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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

12 STEPHENSON AWAH TENENG,  
13 MARCEL NGWA, ANKUSH  
14 KUMAR, GURJINDER SINGH,  
ATINDER PAUL SINGH, NOE  
MAURICIO GRANADOS AQUINO,  
and all others similarly situated,

15 Plaintiffs,

16 v.

17 DONALD J. TRUMP, President of the  
United States,  
18 KIRSTJEN NIELSEN, Secretary  
Department of Homeland Security;  
19 RONALD D. VITIELLO, Acting  
Director, Immigration and Customs  
Enforcement;  
20 DAVID MARIN, Field Office Director,  
Los Angeles Field Office of  
21 Immigration and Customs Enforcement;  
JEFFERSON BEAUREGARD  
22 SESSIONS, III, U.S. Attorney General;  
23 HUGH J. HURWITZ, Acting Director,  
Federal Bureau of Prisons,  
24 DAVID SHINN, Warden, FCI  
Victorville Medium Security Prison I/II,  
in their official capacities only,

25 Defendants  
26  
27  
28

Case No. 5:18-CV-01609

**PLAINTIFFS' NOTICE OF  
MOTION AND MOTION FOR  
PRELIMINARY INJUNCTION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

**ORAL ARGUMENT REQUESTED**

DATE: October 15, 2018  
TIME: 9:00 AM  
JUDGE: Hon. Jesus G. Bernal  
CRTRM: 1

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*themselves and others similarly situated*

28

1 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION**

2 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR  
3 ATTORNEYS OF RECORD HEREIN:

4 NOTICE IS HEREBY GIVEN that on October 15, 2018 at 9:00 AM or as  
5 soon thereafter as the matter may be heard by the above Court, located at Riverside,  
6 California, Plaintiffs Stephenson Awah Teneng, Marcel Ngwa, Ankush Kumar,  
7 Gurjinder Singh, Atinder Paul Singh, and Noe Mauricio Granados Aquino, on  
8 behalf of themselves and all others similarly situated, move this Court to grant a  
9 class-wide preliminary injunction<sup>1</sup> enjoining Defendants from:

10 (a) providing constitutionally inadequate health care to ICE detainees at  
11 Victorville;

12 (b) subjecting ICE detainees at Victorville to conditions and practices that  
13 amount to punishment; and

14 (c) transferring any additional ICE detainees to Victorville.

15 On behalf of themselves and all others similarly situated, Plaintiffs Ngwa,  
16 Gujinder Singh, Atinder Paul Singh, and Noe Mauricio Granados Aquino  
17 additionally move this Court to grant a subclass-wide preliminary injunction,  
18 enjoining Defendants from:

19 (a) restricting detainees' religious exercise or failing to accommodate  
20 detainees' religious exercise in a manner that violates or is otherwise  
21 inconsistent with ICE's Detention Standards; and

22 (b) transferring any additional ICE detainees who are religious to Victorville.

23 This Motion is based on this Notice of Motion, the accompanying  
24 Memorandum of Points and Authorities, the supporting declarations, all pleadings

25 \_\_\_\_\_  
26 <sup>1</sup> Pursuant to Local Rule 7-3, Plaintiffs' counsel conferenced with counsel for the  
27 Defendants regarding this motion on September 5, 2018. See Decl. of Donald  
28 Specter filed with Plaintiffs' Motion to Exceed Page Limits, at ¶¶ 2-3.

1 and papers filed in this action, and such additional papers and arguments as may be  
2 presented at or in connection with the hearing.

3 DATED: September 5, 2018                      Respectfully submitted,

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By: /s/ Margot Mendelson

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**TABLE OF AUTHORITIES**

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<i>Am. Trucking Ass’ns, Inc. v. City of L.A.</i> , 559 F.3d 1046 (9th Cir. 2009).....	46
<i>Anderson v. County of Kern</i> , 45 F.3d 1310 (9th Cir.), opinion amended on denial of reh’g, 75 F.3d 448 (9th Cir. 1995) .....	32
<i>Anli v. Stephens</i> , 69 F. Supp. 3d 633, 644 (E.D. Tex. 2014), <i>aff’d</i> , 822 F.3d 776 (5th Cir. 2016) .....	39
<i>Arnett v. Webster</i> , 658 F.3d 742 (7th Cir. 2011).....	33
<i>Balla v. Idaho State Bd. of Corr.</i> , 595 F. Supp. 1558 (D. Idaho 1984).....	33
<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979) .....	22
<i>Brown v. Plata</i> , 563 U.S. 493 (2011) .....	29
<i>Casey v. Lewis</i> , 834 F.Supp. 1477 (D. Ariz. 1993).....	31, 34
<i>Castro v. Cty. of Los Angeles</i> , 833 F.3d 1060 (9th Cir. 2016).....	25
<i>City of Boerne v. Flores</i> , 521 U.S. 507 (1997) .....	38
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1 *Davies v. Los Angeles Cty. Bd. of Supervisors*,  
 2 177 F. Supp. 3d 1194 (C.D. Cal. 2016)..... 47

3 *Davila v. Gladden*,  
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5 *DeHart v. Horn*,  
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7 *Doe v. Kelly*,  
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9 *Doty v. Cty. of Lassen*,  
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10 *Estelle v. Gamble*,  
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12 *Farris v. Seabrook*,  
 13 677 F.3d 858 (9th Cir. 2012)..... 21

14 *Flores v. Sessions*, Case No. 2:85-cv-04544-DMG-AGR,  
 15 (C.D. Cal. Jun. 21, 2018)..... 24

16 *Fowler v. Crawford*,  
 17 534 F.3d 931 (8th Cir. 2008)..... 35

18 *Franco-Gonzalez v. Nielsen*, Case No. 2:10-cv-02211-DMG-DTB,  
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20 *French v. Owens*,  
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21 *Garner v. Kennedy*,  
 22 713 F.3d 237 (5th Cir. 2013)..... 35

23 *Gartrell v. Ashcroft*,  
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25 *Gates v. Cook*,  
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27 *Gibson v. Cty. of Washoe, Nev.*,  
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 28 *Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016)..... 30



1 *Gordon v. Cty. Of Orange,*  
 2 888 F.3d 1118 (9th Cir. 2018)..... 28

3 *Greene v. Solano Cty. Jail,*  
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5 *Harbor Missionary Church Corp. v. City of San Buenaventura,*  
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7 *Harris v. Bd. of Supervisors, L.A. Cnty.,*  
 8 366 F.3d 754 (9th Cir. 2004)..... 47

9 *Harris v. Escamilla, No. 17-15230, 2018 WL 2355123*  
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10 *Helling v. McKinney,*  
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12 *Hernandez v. Cty. of Monterey,*  
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16 *Holt v. Hobbs,*  
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18 *Hoptowit v. Ray,*  
 19 682 F.2d 1237 (9th Cir. 1982), overruled on other grounds by  
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20 *Innovation Law Lab v. Nielsen,*  
 21 310 F. Supp. 3d 1150 (D. Or. 2018)..... 48

22 *Jennings v. Rodriguez,*  
 23 138 S. Ct. 830 (2018)..... 26

24 *Johnson v. Couturier,*  
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26 *Jolly v. Coughlin,*  
 27 76 F.3d 468 (2d Cir. 1996) ..... 46

28 *Jones v. Blanas,*  
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1 *Jones v. Williams*,  
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3 *Kansas v. Crane*,  
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5 *Kansas v. Hendricks*,  
 6 521 U.S. 346 (1997) ..... 24

7 *King v. Cty. of Los Angeles*,  
 8 885 F.3d 548 (9th Cir. 2018)..... 25, 27, 28

9 *Lopez v. Heckler*,  
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10 *Los Angeles Cty., Cal. v. Castro*,  
 11 137 S. Ct. 831 (2017)..... 30

12 *Madrid v. Gomez*,  
 13 889 F. Supp. 1146 (N.D. Cal. 1995)..... 30, 31, 32, 34

14 *Marcotte v. Monroe Corr. Complex*,  
 15 394 F. Supp. 2d 1289 (W.D. Wash. 2005) ..... 34

16 *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*,  
 17 571 F.3d 873 (9th Cir. 2009)..... 22

18 *McAllen Grace Brethren Church v. Salazar*,  
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19 *Melendres v. Arpaio*,  
 20 695 F.3d 990 (9th Cir. 2012) ..... 46, 47

21 *Merrick v. Inmate Legal Servs.*,  
 22 650 F. App'x 333 (9th Cir. 2016)..... 38

23 *Miller v. Carlson*,  
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25 *Nance v. Miser*,  
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27 *Ortiz v. Downey*,  
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1 *Parsons v. Ryan*,  
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3 *Peralta v. Dillard*,  
 4 744 F.3d 1076 (9th Cir. 2014) ..... 27

5 *Pierce v. County of Orange*,  
 6 526 F.3d 1190 (9th Cir. 2008), opinion amended and superseded on  
 6 denial of reh’g, 519 F.3d 985 (9th Cir. 2008) ..... 27, 36, 38, 39

7 *Plata v. Schwarzenegger*,  
 8 Case No. C01-1351-TEH, 2005 WL 2932253 (N.D. Cal. 2005) ..... 30, 31, 34

9 *Estate of Prasad ex rel. Prasad v. County of Sutter*,  
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11 *Procunier v. Martinez*,  
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15 *Sammartano v. First Jud. Dist. Ct.*,  
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17 *Sharp v. Weston*,  
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25 *Steele v. Shah*,  
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27 *Sutton v. Rasheed*,  
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*United States v. Navarro-Vargas*,  
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1 *Unknown Parties v. Johnson*, 2016 WL 8188563 (D. Ariz. Nov. 18,  
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 3 *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017)..... 25, 28  
 4 *Ware v. Louisiana Dep’t of Corr.*,  
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 14 *Youngberg v. Romeo*,  
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 20 42 U.S.C. § 2000bb *et seq.* ..... 2  
 21 42 U.S.C. § 2000cc-5(7) ..... 35  
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2 **Bureau of Prison Program Statements**

3 BOP PS 4700.06 Food Service Manual,

4 (available at [https://www.bop.gov/policy/progstat/4700\\_006.pdf](https://www.bop.gov/policy/progstat/4700_006.pdf)) ..... 5

5 BOP PS 5300.21 Education, Training and Leisure Time Program

6 Standards,

7 (available at [https://www.bop.gov/policy/progstat/5300\\_021.pdf](https://www.bop.gov/policy/progstat/5300_021.pdf)) ..... 6

