a few days prior, detained persons had already been subject to a lockdown, during which they were confined to their cells for over 23 hours per day without access to the day room, telephones, the library, or outdoor recreation.⁵⁰ To protest being put under strict lockdown conditions again, for external protests beyond their control, individuals in multiple detention units sat on the floor outside their cells and refused to enter.

In response, according to reports from individuals in separate detention units, approximately fifteen to twenty-five officers in riot gear entered the detention units and started spraying pepper spray and shooting pepper balls at detained individuals. People became violently ill, had difficulty breathing, experienced burning sensations in their eyes and throughout their bodies, and coughed for hours after the confrontation. One detained person was reported as having a seizure. Several individuals were taken to a nearby medical facility for treatment of their injuries.

In addition to the excessive use of force, multiple individuals and attorneys representing the protesters who had been sprayed with the pepper spray reported that for two days after the incident, GEO guards did not let people take showers or make phone calls. Others reported being placed into segregation for days after the incident.

V. GOLDEN STATE ANNEX IN MCFARLAND, CALIFORNIA

A. Concerning Conditions at Golden State Annex

ICE began confining individuals at the Golden State Annex ("GSA") in McFarland, California, in approximately September 2020. GSA is a former state prison that was purchased by GEO to be repurposed as an immigration detention facility. GSA serves as an "annex" to Mesa Verde, which is located 26 miles away in Bakersfield. GSA has the capacity to detain 700 individuals. As advocates have noted, the expansion of Mesa Verde through GSA and another "Central Valley Annex" facility "is mired in controversy due to the manner in which ICE entered into these contracts with GEO."⁵¹ In 2019, Governor Newsom signed AB 32, which would

Confidential Settlement Agreement); *see* Second Amended Complaint, Dkt. 95.

⁴⁹ Andrea Castillo, *Immigrants detained at Adelanto staged a peaceful protest. Guards in riot gear pepper-sprayed them*, LA TIMES (June 26, 2020), <https://www.latimes.com/california/story/2020-06-26/immigrants-detained-at-adelanto-staged-a-peaceful-protest-guards-in-riot-gear-pepper-sprayed-them>.

⁵⁰ On June 7, 2020, another protest outside the facility led to an injury to one Adelanto employee, one arrest, and some property damage. Jose Quintero, *Protest at Adelanto ICE Processing Center turns violent*, DAILY PRESS (June 8, 2020), <https://www.vvdailynews.com/picture-gallery/news/2020/06/08/protest-at-adelanto-ice-processing-center-turns-violent/42168169/>. There is no indication that any detained people in any way facilitated or contributed to these protests.

⁵¹ Centro Legal de la Raza and California Collaborative for Immigrant Justice, *Golden State Annex: Impacted Communities and Immigration Enforcement Trends* at 1, May 18, 2021, https://drive.google.com/file/d/1FIDuRrQC11_0CNZXhKID6tT8nAgesuRE/view.

prohibit the operation of private detention facilities in the state. ICE and GEO rushed to execute new contracts in December 2019, flouting federal procurement requirements in order to beat the effective date of AB 32.⁵²

Though it has been operating for less than a year, GSA exhibits many of the deficiencies in conditions and care that exist in other immigration detention facilities. Multiple individuals have reported being deprived of adequate and timely medical and dental care; spoiled food; lack of clean and hygienic spaces to sleep, eat, shower, and use the toilet; and the inappropriate use of administrative segregation (a form of solitary confinement) to hold individuals who report concerns over their safety.

GSA officers have also retaliated against people who have exercised their rights to protest these conditions. In mid-August 2021, Heber Waterhouse was placed by GSA officers in solitary confinement after he protested an officer arbitrarily ordering a change in the television channel in his dorm. GSA punished Mr. Waterhouse for telling his dorm to “stand up and say something” with 20 days in disciplinary segregation. When Mr. Waterhouse has protested these write-ups, GSA officers do not afford the due process required: they do not adequately investigate and interview Mr. Waterhouse’s witnesses.

B. Enrique Cristobal Meneses Has Suffered, and Continues to Suffer, Retaliation for Protesting Abysmal Conditions at GSA.

Enrique Cristobal Meneses has faced retaliation from GEO staff since his arrival at GSA on November 19, 2020. Mr. Cristobal was taken into ICE custody after being granted clemency by Governor Gavin Newsom. Governor Newsom recognized Mr. Cristobal’s years of education, rehabilitation, and mentorship throughout his time in California prison custody. Mr. Cristobal earned his college degree and a certification as an alcohol and drug counselor. He created self-help programs to change the culture of the prison system. Mr. Cristobal learned techniques for conflict resolution, anger management, and other communication skills through his participation in numerous programs. Upon his release from prison, Mr. Cristobal planned to pursue an opportunity in Alameda County at Ahimsa Collective, to work as a restorative justice counselor. Two different substance abuse treatment centers also offered Mr. Cristobal the opportunity to work as a counselor. In short, Mr. Cristobal was prepared to return to his community and provide critical services to help others.

