

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

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

12 Petitioners-Plaintiffs,

13 v.

14 DAVID JENNINGS, Acting Director of the San
15 Francisco Field Office of U.S. Immigration and
16 Customs Enforcement; TAE JOHNSON, Acting
17 Director of U.S. Immigration and Customs
18 Enforcement; U.S. IMMIGRATION AND
19 CUSTOMS ENFORCEMENT; GEO GROUP,
20 INC.; MICHAEL KNIGHT, Acting Warden of
21 Mesa Verde Detention Facility,

22 Respondents-Defendants.
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CASE NO. 3:20-CV-02731

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
PROPOSED CLASS SETTLEMENT**

JUDGE VINCE CHHABRIA

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15 *Attorneys for Petitioners-Plaintiffs*
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1 Plaintiffs Angel De Jesus Zepeda Rivas, Brenda Rubi Ruiz Tovar, Lawrence Kuria Mwaura,
2 Luciano Gonzalo Mendoza Jeronimo, Coraima Yaritza Sanchez Nuñez, Javier Alfaro, Juan Jose
3 Erazo Herrera, Rajnish Rajnish, and Willian Matias Rauda have filed a Motion for Preliminary
4 Approval of the class action settlement reached with Defendants. The Court has carefully
5 considered the Class Settlement Agreement last executed on December 17, 2021 (the “Agreement”)
6 together with all exhibits thereto, all the filings related to the settlement, the arguments of counsel,
7 and the record in this case. The Court hereby gives its preliminary approval of the settlement; finds
8 that the settlement and Agreement are sufficiently fair, reasonable, and adequate to allow
9 dissemination of notice of the settlement to the Settlement Class and to hold a Fairness Hearing;
10 orders the Class Notice to be sent to the Settlement Class in accordance with the Agreement and
11 this Order; and schedules a Fairness Hearing to determine whether the proposed settlement is fair,
12 adequate, and reasonable.

13 **IT IS HEREBY ORDERED THAT:**

14 1. The Agreement is hereby incorporated by reference in this Order, and all terms or
15 phrases used in this Order shall have the same meaning as in the Agreement.

16 2. The Court’s scrutiny for the proposed settlement has been as rigorous at this
17 preliminary approval stage as at the final approval stage. The Court preliminarily approves the
18 settlement and Agreement, finding, on this record, that the terms of the Agreement are fair,
19 reasonable, and adequate, and within the range of possible approval and sufficient to warrant
20 providing notice to the Settlement Class.

21 3. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), and (e), the Court certifies, for
22 settlement purposes only, the following class comprised of all people who are or have been in ICE
23 custody at the Facilities on or after April 20, 2020 (the “Settlement Class”).

24 4. The Court finds, for settlement purposes only, that the Action may be maintained
25 as a class action on behalf of the Settlement Class because:

- 26 a. Numerosity: Class Counsel estimates that over 400 people qualify as
27 members of the Settlement Class. Rule 23(a)(1) is satisfied.
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1 b. Commonality: The alleged constitutional violations expose all Class
2 Members to an unnecessary risk of harm. These issues are common to the
3 Settlement Class. The fact that some Class Members may contract a more
4 severe case of COVID-19 does not defeat the commonality of Plaintiffs'
5 claim. Rule 23(a)(2) is satisfied.

6 c. Typicality: Plaintiffs' claim is typical of all Class Members' claims
7 because it is borne out of the conditions at the Facilities. Each Class
8 Member has suffered the same constitutional injury resulting from the
9 lack of social distancing and COVID-19 mitigation. This claim is typical
10 of the entire Settlement Class. Rule 23(a)(3) is satisfied.

11 d. Adequacy: There are no conflicts of interest between Plaintiffs and Class
12 Members, and Plaintiffs have retained competent counsel to represent the
13 Settlement Class. Class Counsel regularly engage in class action litigation
14 similar to the present case and have dedicated substantial resources to the
15 prosecution of this matter. Rule 23(a)(4) is satisfied.

16 e. Class-wide Remedy: Defendants acted and refused to act on grounds that
17 apply generally to the Settlement Class, such that final injunctive relief or
18 corresponding declaratory relief would respect the Settlement Class as a
19 whole. Rule 23(b)(2) is satisfied.