8 BOP PS 5310.16 Treatment and Care of Inmates with Mental Illness,

9 (available at [https://www.bop.gov/policy/progstat/5310\\_16.pdf](https://www.bop.gov/policy/progstat/5310_16.pdf)) ..... 33

10 BOP PS 5360.09 Religious Beliefs and Practices,

11 (available at [https://www.bop.gov/policy/progstat/5360\\_009.pdf](https://www.bop.gov/policy/progstat/5360_009.pdf)) ..... 7, 41, 41

12 BOP PS 5370.11 Inmate Recreation Program,

13 (available at [https://www.bop.gov/policy/progstat/5370\\_011.pdf](https://www.bop.gov/policy/progstat/5370_011.pdf)) ..... 6

14 BOP PS 6031.04, Patient Care,

15 (available at [https://www.bop.gov/policy/progstat/6031\\_004.pdf](https://www.bop.gov/policy/progstat/6031_004.pdf)) ..... 7

16 BOP PS 6031.04, Patient Care,

17 (available at [https://www.bop.gov/policy/progstat/6031\\_004.pdf](https://www.bop.gov/policy/progstat/6031_004.pdf)) ..... 31

18 BOP PS 6340.04, Psychiatric Services,

19 (available at [https://www.bop.gov/policy/progstat/6340\\_004.pdf](https://www.bop.gov/policy/progstat/6340_004.pdf)) ..... 31

20 BOP PS 7331.04, Pretrial Inmates,

21 (available at [https://www.bop.gov/policy/progstat/7331\\_004.pdf](https://www.bop.gov/policy/progstat/7331_004.pdf)) ..... 4, 40

22 **Other Authorities / News Articles**

23 *About Our Facilities*, Federal Bureau of Prisons, available at

24 [https://www.bop.gov/about/facilities/federal\\_prisons.jsp](https://www.bop.gov/about/facilities/federal_prisons.jsp) ..... 8, 23

25 *Detainees Just Got Sent To A Prison That Staffers Consider Unsafe*,

26 *Huffington Post* (June 23, 2018), available at

27 [https://www.huffingtonpost.com/entry/immigration-detainees-](https://www.huffingtonpost.com/entry/immigration-detainees-victorville-prison_us_5b2d8b44e4b0040e2742f1c9)

28 [victorville-prison\\_us\\_5b2d8b44e4b0040e2742f1c9](https://www.huffingtonpost.com/entry/immigration-detainees-victorville-prison_us_5b2d8b44e4b0040e2742f1c9) ..... 10

1 Dora Schriro, U.S. Department of Homeland Security, *Immigration*  
 2 *Detention Overview and Recommendations* (Oct. 6, 2009), available  
 3 at [https://www.ice.gov/doclib/about/offices/odpp/pdf/icedetention-](https://www.ice.gov/doclib/about/offices/odpp/pdf/icedetention-rpt.pdf)  
 4 [rpt.pdf](https://www.ice.gov/doclib/about/offices/odpp/pdf/icedetention-rpt.pdf)..... 3

5 FCC Victorville Inmate Handbook (2015) ,  
 6 [https://www.bop.gov/locations/institutions/she/SHE\\_fdc\\_aohandboo](https://www.bop.gov/locations/institutions/she/SHE_fdc_aohandbook.pdf)  
 7 [k.pdf](https://www.bop.gov/locations/institutions/she/SHE_fdc_aohandbook.pdf)..... 42

8 FPC Alderson Inmate Handbook,  
 9 Federal Bureau of Prisons, (June 2012),  
 10 [https://www.bop.gov/locations/institutions/ald/ALD\\_aohandbook.p](https://www.bop.gov/locations/institutions/ald/ALD_aohandbook.pdf)  
 11 [df](https://www.bop.gov/locations/institutions/ald/ALD_aohandbook.pdf);..... 8

12 FPC Bryan Inmate Admission and Orientation,  
 13 Federal Bureau of Prisons, (Jan. 22, 2016),  
 14 [https://www.bop.gov/locations/institutions/bry/BRY\\_aohandbook.p](https://www.bop.gov/locations/institutions/bry/BRY_aohandbook.pdf)  
 15 [df](https://www.bop.gov/locations/institutions/bry/BRY_aohandbook.pdf)..... 8

16 FPC Duluth Inmate Admissions and Orientation Handbook,  
 17 Federal Bureau of Prisons (Feb. 2010)  
 18 [https://www.bop.gov/locations/institutions/dth/DTH\\_aohandbook.p](https://www.bop.gov/locations/institutions/dth/DTH_aohandbook.pdf)  
 19 [df](https://www.bop.gov/locations/institutions/dth/DTH_aohandbook.pdf)..... 8

20 Peter C. Baker, *A Janitor Preserves the Seized Belongings of Migrants*,  
 21 *The New Yorker* (March 12, 2017) available at  
 22 [https://www.newyorker.com/culture/photo-booth/a-janitors-](https://www.newyorker.com/culture/photo-booth/a-janitors-collection-of-things-confiscated-from-migrants-in-the-desert)  
 23 [collection-of-things-confiscated-from-migrants-in-the-desert](https://www.newyorker.com/culture/photo-booth/a-janitors-collection-of-things-confiscated-from-migrants-in-the-desert)..... 20, 21

24 Lauren Gill, *As Immigrant Detainees Are Moved to Prisons, What*  
 25 *Happens to the Prisoners?*, *Rolling Stone* (July 3, 2018), available  
 26 at [https://www.rollingstone.com/culture/culture-features/immigrant-](https://www.rollingstone.com/culture/culture-features/immigrant-detainees-victorville-california-prisoners-695215/)  
 27 [detainees-victorville-california-prisoners-695215/](https://www.rollingstone.com/culture/culture-features/immigrant-detainees-victorville-california-prisoners-695215/) ..... 10

28 Roxana Kopetman, *Immigration detainees in Victorville prison get*  
 29 *more scabies, chicken pox; protesters to gather Saturday*, *The*  
 30 *Orange County Register* (June 29, 2018), available at  
 31 [https://www.ocregister.com/2018/06/29/immigration-inmates-in-](https://www.ocregister.com/2018/06/29/immigration-inmates-in-victorville-get-more-scabies-chicken-pox-protesters-to-gather-saturday/)  
 32 [victorville-get-more-scabies-chicken-pox-protesters-to-gather-](https://www.ocregister.com/2018/06/29/immigration-inmates-in-victorville-get-more-scabies-chicken-pox-protesters-to-gather-saturday/)  
 33 [saturday/](https://www.ocregister.com/2018/06/29/immigration-inmates-in-victorville-get-more-scabies-chicken-pox-protesters-to-gather-saturday/)..... 12

1 Kate Morrissette, *ICE is sending 1,000 immigrant detainees to Victorville*  
 2 *prison*, San Diego Tribune (Jun. 7, 2018) available at  
 3 [http://www.sandiegouniontribune.com/news/immigration/sd-me-](http://www.sandiegouniontribune.com/news/immigration/sd-me-victorville-immigrants-20180607-story.html)  
 victorville-immigrants-20180607-story.html. .... 23

4 Esme Murphy, *Behind Bars: Denny Hecker’s Life in Prison*, CBS  
 5 Minnesota (May 15, 2011) available at  
 6 [https://minnesota.cbslocal.com/2011/05/15/a-look-inside-denny-](https://minnesota.cbslocal.com/2011/05/15/a-look-inside-denny-heckers-life-in-prison/)  
 heckers-life-in-prison/ ..... 8

7 Lauren Weber, *As Health Conditions Worsen At Prison Holding 1,000*  
 8 *Detainees, Staff Fears A Riot*, Huffington Post (July 2, 2018),  
 9 available at [https://www.huffingtonpost.com/entry/victorville-](https://www.huffingtonpost.com/entry/victorville-prison-detainees-medical-crisisus5b3abde8e4b07b827cb9ed38)  
 prison-detainees-medical-crisisus5b3abde8e4b07b827cb9ed38 ..... 10

10 Lauren Weber, *Detainee Attempts Suicide After Trump Administration*  
 11 *Jams Migrants Into Troubled Prison*, Huffington Post (Aug. 1,  
 12 2018), available at  
 13 [https://www.huffingtonpost.com/entry/victorville-prison-suicide-](https://www.huffingtonpost.com/entry/victorville-prison-suicide-attempt-migrants_us_5b6267cce4b0de86f49dcbda)  
 attempt-migrants\_us\_5b6267cce4b0de86f49dcbda ..... 16

14 U.S. Dep’t of Justice, Office of Inspector General, *Prisons’ Medical*  
 15 *Staffing Challenges* (March 2016),  
 16 <https://oig.justice.gov/reports/2016/e1602.pdf>..... 11

17 U.S. Immigration and Customs Enforcement, Performance-Based  
 18 National Detention Standards (“PBNDS”) 2008..... 9

19 U.S. Immigration and Customs Enforcement, Performance-Based  
 20 National Detention Standards (“PBNDS”) 2011.....*passim*

21 U.S. Immigration and Customs Enforcement, Facility Inspections:  
 22 Dedicated and Non-Dedicated Facility List,  
 23 <https://www.ice.gov/facility-inspections>..... 9

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs and members of the class they seek to represent<sup>2</sup> are immigrants incarcerated at the Federal Correctional Institution Victorville Medium II (“FCI Victorville”), a violent and understaffed medium-security federal prison in San Bernardino County.

Since June 2018, as part of its “Zero Tolerance Policy,” the federal government elected to imprison thousands of asylum seekers and other immigrants in five federal prisons in the Western United States; hundreds continue to be confined at the Victorville prison. The consequences of Defendants’ decision to incarcerate immigrants in this federal penitentiary are both predictable and devastating. ICE detainees at the prison live in degrading and punitive conditions. They wear brown and orange jumpsuits and are caged in locked cells for extended periods. They endure strip searching and shackling. They are denied ready access to fresh air and sunlight and to adequate food and nutrition. Even though many of these individuals entered the country to seek asylum, they live day in and day out in harsh prison conditions, with no idea when they will be released or where they will go next.

Many of these individuals are fleeing trauma and violence in their home countries, yet Defendants fail to provide adequate psychological screening or mental health treatment. Defendants also fail to provide detainees with adequate access to medical care, even for urgent medical conditions. Nor do they provide language interpretation when medical encounters do occur. Custody officers routinely retaliate against detainees for seeking medical care and threaten to withhold privileges if detainees request medical attention. As a consequence of these failures,

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<sup>2</sup> Plaintiffs filed a Motion for Class Certification on September 4, 2018. Doc. 34.



1 an atmosphere of desperation and fear pervades the prison.