Mr. Cristobal quickly learned that the conditions at GSA did not comply with ICE detention standards and COVID-19 safety protocols. The food he was given was not nutritious, with no fresh vegetables. At times, he witnessed cockroaches and flies being found in the food. Walls within detention units were covered in mold. On February 28, 2021, when Mr. Cristobal and other residents of his dorm complained about being provided with spoiled milk, GEO staff forced them to undergo a pat search without gloves. When Mr. Cristobal protested this practice, noting that it increased the risk of COVID-19 transmission, Lt. Beeman intimidated him by asking, “How long were you in prison?” and accusing him of “nitpicking.” On March 6, 2021,

⁵² Letter from Norma J. Torres and Raúl M. Grijalva to Merrick Garland (June 10, 2021), <https://torres.house.gov/sites/torres.house.gov/files/documents/Letter%20to%20DOJ%20on%20AB32.pdf>.

GEO staff members attempted to move Mr. Cristobal and the other residents of his dorm to a different dorm. When he arrived at the new dorm, Mr. Cristobal saw that it was not ready for living: toilets were broken, phones were hanging down from receptacles, and outside contractors had left their work on the bathrooms unfinished. Mr. Cristobal and the other men were screamed at by a GEO staff member when they asked questions about outside contractors and the potential for COVID-19 exposure. They were left with the distinct impression that they had been moved by GEO staff unnecessarily as a form of harassment. Mr. Cristobal has also observed GEO staff and medical staff failing to wear masks and to wear gloves while conducting temperature checks and while distributing medication. In May 2021, Mr. Cristobal filed a grievance noting that GEO had failed to provide medical attention to a fellow resident.

GEO's failure to adhere to adequate safety protocols arose in other contexts as well. After being assigned to work on a cleaning crew, Mr. Cristobal was presented with a form to sign confirming that he had received training on the use of chemicals and that he had received safety goggles to use while cleaning. Mr. Cristobal refused to sign the form because he had neither received training nor safety goggles. Mr. Cristobal asked for proper training, an extra pair of clothes, and rubber boots to use while using the harsh chemical cleaner. GEO Case Management Officer Mandarang told Mr. Cristobal that he must use his shower shoes and sign the form otherwise he would be fired. He was taken off the job the next day on February 10, 2021.

Mr. Cristobal filed grievances over these and other failures to comply with the PBNDS and appropriate procedures to prevent the spread of COVID-19. In response, many GEO staff members have told Mr. Cristobal to stop filing grievances. The GSA Chief of Security Bodirsky called Mr. Cristobal into his office on March 16, 2021—shortly after Mr. Cristobal had filed a grievance over GEO staff (Lt. Gil) forcing him and other individuals to remain outside in the recreation yard, and without proper clothing, while it rained. Mr. Bodirsky told Mr. Cristobal to stop making a “big deal out of nothing.” Several times in March and April 2021, GSA Warden Brochu met with Mr. Cristobal about his grievances, and told him repeatedly, “you are crying too much about everything.” Warden Brochu warned Mr. Cristobal, “I’m going to run this as a prison if that’s what you want.” From February through May 2021, Mr. Cristobal spoke with Assistant Warden Andrews repeatedly after filing grievances. Assistant Warden Andrews asked Mr. Cristobal during these conversations, “Why are you helping people file grievances? Why are you attacking staff?” Mr. Cristobal again responded that he was simply helping people assert their rights over the way they were treated by GEO staff.

As GEO and ICE personnel realized that Mr. Cristobal would not stop filing grievances, they shifted to overt methods designed to obstruct his ability to file grievances and communicate with outside attorneys and advocates. In June 2021, GEO removed the staff member who had been in charge of faxing legal documents to attorneys for people detained at GSA, claiming that she “faxed too many documents.” GEO instituted a procedure requiring its own staff to review documents to be faxed to attorneys, violating attorney-client privilege. GEO staff have refused Mr. Cristobal's attempts to fax documents to his attorneys on multiple occasions. On July 15, 2021, Mr. Cristobal received mail from his attorney that was clearly marked as legal mail, but opened outside of his presence and in violation of the PBNDS. On July 20, 2021, Assistant Warden Andrews refused Mr. Enrique's request to fax certain documents to his attorneys in advance of a court hearing while permitting him to fax other documents to his attorneys. Mr.

Cristobal has been told by GEO staff that he cannot fax copies of grievances that he has filed to his attorneys. On July 3, 2021, GEO officer Tamayo refused to provide Mr. Cristobal with a copy of the ICE PBNDS and sarcastically told him to “get your own copy.” Since mid-July, GEO staff have scheduled outdoor recreation at a time that conflicts with access to the legal library, requiring Mr. Cristobal and other detained people to choose between the two.