20 5. The Court appoints as class representatives, for settlement purposes only, Plaintiffs
21 Angel De Jesus Zepeda Rivas, Brenda Rubi Ruiz Tovar, Lawrence Kuria Mwaura, Luciano Gonzalo
22 Mendoza Jeronimo, Coraima Yaritza Sanchez Nuñez, Javier Alfaro, Juan Jose Erazo Herrera,
23 Rajnish Rajnish, and Willian Matias Rauda. This Court finds, for settlement purposes only, that
24 Plaintiffs will adequately represent the Settlement Class.

25 6. Pursuant to Federal Rule of Civil Procedure 23(g), and for settlement purposes only,
26 the Court designates as Class Counsel William Freeman, Sean Riordan, and Emilou MacLean
27 (ACLU Foundation of Northern California); Stephanie Padilla (ACLU Foundation of Southern
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1 California); Bree Bernwanger (Lawyers' Committee for Civil Rights of the San Francisco Bay
2 Area); Francisco Ugarte, Jennifer Friedman, Kelly Engel Wells, and Genna Beier (Office of the
3 Public Defender of San Francisco); Martin S. Schenker, Timothy W. Cook, and Julie M. Veroff
4 (Cooley LLP); and Judah Lakin and Amalia Wille (Lakin & Wille LLP) as Class Counsel. The
5 Court preliminarily finds that, based on the work Class Counsel have done identifying,
6 investigating, and prosecuting the claims in this action; Class Counsel's experience in handling
7 class actions and claims of this type asserted in this Action; Class Counsel's knowledge of the
8 applicable law; and the resources Class Counsel have and will commit to representing Settlement
9 Class, that Class Counsel have represented and will represent the interests of the Settlement Class
10 fairly and adequately.

11 7. The Court finds that the proposed Class Notice and the proposed plan of
12 distribution of the Class Notice meet the requirements of Federal Rules of Civil Procedure
13 23(c)(2) and 23(e)(1) and hereby directs Class Counsel to proceed with the notice distribution in
14 accordance with the terms of the Agreement.

15 8. The Court approves the procedures set forth in the Agreement and the Notice of
16 Settlement of Class Action for objections to the settlement.

17 9. Any Class Member who wishes to object to the Agreement must do so within 60
18 days of this Order. Any Class Member who objects may appear in court. The requirement that a
19 Class Member must first submit a written objection as a prerequisite to appearing in court will be
20 excused upon a showing of good cause. As set forth in the Class Notice, the Court will require
21 only substantial compliance with the requirements for submitting an objection.

22 10. The Court directs that a hearing be scheduled on June 9, 2022 at
23 10:00 a.m./p.m. (the "Fairness Hearing") to assist the Court in determining whether the
24 settlement is fair, reasonable and adequate; and whether Final Judgment should be entered
25 dismissing with prejudice Defendants in the above-captioned action. Plaintiffs shall file a motion
26 for final approval of the settlement no later than 14 days before the Fairness Hearing.

27 11. Neither the settlement, nor any exhibit, document, or instrument delivered
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1 thereunder shall be construed as or deemed to be evidence of an admission or concession by
2 Defendants of an interpretation of, any liability or wrongdoing by Defendants, or of the truth of
3 any allegations asserted by Plaintiffs, Class Members, or any other person.

4 12. If the settlement is not finally approved, or the Effective Date does not occur, or the
5 settlement is terminated under its terms, then (a) all parties will proceed as if the settlement (except
6 those provisions that, by their terms, expressly survive disapproval or termination of the settlement)
7 had not been executed and the related orders and judgment had not been entered, preserving in that
8 event all of their respective claims and defenses in the action; and (b) all releases given will be null
9 and void. In such an event, this Court's orders regarding the settlement, including this Preliminary
10 Approval Order, shall not be used or referred to in litigation for any purpose. Nothing in the
11 foregoing paragraph is intended to alter the terms of the Agreement with respect to the effect of the
12 Agreement if it is not approved.

13 13. Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Class
14 Settlement ("Motion") is hereby GRANTED. The Court hereby preliminarily approves the
15 proposed class-wide relief set forth in the Agreement (attached to Plaintiffs' Motion), hereby
16 certifies the Settlement Class as described in the Agreement for settlement purposes, hereby
17 approves the proposed form and plan of notice (attached to Plaintiffs' Motion), and hereby
18 schedules the Fairness Hearing.

19 **IT IS SO ORDERED.**

20 Date: March 4, 2022



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22 HON. VINCE CHHABRIA

23 United States District Judge
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