2 As if these conditions were not appalling enough, Defendants have deprived  
3 detainees of the ability to freely practice their religion—one of the few things that  
4 might bring detainees some sense of comfort or peace of mind. Detainees are denied  
5 the right to participate in congregate worship services and group prayer is restricted.  
6 They are unable to obtain religious counseling or consult with clergy. Detainees’  
7 ability to read and study holy texts, as well as their ability to wear religious headgear  
8 and jewelry, are limited by Defendants’ confiscation of their personal religious  
9 items and refusal to return or replace them in a timely manner, or at all.

10 Plaintiffs intend to move for expedited discovery in order to fully examine  
11 and document the conditions of confinement for ICE detainees at FCI Victorville.  
12 Even without benefit of discovery, however, it is evident that these conditions of  
13 confinement fall below constitutional minima. Defendants’ denial of adequate health  
14 care and employment of unnecessarily punitive and harmful custodial practices  
15 violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution.  
16 Defendants also violate the Free Exercise Clause of the First Amendment and the  
17 Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* by restricting and  
18 failing to accommodate detainees’ religious exercise. Although the named plaintiffs  
19 in this action have been transferred out of FCI Victorville since the filing of the  
20 complaint, the conditions of confinement imposed by Defendants continue to cause  
21 irreparable harm to the class, as well as the subclass, they seek to represent. The  
22 balance of hardships tips sharply in the Plaintiffs’ favor, and the public has no  
23 interest in subjecting immigrants to punitive and degrading conditions of  
24 confinement or in denying them the ability to practice their religion.

25 Pursuant to Federal Rule of Civil Procedure 65, the Court should enjoin  
26 Defendants from the unlawful and unnecessary policies and practices that threaten  
27 FCI Victorville detainees’ physical, mental, and spiritual well-being. In particular,  
28 the Court should enjoin Defendants from providing constitutionally inadequate

1 health care to ICE detainees at FCI Victorville, subjecting ICE detainees at FCI  
2 Victorville to conditions and practices that amount to punishment, restricting  
3 detainees' religious exercise or failing to accommodate detainees' religious exercise  
4 in a manner that violates or is otherwise inconsistent with ICE's Detention  
5 Standards, and transferring any additional ICE detainees to FCI Victorville.

## 6 **II. BACKGROUND**

### 7 **A. The Conditions of Confinement for ICE Detainees at FCI** 8 **Victorville Are Similar to, or Worse than, Those of Criminal** 9 **Prisoners**

9 Defendants know that prisons are inappropriate facilities for immigration  
10 detainees. In 2009, ICE concluded that:

11 the demeanor of the Immigration Detention population is distinct from  
12 the Criminal Incarceration population. The majority of the population is  
13 motivated by the desire for repatriation or relief, and exercise  
14 exceptional restraint. . . [R]elatively few file grievances, fights are  
15 infrequent, and assaults on staff are even rarer.”<sup>3</sup>

14 ICE identified “important distinctions” between “the administrative purpose  
15 of [immigration detainees'] detention—which is to hold, process, and prepare  
16 individuals for removal—as compared to the punitive purpose of the Criminal  
17 Incarceration system.”<sup>4</sup> Notwithstanding these critical distinctions, ICE has elected  
18 to incarcerate immigration detainees in a federal prison—a facility designed to  
19 punish the persons incarcerated there.

20 Both in policy and practice, the federal government flouts the distinction  
21 between civil and criminal detention for the ICE detainees at FCI Victorville. The  
22 ICE-BOP Inter-Agency Agreement that governs the incarceration of ICE detainees  
23 at FCI Victorville expressly provides that the detainees will be subject to BOP's

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25 <sup>3</sup> Dora Schriro, U.S. Department of Homeland Security, *Immigration Detention*  
26 *Overview and Recommendations* at 2, 21 (Oct. 6, 2009), available at  
27 <https://www.ice.gov/doclib/about/offices/odpp/pdf/icedetention-rpt.pdf>.

28 <sup>4</sup> *Id.*

1 policies for *pretrial criminal* inmates. *See* Doc. 35-1 (Inter-Agency Agreement) at ¶  
 2 4.D.3.a.<sup>5</sup> With respect to medical care, mental health care and discipline, BOP  
 3 policy regards ICE detainees as indistinguishable from criminal prisoners at  
 4 Victorville. *See 7331.04 Program Statement*, Federal Bureau of Prisons, 1, 14, 16  
 5 (Jan. 31, 2003), [https://www.bop.gov/policy/progstat/7331\\_004.pdf](https://www.bop.gov/policy/progstat/7331_004.pdf).

6 Indeed, ICE detainees at FCI Victorville experience the same custodial  
 7 restrictions as criminal prisoners.<sup>6</sup> ICE detainees, like criminal prisoners, are subject  
 8 to unclothed visual inspections. *See, e.g.*, Decl. of Yoni Santiago Gutierrez, attached  
 9 hereto as Exhibit 1 at ¶ 3 (“When we arrived . . . [w]e had to take off all of our  
 10 clothes and be searched. I also have been strip searched two other times after legal  
 11 visits.”); Decl. of Noel Siles, attached hereto as Exhibit 2 at ¶ 4 (“When I first got  
 12 here, I was strip searched. I had never exposed myself like that and I felt it was a  
 13 huge violation. I was told to hold my hands behind my head and turn around and  
 14 show my buttocks to an officer and cough.”).<sup>7</sup> ICE detainees, like criminal  
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16 <sup>5</sup> *See Program Statement 7331.04*, Federal Bureau of Prisons, 1, 1 (Jan. 31, 2003),  
 17 [https://www.bop.gov/policy/progstat/7331\\_004.pdf](https://www.bop.gov/policy/progstat/7331_004.pdf); *Policy & Forms*, Federal  
 18 Bureau of Prisons, [https://www.bop.gov/resources/policy\\_and\\_forms.jsp](https://www.bop.gov/resources/policy_and_forms.jsp).

19 <sup>6</sup> Detainees have been told by prison officers that, although immigration detainees  
 20 are not prisoners, they are in prison and have to follow federal prison rules *see* Decl.  
 21 of Gabriel Manzanilla Pedron, attached hereto as Exhibit 3 at ¶ 17, and that these  
 22 rules are stricter than rules in jails. *See* Doc. 1-1 at ¶ 17.

23 <sup>7</sup> *See also* Doc. 1-6 at ¶ 7 (“I had to take off all of my clothes in front of an official  
 24 before I was given a brown jumpsuit.”); Decl. of Desmond Tenghe attached hereto  
 25 as Exhibit 4 at ¶ 3 (“We were strip searched when we arrived. It was embarrassing. I  
 26 have also been strip searched after a legal visit.”); Supp. Decl. of Stephenson Awah  
 27 Teneng attached hereto as Exhibit 5 at ¶ 16 (unclothed visual search upon arrival at  
 28 FCI Victorville); Decl. of Alex Armando Villalobos Veliz attached hereto as Exhibit  
 6 (same) at ¶ 5. BOP conducts these searches notwithstanding a provision in the  
 Pretrial Inmate policy prohibiting visual searches unless there is reasonable  
 suspicion that an inmate is concealing a weapon or contraband. *Program Statement*  
*7331.04*, Federal Bureau of Prisons, 1, 6 (Jan. 31, 2003),  
 (footnote continued)

1 prisoners, are shackled—sometimes for hours on end—when they are transported to  
 2 or from FCI Victorville.<sup>8</sup> ICE detainees, like criminal prisoners, are also subjected  
 3 to extended lockdowns that restrict them to locked cells for days.<sup>9</sup> ICE detainees,  
 4 like criminal prisoners, are required to stand for inmate count and follow the rules of  
 5 the prison.<sup>10</sup> ICE detainees, like criminal prisoners, have severely restricted access  
 6 to fresh air and opportunities for socialization.<sup>11</sup>

7 In many regards, conditions for ICE detainees at FCI Victorville fall well  
 8 below the standards that Defendant BOP sets for criminal prisoners. For example,  
 9 BOP policies require that criminal prisoners receive adequate nutrition and at least  
 10 20 minutes to eat their meals.<sup>12</sup> ICE detainees, by contrast, receive meals that are

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 13 [https://www.bop.gov/policy/progstat/7331\\_004.pdf](https://www.bop.gov/policy/progstat/7331_004.pdf).

14 <sup>8</sup> *See, e.g.*, Doc. 1-6 at ¶ 5 (Plaintiff shackled for four to five hours); Exhibit 6 at ¶ 4  
 15 (shackled for five to six hours), Exhibit 4 at ¶ 2 (shackled for three hours), Doc. 1-3  
 16 at ¶¶ 7-8 (shackled and chained during trip to hospital for urgent medical care).

17 <sup>9</sup> *See, e.g.*, Doc. 1-5 at ¶ 7 (plaintiff kept in cell for first few days after he arrived in  
 18 July); Doc. 1-8 at ¶ 16 (locked down “for about four days without clean clothes or  
 19 showers”); Doc. 1-11 at ¶ 3 (constantly locked in cell the first three days after he  
 20 arrived); Doc. 1-17 at ¶ 7 (spent the first three or four days locked in his cell). *See*  
 21 *also* Exhibit 3 at ¶ 14; Exhibit 6 at ¶ 7.

22 <sup>10</sup> *See, e.g.*, Exhibit 3 at ¶ 18 (officer informed detainee “that we are in a prison and  
 23 we have to follow prison rules”); *id.* (“I saw a guard threaten to hit somebody  
 24 because he did not get up fast enough at 9:30” for count).

25 <sup>11</sup> *See, e.g.*, Doc. 1-6 at ¶ 14 (plaintiff’s unit locked down for seven hours due to a  
 26 fight in another building); Doc. 1-9 at ¶ 6 (describing extremely limited out of cell  
 27 time); Doc. 1-10 at ¶ 15 (same); Doc. 1-11 at ¶ 3 (24-hour lockdowns on weekends);  
 28 Doc. 1-19 at ¶ 12 (same). *See also* Exhibit 5 at ¶ 17; Exhibit 6 at ¶ 9.

<sup>12</sup> *Program Statement P4700.06*, Federal Bureau of Prisons, 1, 61 (Sept. 13, 2011),  
[https://www.bop.gov/policy/progstat/4700\\_006.pdf](https://www.bop.gov/policy/progstat/4700_006.pdf) (requiring nutritionally adequate  
 meals and dining spaces that afford “each inmate the opportunity to have at least 20  
 minutes of dining time for each meal”).