GEO staff have also engaged in other forms of retaliatory conduct. On April 19, 2021, they fired Mr. Cristobal from his work assignment. GEO staff member Ance told Mr. Cristobal that, “The Warden is mad at you because you’re crying a lot. He doesn’t even want to talk about any of you.” She then told Mr. Cristobal that he would have to find another work crew. A few days later, when Mr. Cristobal attempted to address the situation with Warden Brochu, Warden Brochu denied firing Mr. Cristobal and then said, “I’m not going to talk to you about this. You’re always crying.”

GEO staff have retaliated against Mr. Cristobal and fellow residents of his dorm by engaging in disrespectful, aggressive and insulting behavior. These actions appear motivated by the departure of a GEO staff member, Lt. Beeman. On June 5, 2021, GEO officer Barba yelled at Mr. Cristobal to stand up because Barba was doing an “informal count.” When Mr. Cristobal questioned the existence of an “informal count,” Barba refused to answer saying, “my lieutenant says I’m right.” Mr. Cristobal later spoke with Lt. Thomas about the incident, who confirmed that Mr. Cristobal had not delayed or disturbed anything by sitting down. On June 10, 2021, Mr. Cristobal was speaking to his attorney by phone as lunch was being served. GEO staff refused to serve him a sack lunch or take him to the cafeteria after his legal call concluded. Mr. Cristobal was not permitted to eat a meal until dinner that evening. On July 15, 2021, GEO officer Tamayo gave Mr. Cristobal a “write up” after he attempted to stop her from yelling at another detained individual. GEO eventually dropped the charges of rule violations when Mr. Cristobal sought video of the incident and made clear that he would pursue a hearing to contest the charges.

GEO staff have also retaliated by refusing to make regular rounds in Mr. Cristobal’s dorm. The failure to enter the dorm regularly deprives Mr. Cristobal and the other residents of the dorm of the ability to report urgent medical needs or developments, including COVID-19 symptoms, or ask questions about COVID-19 vaccines and protocols. Lieutenants enter Mr. Cristobal’s dorm when he and fellow residents are in the dining hall or at outdoor recreation. When Mr. Cristobal spoke with Medical ADA Director Hincks on May 7, 2021 why other dorms were receiving medical rounds but not the dorm he was in (at the time A-4), Hincks responded, “Other people don’t cry.” Mr. Cristobal engaged Hincks further, noting that he had filed a grievance about negligent medical care and asking for a town hall where individuals could ask questions about medical concerns. Hincks stated, “We have a problem with your dorm. You people cry too much. You guys in here are always harassing my staff. Other dorms don’t cry.” Mr. Cristobal told Hincks that this attitude was retaliatory and discriminated against certain individuals for requesting assistance and filing grievances. On April 30, 2021, the consequences of GEO’s deliberate withholding of medical attention was made clear: another resident of dorm A-4—who was experiencing mental health distress and symptoms—broke a tablet on a table; Mr. Cristobal had attempted to bring this situation to the attention of GEO staff, who had refused to intervene and have medical staff speak with the individual.

C. Edgar Sanchez Has Also Faced Retaliation for Speaking Out Against Conditions Violations at GSA.

Edgar Sanchez has been subjected to retaliation from GEO staff members since shortly after his arrival at GSA on April 1, 2021.

Mr. Sanchez entered ICE custody after being granted parole by the California Board of Parole Hearings. Mr. Sanchez received his grant of parole by accumulating over fifteen years of rehabilitation programming while incarcerated; earning his high school diploma and a college degree; and gaining employable skills through vocational training in welding and auto mechanics. While in custody, Mr. Sanchez successfully completed numerous and long-term programs, including those emphasizing anger management, communication, gang prevention, and parenting. Mr. Sanchez obtained tools and strategies to solve problems, mediate, and communicate with others. He also facilitated a gang-prevention training and mentored youth. Upon his release, Mr. Sanchez's detailed parole plan included residence in a transitional housing unit in Los Angeles; connecting with his son, parents, and many supportive relatives in the area; enrolling in a program for his bachelor's degree; pursuing employment opportunities with friends and relatives; using his former membership in a gang to assist his former brother-in-law, a UCLA professor, in conducting research while also mentoring others in gang-prevention efforts. Despite the parole board's finding that Mr. Sanchez was not a threat to public safety, ICE took him into custody upon his release from prison.

Within days of arriving at GSA, Mr. Sanchez observed serious deficiencies in sanitation, food hygiene, and privacy barriers. The shower area in the Bravo side dorms of GSA did not have privacy curtains. The toilets would spit out water when flushed, raising hygiene concerns in a small living area where COVID-19 is always a possibility. GEO officers did not wear face masks appropriately, including drawing them down onto their chin. The dining hall was extremely dirty: the floor was not swept or mopped; tables were stained with food; flies landed on food; and cockroaches and flies were crawling on the floor and table. At first, Mr. Sanchez tried to draw the GEO officers' attention to these substandard conditions. The officers minimized the hazards and took no corrective action.