1 small, inadequate, of poor nutritional value, and inedible.<sup>13</sup> Officers allow less than  
 2 five minutes for the detainees to eat their meals before demanding that they leave  
 3 the chow hall and throw away any uneaten food.<sup>14</sup>

4 BOP policies also require that all institutions offer various continuing  
 5 education, library, parenting, and other programs.<sup>15</sup> No such programs are provided  
 6 for ICE detainees, who cannot even access books in languages they understand.<sup>16</sup>

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8 <sup>13</sup> See Doc. 1-8 at ¶¶ 15, 17 (weight loss due to lack of food; often served sour milk);  
 9 Doc. 1-9 at ¶ 10 (inadequate amount of food with small portions, has seen worms or  
 10 maggots in the meat); Doc. 1-10 at ¶ 8 (inadequate amount of food, meat in the  
 11 sandwiches is sometimes expired); Doc. 1-14 at ¶ 11 (inadequate amount of food);  
 12 Doc. 1-15 at ¶ 21 (inadequate amount of food; sometimes served spoiled milk and  
 sandwiches that are just two pieces of bread); Doc. 1-20 at ¶ 5 (inadequate amount  
 of food; often feels hungry).

13 <sup>14</sup> See Doc. 1-6 at ¶¶ 20, 21 (less than 10 minutes to eat; official forced a detainee to  
 14 throw away bread he had put in his pocket when leaving the chow hall); Doc. 1-7 at  
 ¶ 6 (only 5 minutes to eat); Doc. 1-8 at ¶ 15 (only about 5 minutes to eat; not  
 15 allowed to take food from the chow hall, even an apple); Doc. 1-10 at ¶ 8 (only 3-5  
 16 minutes to eat); Doc. 1-17 at ¶¶ 12 (3-4 minutes to eat each meal; leftover food is  
 confiscated and thrown away); Doc. 1-20 at ¶ 5 (only 5 minutes to eat). As a result  
 17 of these practices, immigration detainees imprisoned at FCI Victorville have lost  
 18 weight. See Doc. 1-4 at ¶ 11 (7 kilograms lost); Doc. 1-8 at ¶ 15 (10-15 pounds lost,  
 bones visible in wrists that were not visible before); Doc. 1-10 at ¶ 8 (5-10 pounds  
 19 lost); see also Doc. 1-11 at ¶ 5 (10 pounds lost due to inadequate food and pain);  
 20 Doc. 1-15 at ¶ 22 (lost weight since arrival at prison).

21 <sup>15</sup> *Program Statement 5300.21*, Federal Bureau of Prisons, 1, 1 (Feb. 18, 2002),  
[https://www.bop.gov/policy/progstat/5300\\_021.pdf](https://www.bop.gov/policy/progstat/5300_021.pdf); see also *Program Statement*  
 22 *P5370.11*, Federal Bureau of Prisons, 1, 1 (June 25, 2008),  
[https://www.bop.gov/policy/progstat/5370\\_011.pdf](https://www.bop.gov/policy/progstat/5370_011.pdf) (“The Bureau of Prisons  
 23 encourages inmates to make constructive use of leisure time, and offers movies,  
 24 games, sports, social activities, arts and hobbycrafts, wellness, and other group and  
 25 individual activities”).

26 <sup>16</sup> Doc. 1-2 at ¶ 8 (told by ICE that he could not participate in classes listed on a  
 27 paper about the prison); Doc. 1-4 at ¶ 7 (only English books available); Doc. 1-9 at ¶  
 28 9 (no programs, education, or training available); Doc. 1-10 at ¶ 7 (no activities,  
 programs, jobs; books are only in English); Doc. 1-14 at ¶ 14 (books only in English,  
 (footnote continued)

1 Similarly, BOP policy requires that criminal prisoners “have access to  
 2 regularly scheduled congregate services [and] chaplains” and outlines various other  
 3 religious programs, services, and accommodations available to criminal prisoners.<sup>17</sup>  
 4 However, Defendants have not provided any religious worship services for  
 5 detainees of faith, and detainees have no access to religious counseling or chaplains.  
 6 Their ability to engage in informal congregate prayer and religious study is also  
 7 limited. *See infra* II.D.

8 Finally, BOP policies governing patient care provide that criminal prisoners  
 9 receive physical and mental health assessments upon intake. The policies require  
 10 that medical staff assess patients when they express pain. They require that patients  
 11 have access to a variety of physical and mental health care services and treatments  
 12 while incarcerated.<sup>18</sup> In practice, as detailed herein, Defendants routinely deny or  
 13 delay the provision of these health care services to ICE detainees at FCI Victorville.

14 Indeed, Defendants confine ICE detainees in conditions far more restrictive  
 15 than those to which Defendant BOP subjects convicted criminal prisoners in even its  
 16 minimum-security facilities. For example, according to BOP, minimum-security  
 17 facilities (also known as federal prison camps) “have dormitory housing, a relatively  
 18 \_\_\_\_\_  
 19 no classes or programs); Doc. 1-15 at ¶¶ 14, 19 (no books in Spanish until today; no  
 20 classes, programs, or groups available); Doc. 1-17 at ¶ 15 (no known educational,  
 21 recreational, or other programs); Exhibit 5 at ¶ 14 (no access to school or other  
 22 activities).

23 <sup>17</sup> *Program Statement, P5360.09*, Federal Bureau of Prisons, 1, 1 (Dec. 31, 2004),  
[https://www.bop.gov/policy/progstat/5360\\_009\\_CN-1.pdf](https://www.bop.gov/policy/progstat/5360_009_CN-1.pdf).

24 <sup>18</sup> *Program Statement 6031.04*, Federal Bureau of Prisons, 1, 20 (June 3, 2014),  
[https://www.bop.gov/policy/progstat/6031\\_004.pdf](https://www.bop.gov/policy/progstat/6031_004.pdf) (“patients who complain of  
 25 pain, will be assessed and treated if necessary”); *id.* at 5 (listing categories of  
 26 medical treatment available); *id.* at 23 (“Health Services clinical staff will conduct  
 27 an initial assessment of each newly committed inmate upon his/her arrival at an  
 28 institution. ...”).

1 low staff-to-inmate ratio, and limited or no perimeter fencing. These institutions are  
2 work- and program-oriented.”<sup>19</sup> Many of the housing units in federal prison camps  
3 provide open access to microwave ovens, clothing irons, hairdryers, curling irons,  
4 and other appliances.<sup>20</sup> Some individuals in BOP camps are permitted to possess a  
5 radio or MP3 player,<sup>21</sup> sleep in residential dorm-like buildings, and access gyms and  
6 movie theaters.<sup>22</sup>

7 By contrast, Defendants confine ICE detainees at FCI Victorville in small,  
8 locked cells. Defendants restrict their freedom of movement, and even forbid them  
9 from bringing food from the chow hall back to their cells. *See* Exhibit 6 at ¶¶9-10  
10 (prisoners get to go out on the weekends, but detainees are locked in their cells on  
11 Saturdays and Sundays). Defendants confiscate their personal property and prohibit  
12 them from possessing entertainment devices like televisions and radios to help pass  
13 the time. *See* Doc. 1-15 at ¶ 13 (housed alone in small cell), and at ¶14 (no  
14 television or radio in cell); Exhibit 5 at ¶ 13 (prisoners are permitted to have MP3  
15 players, but ICE detainees are not). Defendants deny ICE detainees access to  
16 educational and recreational programs and work opportunities.

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18 <sup>19</sup> *About Our Facilities*, Federal Bureau of Prisons, *available at*  
19 [https://www.bop.gov/about/facilities/federal\\_prisons.jsp](https://www.bop.gov/about/facilities/federal_prisons.jsp).

20 <sup>20</sup> *FPC Alderson Inmate Handbook*, Federal Bureau of Prisons, 1, 8 (June 2012),  
21 [https://www.bop.gov/locations/institutions/ald/ALD\\_aohandbook.pdf](https://www.bop.gov/locations/institutions/ald/ALD_aohandbook.pdf); *FPC Duluth*  
22 *Inmate Admissions and Orientation Handbook*, Federal Bureau of Prisons 1, 12  
(Feb. 2010), [https://www.bop.gov/locations/institutions/dth/DTH\\_aohandbook.pdf](https://www.bop.gov/locations/institutions/dth/DTH_aohandbook.pdf).

23 <sup>21</sup> *FPC Bryan Inmate Admission and Orientation*, Federal Bureau of Prisons, 1, 7  
24 (Jan. 22, 2016),  
[https://www.bop.gov/locations/institutions/bry/BRY\\_aohandbook.pdf](https://www.bop.gov/locations/institutions/bry/BRY_aohandbook.pdf).

25 <sup>22</sup> Esme Murphy, *Behind Bars: Denny Hecker’s Life in Prison*, CBS Minnesota  
26 (May 15, 2011), *available at* [https://minnesota.cbslocal.com/2011/05/15/a-look-](https://minnesota.cbslocal.com/2011/05/15/a-look-inside-denny-heckers-life-in-prison/)  
27 [inside-denny-heckers-life-in-prison/](https://minnesota.cbslocal.com/2011/05/15/a-look-inside-denny-heckers-life-in-prison/) (describing the Federal Prison Camp in Duluth  
28 Minnesota).

1           **B. Defendants' Practices and Conditions of Confinement at FCI**  
 2           **Victorville Violate ICE's Detention Standards**

3           The government has developed standards for ICE detention that expressly  
 4 prohibit many of the practices and conditions of confinement present at FCI  
 5 Victorville.<sup>23</sup> ICE's 2008 and 2011 Performance-Based National Detention  
 6 Standards require, for example: (1) physical and mental health intake assessments;  
 7 (2) access to appropriate health care services; (3) provision of adequate nutrition,  
 8 and at least 20 minutes to eat meals; and (4) access to religious services, clergy, and  
 9 various religious items.<sup>24</sup> The fact that Defendant ICE developed and enforces these  
 10 standards for ICE detainees demonstrates that the deprivations at FCI Victorville are  
 11 not necessary to achieve a governmental objective.<sup>25</sup>

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 16 <sup>23</sup> ICE's Performance-Based National Detention Standards ("PBNDS") govern  
 17 conditions in eleven immigration detention centers in the Ninth Circuit. *See* U.S.  
 18 Customs and Immigration Enforcement, Facility Inspections: Dedicated and Non-  
 19 Dedicated Facility List, <https://www.ice.gov/facility-inspections> (showing seven  
 20 dedicated facilities under PBNDS 2011 and four dedicated facilities under PBNDS  
 21 2008).

22 <sup>24</sup> PBNDS 2008 § 4.22(V)(I)(1); PBNDS 2011 § 4.3(II)(14) (intake assessments); §§  
 23 4.22(II)(15), 4.22(V)(B), (K), (N) & (O); PBNDS 2011 §§ 4.3(II)(2) & (4),  
 24 4.3(V)(A), (S) & (T) (health care services); PBNDS 2008 §§ 4.20(II)(1), (3) & (4),  
 25 4.20(V)(D)(1); PBNDS 2011 §§ 4.1(II)(1) & (3), 4.1(V)(D)(1) (adequate nutrition  
 26 and time to consume meals); §§ 5.30(II)(6), 5.30(V)(G); PBNDS 2011 §§  
 27 5.5(V)(D), (F) & (J). The 2008 and 2011 Standards can be found at  
 28 <https://www.ice.gov/factsheets/facilities-pbnds>.

<sup>25</sup> Plaintiffs do not concede that the ICE standards meet constitutional minima; many  
 are unduly restrictive. Nonetheless, even these excessively restrictive standards  
 provide for less punitive correctional practices and conditions of confinement than  
 those that exist at FCI Victorville.



1           **C. Defendants Deny Minimally Adequate Health Care to ICE**  
 2           **Detainees at FCI Victorville**

3           In addition to subjecting ICE detainees to harmful and punitive conditions of  
 4 confinement at FCI Victorville, Defendants fail to provide for detainees' basic  
 5 medical and mental health needs. The prison lacks adequate health care staff to  
 6 provide a minimally adequate system of health care for individuals detained there.  
 7 On August 27, 2018, John Kostelnik, a case manager at FCI Victorville and  
 8 president of AFGE 3969, which represents BOP employees at FCI Victorville,  
 9 confirmed that there are just two doctors on staff to serve over 4,000 criminal  
 10 prisoners and ICE detainees at Victorville, and one of them is largely occupied with  
 11 administrative tasks. *See* Decl. of Margot Mendelson (hereinafter "Mendelson  
 12 Decl."), Exhibit 1 at p. 1, ln. 25, p. 2, ln. 1.<sup>26</sup> According to media reports, no  
 13 additional staff were hired to help attend to the 1,000 detainees that arrived around  
 14 June 8,<sup>27</sup> and "[m]edical staff have become 'emotional' as they struggle to provide  
 15 proper care" for Victorville's thousands of charges.<sup>28</sup> Mr. Kostelnik's account is

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 17 <sup>26</sup> *Accord* Lauren Weber, *1,000 Detainees Just Got Sent To A Prison That Staffers*  
 18 *Consider Unsafe*, Huffington Post (June 23, 2018), available at  
 19 [https://www.huffingtonpost.com/entry/immigration-detainees-victorville-](https://www.huffingtonpost.com/entry/immigration-detainees-victorville-prison_us_5b2d8b44e4b0040e2742f1c9)  
 20 [prison\\_us\\_5b2d8b44e4b0040e2742f1c9](https://www.huffingtonpost.com/entry/immigration-detainees-victorville-prison_us_5b2d8b44e4b0040e2742f1c9) (Kostelnik explaining that "[e]ven before  
 'getting detainees, we didn't have the staffing to provide proper medical care'");  
 21 Lauren Gill, *As Immigrant Detainees Are Moved to Prisons, What Happens to the Prisoners?*,  
 22 *Rolling Stone* (July 3, 2018), available at [https://www.rollingstone.com/culture/culture-](https://www.rollingstone.com/culture/culture-features/immigrant-detainees-victorville-california-prisoners-695215/)  
 23 [features/immigrant-detainees-victorville-california-prisoners-695215/](https://www.rollingstone.com/culture/culture-features/immigrant-detainees-victorville-california-prisoners-695215/). (documents  
 show that "there are just two physicians, nine physician assistants or nurse  
 24 practitioners, and one medical clerical worker to care for the roughly 4,200 people"  
 at Victorville).

25 <sup>27</sup> Lauren Weber, *As Health Conditions Worsen at Prison Holding 1,000*  
 26 *Detainees, Staff Fears A Riot*, Huffington Post (July 2, 2018), available at  
 27 [https://www.huffingtonpost.com/entry/victorville-prison-detainees-medical-](https://www.huffingtonpost.com/entry/victorville-prison-detainees-medical-crisisus5b3abde8e4b07b827cb9ed38)  
 28 [crisisus5b3abde8e4b07b827cb9ed38](https://www.huffingtonpost.com/entry/victorville-prison-detainees-medical-crisisus5b3abde8e4b07b827cb9ed38).

<sup>28</sup> Gill, *supra* note 26.

1 consistent with the U.S. Department of Justice Office of the Inspector General’s  
2 2016 investigative findings, which documented systemic understaffing of medical  
3 professionals throughout the BOP, resulting in limitations on prisoners’ access to  
4 medical care.<sup>29</sup> These drastic deficiencies in medical staffing have led to a  
5 dangerous and life-threatening situation for Victorville ICE detainees, whose basic  
6 health care needs have been ignored.

7 **1. Defendants Fail to Provide Adequate Intake Health**  
8 **Screening**

9 Defendants fail to conduct adequate intake health screenings of detainees  
10 when they are admitted to FCI Victorville. There is no consistent screening of  
11 detainees for medical, mental health, or dental problems upon intake. *See* Doc. 1-10  
12 at ¶ 12 (no dental screening despite painful toothache); Doc. 1-15 at ¶ 5 (no medical,  
13 dental, or mental health screening upon arrival). The minimal and inconsistent  
14 screening that does occur often involves no meaningful communication with the  
15 patient, leading to “treatment” without detainees’ informed consent. *See* Doc. 1-6 at  
16 ¶ 15 (“They didn’t tell us what was in the injection”); Doc. 1-2 at ¶ 13 (“screening”  
17 consisted of an injection of unknown contents).

18 Indeed, communication is, in many cases, rendered impossible by  
19 Defendants’ failure to provide language interpretation to detainees. For example, a  
20 nurse who examined Plaintiff Ankush Kumar regarding his kidney stones relied on  
21 another Punjabi-speaking detainee who is fluent in English and was compelled to  
22 interpret for other Punjabi speakers during medical encounters. Doc. 1-3 at ¶ 6.

23 \_\_\_\_\_  
24 <sup>29</sup> *Review of the Federal Bureau of Prisons’ Medical Staffing Challenges*, Office of  
25 the Inspector General, Department of Justice, (March 2016),  
26 <https://oig.justice.gov/reports/2016/e1602.pdf>. Plaintiffs intend to file a motion for  
27 expedited discovery, which will request discovery regarding staffing and vacancy  
28 levels for custody and health care staff at FCI Victorville. Plaintiffs will supplement  
this filing once that discovery is obtained.

1 Plaintiff Ngwa is fluent in English and French, and acted as a translator for French-  
 2 speaking detainees. Doc. 1-2 at ¶ 16; *see also* Doc. 1-7 at ¶ 4 (relies on cellmate to  
 3 translate to French); Doc. 1-9 at ¶ 16 (another detainee translated when he saw a  
 4 nurse regarding stomach pain). Some non-English speaking detainees are treated  
 5 without any interpretation at all. *See* Doc. 1-17 at ¶ 8 (received medical treatment he  
 6 did not understand; all services rendered in English).

7 These nonexistent or inadequate screenings have predictably had adverse  
 8 health effects on the detainee community at large, including outbreaks of  
 9 communicable diseases and prolonged quarantines.<sup>30</sup> According to Mr. Kostelnik's  
 10 August 27, 2018 report, in fact, there have been at least 60 cases of scabies and 30  
 11 cases of chickenpox at the prison since the ICE detainees arrived in June 2018. *See*  
 12 Mendelson Decl., Exhibit 1 at p. 2, ln. 5-10.

13 At Victorville, Defendants rely on a short, written survey (available only in  
 14 English and Spanish) as the only form of mental health screening. *See* Doc. 1-19 at  
 15 ¶ 6 (describing questionnaire used in lieu of mental health screening).<sup>31</sup> Plaintiff  
 16

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17 <sup>30</sup> *See* Roxana Kopetman, *Immigration detainees in Victorville prison get more*  
 18 *scabies, chicken pox; protesters to gather Saturday*, The Orange County Register  
 19 (June 29, 2018), available at [https://www.ocregister.com/2018/06/29/immigration-](https://www.ocregister.com/2018/06/29/immigration-inmates-in-victorville-get-more-scabies-chicken-pox-protesters-to-gather-saturday/)  
 20 *See* Doc. 1-2 at ¶ 5 (“My unit was quarantined for chicken pox and we didn’t  
 21 shower for two days. It started to smell bad in our room.”); Exhibit 3 at ¶ 10 (21-day  
 22 quarantines due to chicken pox; some people quarantined for a second time); Exhibit  
 23 5 at ¶¶ 2, 5 (quarantined due to chicken pox twice for a total of 42 days; some  
 24 people had to go into a third quarantine); *id.* at ¶¶ 3-4 (during quarantines, were  
 25 locked in cells 85% of the time, only allowed out of cells for two hours twice a day,  
 26 and did not receive enough food); *id.* at ¶ 6 (“Quarantine is hard because we do not  
 27 go out into the yard, do not get fed enough, and sometimes guards come into the  
 28 cells to search them, and toss things about and throw them away.”).

<sup>31</sup> On August 10, 2018, U.S. District Judge Dolly M. Gee issued an order in the  
*Franco-Gonzalez v. Nielsen* litigation finding that the initial mental health  
 screenings conducted for ICE detainees at some federal prisons, including FCI  
 (footnote continued)

1 Granados Aquino was “never . . . asked about [his] mental health in person” after  
 2 arriving at Victorville. Doc. 1-6 at ¶ 15. When he first arrived at the prison, he filled  
 3 out a form, on which he indicated that he was depressed; however, Defendants never  
 4 followed up to conduct an assessment or offer him mental health services. *Id.* at  
 5 ¶ 16. This is consistent with the experiences of other Plaintiffs and detainees. *See*  
 6 Doc. 1-2 at ¶ 15 (“No one has asked me if I feel sad, depressed, or suicide [*sic*]. I  
 7 would tell them [yes] if they did. I still feel depressed because I am in pain and can’t  
 8 ask for help.”); Doc. 1-18 at ¶¶ 4-5, 7 (no screening or ability to request counseling  
 9 for anxiety because staff does not speak French); Doc. 1-19 at ¶ 6 (no face-to-face  
 10 mental health screening).