In April and May 2021, Mr. Sanchez filed grievances over his observations of cockroaches in the food, the poor quality of meals, and the lack of shower curtains in the Bravo side dorms that were needed for individual privacy. He also filed a grievance over a GEO staff member berating a person in his detention unit for sitting down for a moment during count. A little over a week later, Mr. Sanchez filed another grievance when GEO staff refused to provide medical attention to a Spanish-speaking individual, accusing him of "making it a habit" to request medical attention, and threatening to write up the individual if he continued seeking medical care. In July 2021, Mr. Sanchez filed a grievance regarding the lack of privacy barriers for the bathroom in the outdoor recreation yard.

GEO staff have explicitly commented upon Mr. Sanchez's grievances, revealing GEO's intent to dissuade and pressure Mr. Sanchez from exercising his rights. The GEO grievance coordinator refused to acknowledge the substance of Mr. Sanchez's concerns, instead accusing Mr. Sanchez of being "problematic," and asking, "Are you going to make it hard for me?" On

June 16, 2021, Assistant Warden Andrews asked Mr. Sanchez directly, “Why are you grievancing? What’s the motivation behind this? Why are you helping other people submit grievances?” When Mr. Sanchez drafts his grievances, GEO staff accost him and ask him what he is doing and why he is writing “so much.” GEO staff make remarks to each other such as, “Watch out for that guy, he’ll submit a grievance.” On occasion, Mr. Sanchez’s access to the electronic grievance appeal procedures on the GEO-provided tablet have been blocked for several days, leaving him with little time to file a timely appeal of GEO’s denials of his grievances.

Mr. Sanchez’s exercise of his First Amendment rights to assert grievances and seek redress of the substandard conditions have resulted in GEO staff members retaliating against Mr. Sanchez and others in his dorm. GEO staff turned off the air conditioning in Mr. Sanchez’s dorm for two days in a row, although the temperature was hot enough to require it. The air conditioning was kept off during the day time, and turned on only at night. When Mr. Sanchez asked why the air conditioning could not be turned on during the day, the GEO staff members claimed that there was nothing they could do about it. Next, GEO staff began searching Mr. Sanchez’s dorm daily. Though GEO staff were required by policy to conduct regular searches, they did not do so until after Mr. Sanchez began filing grievances. During these searches, GEO searched the property and lockers of the residents in Mr. Sanchez’s dorm, but *did not search* Mr. Sanchez’s property. When Mr. Sanchez questioned why he was being excluded, GEO staff told him, “We’re not searching yours, we’re searching everyone else’s property.” The clear intention of GEO staff was to single Mr. Sanchez out so that the fellow residents in his dorm could express their displeasure towards him for submitting grievances.

The GEO officers in Mr. Sanchez’s dorm yell frequently at the individuals confined there. They state that they dislike Mr. Sanchez’s dorm because the residents are rude and disrespectful. As they move through the dorm, officers state, “That’s why we don’t like this damn dorm, you don’t listen.” During count time, an officer McCabe yelled at an individual who sat down briefly during count, saying “What are you doing? Get the fuck up. Do you know who I am? I’ve been working here for 15 years. What are you looking at?” Most recently, on June 9, 2021, officer McCabe yelled at a member of Mr. Sanchez’s dorm for bringing a water bottle to the dining hall, claiming it violated the facility’s rules. When that individual poured the water in his bottle on the floor in frustration, officer McCabe falsely claimed that the individual had thrown the water at her boot; as a result of that false accusation, he was placed in solitary confinement in the administrative segregation area and accused of assault. He was eventually moved to the medical area after banging his head in the administrative segregation area. Mr. Sanchez and the members of his dorm filed a grievance over the retaliatory, punitive, and inappropriate conduct of the GEO staff member.

Mr. Sanchez’s ability to make phone calls to his family members on the telephone in his dorms also appears to have been restricted. On June 10 and June 11, 2021, Mr. Sanchez dialed his Talton PIN number into the phone in order to begin a call. The dial tone stopped. He tried his PIN number on a different phone, but the dial tone stopped again. Meanwhile, other residents were using the phones without incident.

VI. ICE AND ITS CONTRACTORS' CONDUCT CONSTITUTES RETALIATION FOR ACTIVITY PROTECTED BY THE FIRST AMENDMENT

The disturbing actions of ICE and its detention contractors described above constitute clear retaliation against the Complainants and fellow individuals in the detention facilities, in violation of the First Amendment.

The Complainants, together with other detained people, engaged in a variety of activity: from filing grievances to seek internal redress of their concerns; to engaging in hunger and labor strikes to more urgently press for critical changes to ICE and its contractors' actions; to speaking with the press to raise public awareness of the life-threatening conditions; to speaking with attorneys and advocates to provide testimony and evidence; and to organizing among themselves to enhance their ability to obtain change.