## 11 2. Defendants Do Not Provide Emergency and Routine Health 12 Care

13 Plaintiffs and other FCI Victorville detainees have experienced medical  
 14 emergencies that go unaddressed and result in gratuitous suffering and a risk of  
 15 permanent injury or death. While there is an emergency call button in each cell, calls  
 16 from detainees experiencing medical emergencies are often ignored. When he  
 17 experienced extreme pain from a kidney stone, for example, Plaintiff Ankush  
 18 Kumar pushed the emergency call button but was not provided medical attention  
 19 until the next day, when he was given medication and ultimately transported to the  
 20 hospital. Doc. 1-3 at ¶ 5-7. In some cases, detainees have been instructed not to use  
 21 the emergency call button to notify staff of their health care needs. Prison staff

22  
 23 Victorville, are “inadequate” and fail to meet the requirements of the injunction and  
 24 implementation plan in that case. Order, *Franco-Gonzalez v. Nielson*, Case No.  
 25 2:10-cv-02211-DMG-DTB, Doc. 1008 at 7, 11 (C.D. Cal. Aug. 10, 2018). On  
 26 August 17, 2018, the U.S. Department of Justice filed a status report representing  
 27 that ICE and BOP would “work together to . . . perform . . . 14-day mental health re-  
 28 screenings” to the 441 ICE detainees at FCI Victorville II by August 31, 2018. *See*  
 Defs.’ Status Report, *Franco-Gonzalez v. Nielsen*, Case No. 2:10-cv-02211-DMG-  
 DTB, Doc. 1009 at 2 (C.D. Cal. Aug. 17, 2018).

1 instructed one detainee that he “should not touch the call button in [his] cell unless  
2 [he is] dying,” Doc. 1-15 at ¶ 24, and told another detainee never to push the button  
3 again. Doc. 1-11 at ¶¶ 7-8.

4 Defendants also lack a reliable system for detainees to access routine health  
5 care. Detainees struggle to communicate their medical care needs to health care  
6 staff. For example, forms to request access to medical services are not routinely  
7 available, and in those cases where forms are provided, they are available only in  
8 English and Spanish. *See* Doc. 1-2 at ¶ 11-12; Doc. 1-4 at ¶ 4; Doc. 1-9 at ¶ 15;  
9 Doc. 1-10 at ¶ 11; Doc. 1-11 at ¶ 6. Even those suffering severe and ongoing pain  
10 are unable to convey their needs to medical staff. *See* Doc. 1-10 at ¶¶ 10-13  
11 (detainee unable to request medical care for his toothache); Doc. 1-20 at ¶ 7  
12 (describing detainee who requested medical care for toothache for eight days “but  
13 no one came to see him”).

14 When detainees do manage to access medical staff, diagnosis and treatment is  
15 often delayed or denied outright. In one case, a detainee who was suffering from a  
16 fever, cough, and sore throat was told by staff that there “weren’t any medical  
17 consultations unless it was really serious, so [he] could not have any help.” Doc. 1-  
18 19 at ¶¶ 7–9. *See also* Doc. 1-2 at ¶ 13 (medical staff screening detainee for chicken  
19 pox “did not want to talk to me about my pain”); Doc. 1-1 at ¶¶ 7-13; and at ¶¶ 19-  
20 21 (no dental treatment or medication for Plaintiff Teneng’s severe toothache  
21 despite complaining to custody and medical staff multiple times over multiple days);  
22 Doc. 1-11 at ¶¶ 7-8 (told to wait until “mañana” for treatment for gastritis); Doc. 1-9  
23 at ¶ 3, and at ¶¶ 13-16 (detainee unable to request medical services or to  
24 communicate with officers about bloody stool, peeling skin, and rashes for weeks);  
25 Doc. 1-18 at ¶ 6 (detainee requested X-ray due to pain in his shoulders, ribs, and leg,  
26 but was not provided an exam.); Doc. 1-8 at ¶ 13 (detainee with nosebleed denied  
27 access to medical staff, and instead told to “deal with it and cut out your bullshit”).  
28

1                   **3. Defendants Do Not Provide Minimally Adequate Mental**  
2                   **Health Care**

3                   Defendants fail to provide adequate meaningful mental health treatment. Doc.  
4 1-6 at ¶ 11 (in response to urgent request for mental health treatment, officer told  
5 detainee “I can’t help you right now. Maybe tomorrow.”); Doc. 1-15 at ¶¶ 16, 25  
6 (detainee experiencing depression, loneliness, and desperation; unable to access  
7 mental health services); Doc. 1-18 at ¶ 7 (detainee deeply anxious and unable to  
8 access mental health services). Even when ICE detainees inform Defendants of their  
9 serious, current mental health needs, Defendants fail to conduct comprehensive  
10 assessments or provide necessary care. Doc. 1-6 at ¶¶ 15-16 (detainee filled out  
11 form reporting that he was depressed, but no one at the prison followed up or  
12 offered assessment or treatment). One detainee learned, while in custody at FCI  
13 Victorville, that his father had been killed in Honduras. Exhibit 1 at ¶ 5. Upon  
14 learning the news, he “yelled and began to cry and lost control.” *Id.* In response,  
15 “some guards started laughing at me” and “put me in a little hallway all alone.” *Id.*  
16 at ¶¶ 6-7. After an hour and a half, a psychologist arrived, but she didn't speak  
17 Spanish and relied on another detainee to translate. *Id.* at ¶ 8. A few days later,  
18 another mental health professional came to see him in the hallway of the housing  
19 unit, “in front of all of my acquaintances.” *Id.* at ¶ 13. She also didn’t speak Spanish,  
20 and relied on another detainee to translate. *Id.* She told Mr. Gutierrez Gonzalez that  
21 “if I keep asking for the psychologist, they were going to put me in isolation.” *Id.*

22                   Defendants’ failure to provide mental health care at the prison is particularly  
23 problematic because the harsh and punitive conditions of confinement can cause  
24 severe psychological distress. Detainees at Victorville report experiencing mounting  
25 depression and hopelessness, which is exacerbated by long periods of enforced  
26 idleness and the denial of adequate opportunities for recreation, activity, and  
27  
28

1 socialization.<sup>32</sup> They also report that they hear men weeping in their beds at night  
 2 and that they have seen men with fresh scars on their wrists from cutting  
 3 themselves.<sup>33</sup> Media reports indicate that at least two detainees have attempted  
 4 suicide or been placed on suicide watch.<sup>34</sup> By failing to provide adequate mental  
 5 health care, Defendants have placed Plaintiffs and the class they seek to represent at  
 6 serious risk of needless psychological harm, injury, and death by suicide.

7  
 8  
 9 <sup>32</sup> See Doc. 1-2 at ¶ 10 (depression and difficulty sleeping due to enforced idleness);  
 10 Doc. 1-6 at ¶ 11 (cried in cell and became depressed due to isolation); Doc. 1-9 at ¶  
 11 12 (anxiety due to being locked in cell 20-21 hours a day with nothing to do); Doc.  
 12 1-10 at ¶ 10 (“As a result of spending so much time in my cell with nothing to do, I  
 13 am frustrated, worry, and get headaches”); Doc. 1-13 at ¶ 3 (“When we first arrived  
 14 at Victorville we were in our cells all of the time and it was very hard.”); Doc. 1-15,  
 15 at ¶ 16 (“I am having a very difficult time with the isolation and idleness. I feel very  
 16 depressed and lonely. At night, I cry.”); Doc. 1-18 at ¶ 3 (anxiety and difficulty  
 17 sleeping due to being locked in cell with nothing to do); Exhibit 2 at ¶ 5 (depression  
 18 has worsened due to the conditions at Victorville; has suicidal thoughts).

19 <sup>33</sup> Doc. 1-8 at ¶ 14 (detainee reporting that “I saw an Ecuadorean man who took the  
 20 blade out of his razor and cut across his arms and cut a cross into the side of his  
 21 wrist.”); Doc. 1-15 at ¶¶ 17-18 (has heard men crying in their beds at night; has seen  
 22 men with scars from cutting themselves due to depression and desperation); Exhibit  
 23 5 at ¶ 20 (heard a fellow detainee, a minor, crying in his cell during quarantine);  
 24 Exhibit 3 at ¶ 9 (“I’ve heard [other detainees] crying. One time I heard someone  
 25 saying he was going to kill himself.”).

26 <sup>34</sup> See Lauren Weber, *Detainee Attempts Suicide After Trump Administration*  
 27 *Jams Migrants Into Troubled Prison*, Huffington Post (Aug. 1, 2018), available  
 28 at [https://www.huffingtonpost.com/entry/victorville-prison-suicide-attempt-migrants\\_us\\_5b6267cce4b0de86f49dcbda](https://www.huffingtonpost.com/entry/victorville-prison-suicide-attempt-migrants_us_5b6267cce4b0de86f49dcbda), (“In the last week, one detainee has tried to kill himself, saying he was terrified he would be deported back to Cuba. Another was put on suicide watch after staffers noticed he couldn’t stop crying, according to multiple staff members who requested anonymity to protect their jobs after employees were told not to speak to the press.”). Cf. Weber, *supra* n.27 (Congressman who toured Victorville expressing concern that “the sense of hopelessness and depression could cause some of them to take their own lives”).

#### 4. Defendants Do Not Provide Adequate Medication

Defendants also have failed to ensure that detainees receive necessary medications. In one case, an asthmatic patient was denied an inhaler or other asthma medicine upon arrival at Victorville, despite informing staff of his condition. *See* Doc. 1-15 at ¶¶ 3, 5. He suffered an asthma attack a week later and when he was finally given an inhaler, it only had 15 doses left. *Id.* at ¶¶ 6-7. Once that inhaler ran out, the detainee requested another but staff did not provide one. *Id.* at ¶¶ 7-8. Fear of another asthma attack without an inhaler confined the detainee to his cell for most of the time he was detained at Victorville. *Id.* at ¶ 9.

Another detainee, whose medication was thrown away by ICE officials when he was apprehended, notified prison staff of his medical need when he arrived at Victorville but was denied because he could not remember the name of the medicine. Doc. 1-8 at ¶¶ 7, 10. Medical staff did not attempt to determine his diagnosis or provide an alternative medication. *Id.* at ¶ 11.