The First Amendment unambiguously protects the expressive activity and speech described in this complaint. Courts have widely considered hunger strikes to be “protected by the First Amendment if they were intended to convey a particularized message.”⁵³ Individuals in carceral settings also have the right to petition the government for redress of grievances (which includes the right to file civil actions in court, a “reasonable” right of access to the courts, and the right to petition a federal agency for immigration benefits).⁵⁴ A facility is “forbid[den]...from erect[ing] barriers that impede this right of access of incarcerated persons.”⁵⁵ People in carceral settings also possess the right to hire and consult with counsel, to receive sealed legal mail without government interference or inordinate delay,⁵⁶ and to communicate with the outside world (which includes the right to make telephone calls, exchange correspondence, and receive in-person visitors).⁵⁷ Courts have also recognized protest in the form of refusing orders to return to cells as protected activity.⁵⁸ First Amendment protections extend to noncitizens, including those in detention.⁵⁹

It is axiomatic that officials may not retaliate against people in prison or detention for exercising their right to free speech. “Official reprisal for protected speech offends the Constitution [because] it threatens to inhibit exercise of the protected right, and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an

⁵³ *Stefanoff v. Hays Cnty.*, 154 F.3d 523, 527 (5th Cir. 1998) (per curiam); *Dumbrique v. Brunner*, No. 14-cv-02598-HSG, 2016 WL 3269975, at *7 (N.D. Cal., June 15, 2016) (citing cases).

⁵⁴ See, e.g., *Cruz v. Beto*, 405 U.S. 319, 321 (1972) (“persons in prison, like other individuals, have the right to petition the Government for redress of grievances”).

⁵⁵ *Silva v. Di Vittorio*, 658 F.3d 1090, 1101–02 (9th Cir. 2011), *overruled on other grounds by Richey v. Dahne*, 807 F.3d 1202, 1209 n.6 (9th Cir. 2015).

⁵⁶ See *Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995); *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017); *Eng v. Cooley*, 552 F.3d 1062, 1069 (9th Cir. 2009) (courts have “long-recognized [the] First Amendment right to hire and consult an attorney”).

⁵⁷ See, e.g., *Valdez v. Rosenbaum*, 302 F.3d 1039, 1048 (9th Cir. 2002) (“We sensibly and expansively define the First Amendment right at issue in this case as the right to communicate with persons outside prison walls”); *Strandberg v. City of Helena*, 791 F.2d 744, 747 (9th Cir. 1986) (“Courts have recognized detainees’ and prisoners’ first amendment right to telephone access.”).

⁵⁸ See *Rivera Martinez*, No. ED CV 18-1125-SP, 2020 WL 2496063, at *26 (C.D. Cal. Jan. 7, 2020).

⁵⁹ See *Bello-Reyes v. Gaynor*, 985 F.3d 696, 699 (9th Cir. 2021); *Bridges v. Wixon*, 326 U.S. 135, 148 (1945).

individual to retaliatory actions . . . for speaking out.”⁶⁰ Actions detailed above—assault by officers, threats, placement in segregation/solitary confinement, false disciplinary charges, denial or interference with medical or mental health care, and transfer to other facilities—all constitute unlawful retaliation when taken to punish or deter protected speech.⁶¹

It is evident that ICE and its contractors engaged in this behavior *because of* the protected First Amendment activity of complainants. The timing of their actions, their explicit statements conditioning access to commissary and other demands on ceasing their protest, and their expressions of intimidation, threats, and displeasure over the filing of grievances, hunger strikes, and speaking to external advocates and press, makes clear that ICE and its contractors acted expressly to dissuade and punish people for engaging in protected activity. In addition, ICE and its contractors’ actions responding to protected activity, including placing individuals in solitary confinement in segregation areas, transferring perceived leaders to new facilities, and attacking individuals with pepper spray or other excessive force, plainly do not advance any legitimate governmental objective.

Any claim that the actions taken were justified by the PBNDS and facility policies and procedures is without merit because the government may not take an adverse action in response to constitutionally protected speech, even if it otherwise could legally take such action.⁶² In the present context, ICE and their contractors’ actions, including placing people in solitary confinement, initiating transfers to different facilities, obstructing access to legal visits and phone calls, refusing to clean facility restrooms,⁶³ using excessive force in response to protected forms of protest, all offend the First Amendment right to be free of government retaliation.

To the extent ICE may seek to justify taking away or threatening to take away access to commissary food based on the PBNDS (2011) standard for hunger strikes, that justification is an unacceptable pretext for several reasons.⁶⁴ First, even if ICE were to determine that an individual

⁶⁰ *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (quoting *Crawford-El v. Britton*, 523 U.S. 574, 588 n.10 (1998)).

⁶¹ See, e.g., *Burgess v. Moore*, 39 F.3d 216, 218 (8th Cir. 1994) (threats); *Cruz v. Beto*, 603 F.2d 1178, 1185-86 (5th Cir. 1979) (solitary confinement); *Austin v. Terhune*, 367 F.3d 1167, 1170-71 (9th Cir. 2004) (false disciplinary charges); *Davis v. Goord*, 320 F.3d 346, 353 (2d Cir. 2003) (denial of medical care); *Morris v. Powell*, 449 F.3d 682, 687 (5th Cir. 2006) (transfer).

⁶² See, e.g., *Mt. Healthy City Sch. Dist. Bd. Of Educ. v. Doyle*, 429 U.S. 274, 283–84 (1977) (holding teacher who lacked tenure and “could have been discharged for no reason whatever” could still bring retaliation action when discharge was retaliatory); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (holding professor’s lack of tenure and lack of contractual right to employment did not foreclose his First Amendment retaliation claim).

⁶³ *Arredondo v. Drager*, No. 14-cv-04687-HSG, 2016 WL 3755958, at *12 (N.D. Cal. July 14, 2016) (denying summary judgment and holding that there is a genuine dispute as to whether transferring plaintiff to Unit C12 was motivated by hunger strike or done to provide medical care) (citing *Mt. Healthy*, 429 U.S. at 283–84 (retaliation by a state actor for the exercise of a constitutional right is actionable, even if the act, when taken for different reasons, would have been proper)).

⁶⁴ Any purported health rationale proffered by ICE is undermined by the fact that the objectives of the protests themselves, which have been directly related to health concerns, have gone ignored. Furthermore, reports that facility staff removed prescription medications from detained noncitizen’s cells in retaliation for their protesting the unsanitary conditions indicates that the health and safety of the individuals is not ICE or its contractors’ primary focus. See also *supra* Part II.B (Warden Nathan Allen informed an individual participating in a hunger strike that they were taking away commissary purchases “to make sure you’re doing hunger strike properly”).

was on a hunger strike, the PBNDS calls for individualized medical evaluation and care, not a blanket policy of withholding commissary. And second, removing a person's access to food is dangerous and should only be done at the direction of medical staff for a specific medical reason; even then, as with other medical interventions, ICE and its contractors must respect a person's right to refuse the intervention. At bottom, absent a specific medical reason and the individual's consent, withholding commissary food only serves as a cudgel to force a person to abandon their symbolic protest.

The ICE PBNDS 2011 standard that expressly calls for ICE contractors to penalize "engaging in or inciting a group demonstration," also violates the First Amendment.⁶⁵ It is a presumptively invalid prior restraint on speech and association. It discriminates based on viewpoint, content, and speaker. It is overbroad in that it sweeps in wide swaths of protected speech for punishment. It is not adequately tailored to any legitimate government objective and is unnecessary given other rules that adequately protect any such legitimate government objective. And it is void for vagueness. ICE should eliminate this policy.

VII. ICE'S PATTERN AND PRACTICE OF RETALIATION NATIONWIDE

Complainants urge CRCL to view their complaint against a backdrop of a documented national pattern of retaliatory actions by ICE employees and contractors against First Amendment-protected activities inside detention centers across the country. This includes, for example, retaliation through the use of: pepper spray at the Stewart Detention Center in Georgia,⁶⁶ solitary confinement at the Etowah County Detention Center in Alabama,⁶⁷ transfers of protesters to other facilities from the Laredo Detention Center in Texas,⁶⁸ and the elimination of phone, tablet, and television access at the South Louisiana ICE Processing Center.⁶⁹ Adding to the record, a recent report by the ACLU and Physicians for Human Rights shows that for years ICE and its contractors have routinely coordinated abusive responses to people engaged in hunger strikes.⁷⁰

⁶⁵ See 2011 Operations Manual, ICE Performance-Based National Detention Standards, Section 3.1 & Appendix 3.1.A, Sec. II(A)(213), <https://www.ice.gov/doclib/detention-standards/2011/3-1.pdf>.

⁶⁶ See José Olivares, *ICE'S Immigration Detainees Protested Lack of Coronavirus Precautions —And Swat-Like Private-Prison Guards Pepper-Sprayed Them*, THE INTERCEPT (May 5, 2020), <https://theintercept.com/2020/05/05/ice-stewart-immigration-detention-coronavirus-protest-pepper-spray>.

⁶⁷ See Clarissa Donnelly-DeRoven, *Immigrants Detained by ICE Say They Were Punished for Requesting COVID-19 Tests*, THE INTERCEPT (Dec. 3, 2020), <https://theintercept.com/2020/12/03/etowah-ice-detention-covid-outbreak>.

⁶⁸ See Claire Osborn, *Official: ICE transfers 47 immigrants after protest at Taylor detention center*, AUSTIN AMERICAN-STATESMAN (Feb. 28, 2020), <https://www.statesman.com/news/20200228/official-ice-transfers-47-immigrants-after-protest-at-taylor-detention-center>.

⁶⁹ See Felipe De La Hoz, *ICE Locks Down Facility As Women Protest Handling of Possible Tuberculosis Case*, THE INTERCEPT (June 12, 2021), <https://theintercept.com/2021/06/12/ice-louisiana-tuberculosis>.