A third detainee who was seriously injured and hospitalized during his initial apprehension was not given any pain medication following his initial treatment. *See* Doc. 1-20 at ¶ 2. Nor was he provided instructions for refilling his gastritis medication. *Id.* at ¶¶ 8-9. The same is true of another detainee suffering from gastritis, despite making multiple requests. Doc. 1-7 at ¶¶ 7-12. Another detainee has been unable to obtain medicine for a serious skin rash, causing his skin to peel. Doc. 1-9 at ¶ 13. One detainee managed to obtain ibuprofen to treat his pain a few days after meeting with medical staff, but was instructed only to take it with food, which is not provided in the evenings. Doc. 1-16 at ¶ 11.<sup>35</sup>

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<sup>35</sup> *See also* Exhibit 6 at ¶¶ 11-12 (prescription for kidney medication confiscated at border; medical staff at FCI Victorville have not replaced it despite detainee's requests).



1                                   **5. Custody Staff Use Threats and Retaliation to Improperly**  
 2                                   **Interfere with Health Care**

3           Custody staff at FCI Victorville routinely interfere with detainees' access to  
 4 health care with conduct that is perceived as retaliatory and has had a chilling effect  
 5 on detainees' willingness to report alarming symptoms or request health care. For  
 6 example, Plaintiff Teneng was "locked in his cell for several hours while other  
 7 detainees were allowed out in response to his asking medical staff to care for his  
 8 tooth pain." Doc. 1-1 at ¶¶ 13-18. *See* Doc. 1-13 at ¶ 3 (detainee was afraid to ask  
 9 for medical care because of how custody staff respond to others who request care).  
 10 Detainees have been intimidated into silence either through explicit threats or  
 11 through verbal abuse. Doc. 1-1 at ¶ 17 (Plaintiff threatened with pepper spray if he  
 12 continued to complain about his toothache); Doc. 1-11 at ¶¶ 7-8 (custody staff  
 13 response to request for medical care was "don't be a dumbass"); Doc. 1-8 at ¶ 13  
 14 (custody staff response to request for medical treatment was "deal with it and cut out  
 15 your bullshit"); Doc. 1-15 at ¶ 24 (detainee warned he "should not touch the call  
 16 button in [his] cell unless [he is] dying"); Exhibit 3 at ¶¶ 11-12 (detainee afraid to  
 17 ask officers for help when he is sad or sick because he has witnessed them say nasty  
 18 things to other detainees).<sup>36</sup>

19                                   **D. Defendants Have Severely Limited Detainees' Religious Exercise.**

20           FCI Victorville detainees' ability to exercise their religion is severely limited.  
 21 For example, detainees are not permitted to attend religious worship services that  
 22 may be held for other prisoners at the facility, and Defendants have not provided  
 23 separate services for detainees of faith. *See, e.g.*, Doc. 1-2 at ¶ 9 (Plaintiff reporting  
 24 \_\_\_\_\_

25 <sup>36</sup> BOP conditions at issue here do not comply with the ICE standards providing that  
 26 "[b]ecause ICE exercises significant authority when it detains people, ICE must do  
 27 so in the most humane manner possible with a focus on providing sound conditions  
 28 and care." *See* PBNDS 2011 at i, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

1 no Presbyterian worship services); Doc. 1-7 at ¶ 13 (Catholic); Doc. 1-12 at ¶ 7  
2 (Sikh); Doc. 1-14 at ¶ 12 (Hindu); Doc. 1-18 at ¶ 2 (Islamic); Decl. of Dominic  
3 Tebit attached hereto as Exhibit 7 at ¶ 8 (Presbyterian); Exhibit 3 at ¶ 21 (no church  
4 services for Seventh Day Adventist detainees and not allowed to attend any religious  
5 services held for non-immigrant prisoners); Decl. of Fabio Serrano Solorzano  
6 attached hereto as Exhibit 8 at ¶ 16 (Catholic); *see also*, Doc. 1-9 at ¶ 9 (no  
7 religious services or other programs available for detainees); Doc. 1-16 at ¶ 8  
8 (same).

9 Detainees' ability to gather informally outside of their cells to conduct group  
10 prayer or religious study is also limited. *See, e.g.*, Doc. 1-6 at ¶ 23 (prison officers  
11 told Plaintiff and other detainees that they could not gather in the day room to pray,  
12 sing songs, and preach); Doc. 1-9 at ¶ 9 (officers dispersed group of detainees who  
13 sought to pray together in the common area, telling them that they "did not have the  
14 right to assemble or to pray together"); Doc. 1-18 at ¶ 2 (Muslim detainee can only  
15 pray in his cell); Exhibit 3 at ¶ 22 (stating that detainees have "tried to meet as a  
16 group informally for Bible study" but an "officer broke us up and told us it was not  
17 allowed"); Exhibit 8 at ¶ 16 (detainees tried to gather to pray and sing hymns, but  
18 were told by officer that they could not gather as a group).

19 Further, detainees of faith have no ability to consult with clergy or obtain  
20 religious counseling. *See, e.g.*, Doc. 1-2 at ¶ 9 (Presbyterian Plaintiff not able to see  
21 clergy); Doc. 1-7 at ¶ 13 (detainee unable to see a priest since being detained at  
22 Victorville); Exhibit 7 at ¶ 16 (in past, Catholic detainee sought out advice from  
23 priest, but has no access to pastor or priest for religious counseling at Victorville).

24 Defendants also have restricted detainees' access to various religious items,  
25 including holy books and other religious texts, religious headwear, and religious  
26 jewelry. For example, Defendants seized Plaintiff Granados Aquino's Bible at the  
27 border and denied his request for its return. Doc. 1-6 at ¶ 25. Another detainee—a  
28 Seventh Day Adventist for whom reading the Bible in Spanish is an "important

1 part” of his religious practice—also had his Spanish-language Bible confiscated by  
2 Defendants, who have refused to return it. Exhibit 3 at ¶ 23. He only happens to  
3 have access to a Spanish Bible now because another detainee (who had the sole  
4 copy of the Spanish Bible for the entire unit) gave it to him when transferring to a  
5 new facility. *Id.* The detainee reports that, currently, only three Bibles are available  
6 on the unit for 15 people who need them. *Id.*; see Doc. 1-15 at ¶15 (detainee made  
7 “multiple requests for a Bible but officers in [his] housing unit said there are no  
8 bibles here”). Similarly, Muslim detainees have no access to the Quran or other  
9 Islamic texts. Doc. 1-18 at ¶ 2.

10 One detainee similarly reported that his rosary was confiscated at the border,  
11 and he has no idea where it is. Doc. 1-20 at ¶ 10. An ICE officer told him it was in  
12 Florence; another officer said his property had been lost.<sup>37</sup> *Id.* Sikh detainees’  
13 turbans and karas (religious bracelets) have been confiscated as well. Defendants  
14 have not returned them. *See, e.g.*, Doc. 1-4 at ¶ 9 (Plaintiff Atinder Paul Singh  
15 “asked repeatedly if I could get my turban back, or wear a head covering” but “was  
16 told it is not allowed); Doc. 1-5 at ¶ 6 (“Since I came to Victorville, I have asked for  
17 a turban and my kara but was told they are in my personal property.”); Doc. 1-12 at  
18 ¶¶ 5, 8 (Sikh turban confiscated, never returned).

19 The prison has purported to make turbans available to purchase via the  
20 commissary. *See* Doc. 1-4 at ¶ 10. However, in practice, many detainees continue to  
21 suffer serious delays in obtaining a turban, if they receive one all.<sup>38</sup> The commissary  
22

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23 <sup>37</sup> *Cf.* Peter C. Baker, *A Janitor Preserves the Seized Belongings of Migrants*, New  
24 Yorker (Mar. 12, 2017), available at [https://www.newyorker.com/culture/photo-](https://www.newyorker.com/culture/photo-booth/a-janitors-collection-of-things-confiscated-from-migrants-in-the-desert)  
25 booth/a-janitors-collection-of-things-confiscated-from-migrants-in-the-desert  
(detailing various items seized by CBP, including rosaries and pocket Bibles).

26 <sup>38</sup> According to Plaintiff Atinder Paul Singh, an ICE agent told detainees that they  
27 could obtain a “small cover like a patka,” a type of turban, if they paid \$10. Doc 1-4  
28 at ¶ 10. But the patka was never received, even though Singh’s prison account had  
(footnote continued)

1 is only open on Mondays, and even then, commissary hours are often canceled  
 2 without notice. Decl. of Munmeeth Kaur Soni attached hereto as Exhibit 9 at ¶ 10.  
 3 As a result, newly arriving detainees who need turbans are forced to go a week or  
 4 more without commissary access. *Id.* Moreover, many detainees cannot afford to  
 5 purchase turbans. *See id.* at ¶ 11; Doc 1-4 at ¶ 10.

### 6 **III. ARGUMENT**

7 Plaintiffs are entitled to a preliminary injunction prohibiting the  
 8 unconstitutional and punitive policies and practices in effect at Victorville because:  
 9 (1) Plaintiffs are likely to succeed on the merits; (2) Plaintiffs are likely to suffer  
 10 irreparable harm absent preliminary relief; (3) the balance of equities tips in  
 11 Plaintiffs' favor, and (4) an injunction is in the public interest. *Winter v. Nat'l Res.*  
 12 *Def. Council*, 555 U.S. 7, 20 (2008). Plaintiffs also are entitled to preliminary relief  
 13 under the "sliding scale" approach, the Ninth Circuit's "alternate formulation" of the  
 14 *Winter* standard. *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012). Under this  
 15 approach, as long as the *Winter* factors regarding irreparable harm and public  
 16 interest are met, courts will issue an injunction where movants raise: (1) "serious  
 17 questions going to the merits," and (2) the balance of equities "tips sharply towards  
 18 the [movants]." *Id.* (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d  
 19 1127, 1135 (9th Cir. 2011)).<sup>39</sup>

20 \_\_\_\_\_  
 21 enough money, thanks to his family in the United States. *Id.*

22 <sup>39</sup> Plaintiffs seek a prohibitory injunction to "prevent future constitutional  
 23 violations" of the class's and subclass's constitutional rights. *Hernandez v. Sessions*,  
 24 872 F.3d 976, 998 (9th Cir. 2017) (an injunction that "prevents future constitutional  
 25 violations [is a] a classic form of prohibitory injunction"). Insofar as the relief  
 26 sought could be characterized as requiring a mandatory injunction, however,  
 27 Plaintiffs also meet this heightened standard. In the instant case, the merits of the  
 28 case are not "doubtful," and the failure to issue an injunction will lead to "extreme  
 or very serious damage" that will not be "capable of compensation in damages." *Id.*  
 at 999 (citing *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d  
 (footnote continued)

1           **A.     PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**  
 2           **OF THEIR FIFTH AMENDMENT CLAIM REGARDING**  
 3           **EXCESSIVELY PUNITIVE CONDITIONS OF CONFINEMENT**

4           Immigration detainees are civil detainees, *Zadvydas v. Davis*, 533 U.S. 678,  
 5 690 (2001), and “the government’s discretion to incarcerate [them] is always  
 6 constrained by the requirements of due process.” *Hernandez v. Sessions*, 872 F.3d  
 7 976, 981, 1000-01 (9th Cir. 2017). The due process clause of the Fifth Amendment  
 8 prohibits Defendants from confining ICE detainees in conditions that constitute  
 9 punishment. *Jones v. Blanas*, 393 F.3d 918, 932, 934 (9th Cir. 2004) (“With respect  
 10 to an individual confined awaiting adjudication under civil process, a presumption  
 11 of punitive conditions arises where the individual is detained under conditions  
 12 identical to, similar to, or more restrictive than those under which pretrial criminal  
 13 detainees are held”); *see also Bell v. Wolfish*, 441 U.S. 520, 536 (1979) (for pretrial  
 14 criminal detainees, the conditions and restrictions of detention cannot “amount to  
 15 punishment”).<sup>40</sup> Here, by design and in practice, the conditions of confinement for  
 16 ICE detainees at FCI Victorville plainly amount to punishment.