⁷⁰ See ACLU & Physicians for Human Rights, "Behind Closed Doors: Abuse and Retaliation Against Hunger Strikers in U.S. Immigration Detention" (June 2021), <https://www.aclu.org/report/report-behind-closed-doors-abuse-retaliation-against-hunger-strikers-us-immigration-detention>. This abuse took various forms, including the threatened and actual use of involuntary medical procedures like force-feeding and forced urinary catheterization, solitary confinement, retaliatory transfer, and excessive force. *Id.*

The pattern of retaliation at the hands of immigration authorities extends beyond the detention context. ICE has abruptly struck back against immigrant leaders for criticizing DHS policies and practices, including by detaining Ravi Ragbir and Jean Montrevil in New York⁷¹ and Jose Bello in Bakersfield,⁷² and targeting Maru Mora-Villalpando in Seattle for deportation.⁷³ DHS has surveilled and revoked privileges from attorneys, journalists, activists, and clergy who support immigrant-rights advocacy.⁷⁴ And CBP and DOJ have sought to jail humanitarian aid workers who exposed Border Patrol agents pouring out water jugs in the desert.⁷⁵

Together these examples evince a DHS culture of abusing their power to stifle dissent. This culture is anathema to sacrosanct First Amendment rights to freedom of speech, peaceable assembly, and petition for redress of grievances. It must be eliminated, root and branch.

VIII. REQUEST FOR CRCL INVESTIGATION AND RECOMMENDATIONS TO ICE

A. Conduct a Thorough Investigation of Complainants' Experiences of Retaliation and Recommend That ICE Affirmatively Protect Complainants and Similarly Situated Individuals from Further Retaliation

Complainants request that CRCL investigate their experiences of retaliation—as detailed in this complaint—and that CRCL issue recommendations to ICE for the agency to undertake remedial measures, including the following:

1. Conduct personnel and contract reviews with the aim of identifying the specific officers and agents within ICE and its contractors that undertook, supervised, or approved of the retaliatory measures (as well as those that subsequently learned of the unlawful conduct but failed to take action to redress it);

⁷¹ See Nick Pinto, *No Sanctuary*, THE INTERCEPT (Jan. 19, 2018), <https://theintercept.com/2018/01/19/ice-new-sanctuary-movement-ravi-ragbir-deportation>.

⁷² See *Bello-Reyes*, 985 F.3d at 702 (“[T]he timing of ICE’s decision to re-arrest Bello is highly suggestive of retaliatory intent.”).

⁷³ See Nina Shapiro, *Activist Maru Mora-Villalpando says ICE using deportation threat as ‘intimidation tactic,’* THE SEATTLE TIMES (Jan. 16, 2018), <https://www.seattletimes.com/seattle-news/activist-maru-mora-villalpando-says-ice-using-her-deportation-as-intimidation-tactic>.

⁷⁴ See Ryan Devereaux, *Journalists, Lawyers, And Activists Working on the Border Face Coordinated Harassment From U.S. And Mexican Authorities*, THE INTERCEPT (Feb. 8, 2019), <https://theintercept.com/2019/02/08/us-mexico-border-journalists-harassment>; Adolfo Flores, *A Pastor Who Was Put on a Watch List After Working With Immigrants Is Suing the US*, BUZZFEED NEWS (July, 8, 2019), <https://www.buzzfeednews.com/article/adolfoflores/pastor-watchlist-immigrants-lawsuit>; José Olivares & John Washington, *ICE Discussed Punishing Immigrant Advocates for Peaceful Protests*, THE INTERCEPT (June 17, 2021), <https://theintercept.com/2021/06/17/ice-retaliate-immigrant-advocates-surveillance>.

⁷⁵ See Amy B. Wang, *Border Patrol agents were filmed dumping water left for migrants. Then came a ‘suspicious’ arrest*, THE WASHINGTON POST (Jan. 24, 2018), <https://www.washingtonpost.com/news/post-nation/wp/2018/01/23/border-patrol-accused-of-targeting-aid-group-that-filmed-agents-dumping-water-left-for-migrants>.

2. Remove those officers and agents from all detention and enforcement activities pending investigation;
3. Take disciplinary measures against those officers and agents, including shifting them out of operational roles;
4. Identify and correct failures in the grievance process;
5. Implement training and other policy changes to ensure that ICE and its contractors' staff refrain from retaliation in the future; and
6. Address the underlying conditions of confinement that led to Complainants' exercise of their First Amendment rights.

Further, CRCL should recommend that ICE grant the Complainants—as well as any other individuals who suffered retaliation related to the events mentioned in this Complaint—prosecutorial discretion, including the following:

7. Release any who remain in detention;
8. Abstain from re-detaining any who previously have been released; and
9. Issue deferred action to protect them from removal while the investigatory process unfolds and/or move to dismiss, or stipulate to relief in, their removal proceedings.

B. Recommend that ICE Terminate Contracts with Immigration Detention Facilities

The experiences of Complainants detailed in this complaint demonstrates the inhumane conditions of confinement and serious violations of civil rights and civil liberties that individuals are forced to endure while in detention. Despite years of oversight, inspections, and litigation, ICE and its contractors have failed to remedy unlawful conditions or to refrain from retaliating against those who speak up. Ending the detention contracts will solve these problems. CRCL should recommend that ICE take the following steps:

1. Immediately **end ICE's contract with the Yuba County Sheriff.**
2. Immediately **end ICE's contracts with GEO and CoreCivic** to operate the facilities described in this complaint.

C. Recommend that ICE Adopt Policies, Guidance, and Mandatory Training That Enforce Individuals' First Amendment Rights in Detention Facilities

The retaliation by ICE and its contracts against individuals exercising their First Amendment rights in detention facilities illustrates the clear need for policies, guidance, and mandatory trainings articulating the protections afforded by the First Amendment. To the extent any facilities used for ICE detention remain operational, CRCL should recommend that ICE take the following measures:

1. Prohibit First Amendment retaliation by ICE and its contactors by revising the "First Amendment Protected Activities" memo (and any subsequent guidance) to: explicitly prohibit agency personnel from profiling, surveilling, monitoring,

targeting, harassing, revoking or rejecting applications from, fining, arresting, detaining, deporting, or otherwise discriminating against any individual, group, or organization based on their First Amendment activities, and close loopholes permitting the collection and documentation of First Amendment protected activity without express and affirmative consent.⁷⁶

2. Expand and reissue the 2011 “Victims, Witnesses, and Plaintiffs” prosecutorial discretion memo to explicitly cover immigrants in ICE custody who report labor violations, civil rights violations, and other significant abuses—including retaliation for First Amendment-protected speech and activity.⁷⁷
3. Treat engagement in First Amendment-protected speech and activity as an organizer or activist as a strong positive equity warranting a presumption of a favorable exercise of prosecutorial discretion.
4. Adopt a PBNDS standard making clear that individuals have a right to seek internal and external redress of their concerns—including the filing of internal and external grievances, communication with attorneys and advocates, speaking with representatives of the media—and cannot be retaliated against for exercising those rights.

D. Recommend That ICE Eliminate Policies That Punish Individuals Engaged in Protected Activity

CRCL should recommend that ICE amend the PBNDS and ICE Health Service Corps⁷⁸ guidance to make clear the following:

1. Eliminate the standard that expressly calls for ICE contractors to penalize “engaging in or inciting a group demonstration.”⁷⁹
2. Prohibit the removal of access to non-food commissary items, including hygiene products, in response to individuals engaging in hunger strikes.
3. Prohibit ICE and its contractors from withholding commissary-purchased food from individuals on hunger strikes (including those who fast as well as those that boycott facility-provided meals while still eating commissary food).

⁷⁶ Stipulation for Compromise Settlement and Release and Dismissal, *Migrant Justice v. Wolf*, No. 5:18-cv-192 (GWC) (D. Vt. Oct. 28, 2020), available at <https://migrantjustice.net/sites/default/files/MJ-ICE-Settlement.pdf>. This proposed recommendation was put forth and discussed at length in a recently filed CRCL complaint. See Complaint of NYU Immigrant Rights Clinic and Cornell First Amendment Clinic (July 19, 2021), available at https://www.law.nyu.edu/sites/default/files/NYU%20Cornell%20DHS%20CRCL%20Complaint_First%20Amendment%20Retaliation_Final%20Letter%20and%20Index%207%2019%202021%20web%20version.pdf.

Complainants here also support that complaint’s proposed recommendation that ICE adopt regulations strengthening the authority of the Office of CRCL, as well as the Office of the Inspector General, to furnish them authority to order release and prevent deportation of complainants and witnesses in their investigations, and the power to order—not just recommend—corrective agency actions.

⁷⁷ Memorandum from former ICE Director John Morton (Jun. 17, 2011),

<https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>.

⁷⁸ Although IHSC does not run the health care in the facilities at issue in this complaint, ICE should apply uniform, nationwide standards in response to hunger strikes.

⁷⁹ See 2011 Operations Manual, ICE Performance-Based National Detention Standards, Section 3.1 & Appendix 3.1.A, Sec. II(A)(213), <https://www.ice.gov/doclib/detention-standards/2011/3-1.pdf>.

E. Recommend that ICE Hold Regular Meetings Between Facility Management and Dorm/Pod Representatives

CRCL should recommend that ICE to allow detained individuals to collectively share their grievances with ICE and its contractors by taking the following measures:

1. Hold regular meetings between facility management and ICE ERO officials and representatives chosen by each dorm/pod, at which representatives can share collective grievances of their respective dorm/pod.
2. Allow an outside advocate chosen by the representatives to attend these meetings;
3. Require that ICE ERO officials and facility management provide a timely written response to all collective grievances raised at these meetings.

Thank you for your attention to this complaint.

Sincerely,

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California Collaborative for Immigrant Justice

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