17           Because the conditions of confinement of immigration detainees at Victorville  
 18 are presumptively unconstitutional, and because it is unlikely that Defendants will  
 19 be able to rebut this presumption, Plaintiffs are likely to succeed on the merits of  
 20 their claim.

21 \_\_\_\_\_  
 22 873, 879 (9th Cir. 2009)). As the Ninth Circuit recently held in a lawsuit challenging  
 23 immigration detention practices, “unlawful detention certainly constitutes ‘extreme  
 24 or very serious’ damage, and that damage is not compensable in damages.”  
 25 *Hernandez, supra*, 872 F.3d at 999. Moreover, as in *Hernandez*, the merits of  
 26 Plaintiffs’ case “follow[] directly” from established precedent. *Id.*

27 <sup>40</sup> The Fifth Amendment due process clause applies here, but decisions construing  
 28 the Fourteenth Amendment are instructive because the due process clauses of the  
 Fifth and Fourteenth Amendments “are coextensive.” *United States v. Navarro-*  
*Vargas*, 408 F.3d 1184, 1189 (9th Cir. 2005). Accordingly, for purposes of this  
 motion, Plaintiffs treat as interchangeable cases interpreting them.

1                   **1. Incarcerating ICE Detainees at FCI Victorville Is Inherently**  
 2                   **Punitive**

3                   Incarcerating ICE detainees at a medium-security federal prison is inherently  
 4 punitive. Courts have recognized that the conditions of confinement in prisons are  
 5 “designed to punish” criminals. *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982).  
 6 At FCI Victorville in particular, the physical plant layout and correctional practices  
 7 are designed to confine medium-security criminal prisoners in a manner  
 8 “appropriate” to the heightened security threat they pose.<sup>41</sup> Consequently, BOP  
 9 confines individuals at FCI Victorville within “strengthened perimeters (often  
 10 double fences with electronic detention systems),” locks them in “cell-type  
 11 housing,” and subjects them to heightened “internal controls.”<sup>42</sup> By incarcerating  
 12 ICE detainees at FCI Victorville, Defendants subject them to a regime of  
 13 punishment and control wholly inappropriate for civil detainees.

14                   Exposing civil immigration detainees to punitive conditions of confinement is  
 15 consistent with Defendants’ broader policy of punishing immigrants who enter the  
 16 country in an effort to deter future migrants. Indeed, Defendants have conceded that  
 17 they began sending immigrants to Victorville, in part, due to a spike in the demand  
 18 for detention space resulting from their so-called “Zero Tolerance Policy” toward  
 19 unauthorized border crossings.<sup>43</sup> In a recent filing before this court, the Department  
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21 <sup>41</sup> Federal Bureau of Prisons, *About Our Facilities*, available at  
 22 [https://www.bop.gov/about/facilities/federal\\_prisons.jsp](https://www.bop.gov/about/facilities/federal_prisons.jsp) (BOP prisons “are operated  
 23 at five different security levels in order to confine offenders in an appropriate  
 24 manner.”).

24 <sup>42</sup> *Id.*

25 <sup>43</sup> *See, e.g.,* Kate Morrissey, *ICE is sending 1,000 immigrant detainees to Victorville*  
 26 *prison*, San Diego Tribune (Jun. 7, 2018) available at  
 27 [http://www.sandiegouniontribune.com/news/immigration/sd-me-victorville-](http://www.sandiegouniontribune.com/news/immigration/sd-me-victorville-immigrants-20180607-story.html)  
 28 [immigrants-20180607-story.html](http://www.sandiegouniontribune.com/news/immigration/sd-me-victorville-immigrants-20180607-story.html) (ICE spokesperson said “the agency needed the  
 extra bed space because of . . . the Department of Justice’s recently implemented  
 (footnote continued)

1 of Homeland Security argued that detaining immigrants is justifiable because it  
 2 “deters others from unlawfully coming to the United States.” *See* Defs.’  
 3 Memorandum Of Points And Authorities In Support Of Ex Parte Application for  
 4 Relief from the *Flores* Settlement Agreement, *Flores v. Sessions*, Case No. 2:85-cv-  
 5 04544-DMG-AGR, Doc. 425-1 at 13, ln. 26 (C.D. Cal. Jun. 21, 2018) (internal  
 6 quotations and citation omitted). In essence, Defendants have elected to lock  
 7 Plaintiffs in a medium-security federal prison in order to send a message to foreign  
 8 nationals that they will face a similar fate if they seek asylum or cross the border  
 9 without authorization.

10 Courts have long held that general deterrence is an impermissible justification  
 11 for any form of civil detention. *See, e.g., Kansas v. Crane*, 534 U.S. 407, 412 (2002)  
 12 (quoting *Hendricks*, 521 U.S. at 373) (explaining that civil detention cannot be a  
 13 “‘mechanism for retribution or general deterrence’ – functions properly those of  
 14 criminal law”); *accord Kansas v. Hendricks*, 521 U.S. 346, 373 (1997) (Kennedy, J.,  
 15 concurring) (“retribution and general deterrence are reserved for the criminal system  
 16 alone”). A general-deterrence scheme is particularly objectionable in the  
 17 immigration context because “neither those being detained nor those being deterred  
 18 are certain wrongdoers, but rather individuals who may have legitimate claims to  
 19 asylum in this country.” *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 189 (D.D.C. 2015).

20 **2. The Conditions of Confinement at FCI Victorville Are**  
 21 **Unconstitutional Because They Are Excessive in Relation to**  
 22 **the Government Objective and Because ICE Detainees Are**  
 23 **Subjected to Similar, or Worse, Conditions Than Convicted**  
 24 **Prisoners**

25 As civil detainees, Plaintiffs and the class they seek to represent are entitled to  
 26 greater protections than post-conviction criminal detainees. *Jones*, 393 F.3d 918,  
 27 931-32 (9th Cir. 2004) (“an individual detained awaiting civil commitment  
 28 zero-tolerance policy on illegal crossings”).

1 proceedings is entitled to protections at least as great as those afforded to a civilly  
2 committed individual and at least as great as those afforded to an individual accused  
3 but not convicted of a crime”); *see also Castro v. Cty. of Los Angeles*, 833 F.3d  
4 1060, 1069-70 (9th Cir. 2016) (recognizing distinction between the Eighth  
5 Amendment protections afforded persons convicted of criminal offenses, and the  
6 due process protections afforded to pretrial detainees). Civil detainees are  
7 constitutionally entitled to “more considerate treatment and conditions of  
8 confinement” than criminal prisoners. *Sharp v. Weston*, 233 F.3d 1166, 1172 (9th  
9 Cir. 2000).

10 Conditions for civil detainees amount to punishment: “(1) where the  
11 challenged restrictions are expressly intended to punish, or (2) where the challenged  
12 restrictions serve an alternative, non-punitive purpose but are nonetheless ‘excessive  
13 in relation to the alternative purpose’ . . . .” *Jones, supra*, 393 F.3d at 932 (internal  
14 citations omitted). The court makes an objective assessment whether there is a  
15 reasonable relationship between the government’s conduct and a legitimate purpose.  
16 *Unknown Parties v. Johnson*, 2016 WL 8188563, at \*5 (D. Ariz. Nov. 18, 2016),  
17 *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017).

18 Moreover, if civil detainees are confined under conditions that are “identical  
19 to, similar to, or more restrictive than” those of criminal prisoners, a presumption  
20 arises that the conditions are punitive and thus unconstitutional. *King v. Cty. of Los*  
21 *Angeles*, 885 F.3d 548, 557 (9th Cir. 2018). A defendant can rebut the presumption  
22 of unconstitutionality by showing “legitimate, non-punitive interests justifying the  
23 conditions of [the detainee’s] confinement,” and that the restrictions imposed are not  
24 “excessive in relation to these interests.” *Id.* at 558 (quoting *Jones*, 393 F.3d at 933).  
25 However, “[e]ven if legitimate, non-punitive interests are identified, conditions of  
26 confinement may still be ‘excessive’ if they are ‘employed to achieve objectives that  
27 could be accomplished in so many alternative and less harsh methods.’” *Id.* (internal  
28 citations and quotation marks omitted).



1           The highly restrictive conditions of confinement at FCI Victorville are plainly  
2 excessive in relation to the government’s interest. Here, the governmental objective  
3 is to detain immigration detainees pending their removal proceedings.<sup>44</sup> Defendants  
4 themselves have developed standards that prohibit many of the conditions present at  
5 FCI Victorville, including with respect to physical and mental health screenings,  
6 access to health care, nutrition, and exercise of religion. *See supra* II.A- D.  
7 Defendants have no legitimate governmental interest in conditions that violate their  
8 own minimum standards for conditions of confinement.

9           Moreover, Defendants confine ICE detainees at FCI Victorville in conditions  
10 similar to—and, in many respects worse than—criminal prisoners. As set forth  
11 above, *supra* II.A, ICE detainees are subject to the same BOP policies as criminal  
12 prisoners, including policies covering health care and discipline. Detainees also are  
13 subject to many of the same correctional practices as criminal prisoners, such as  
14 extended lockdowns, unclothed visual searches, and shackling during transport.  
15 Detainees are, in fact, treated worse than criminal prisoners with respect to such  
16 crucial conditions of confinement as access to health care, nutrition, recreation and  
17 other programs, as well as the ability to exercise their religious beliefs. *See Jones*,  
18 393 F.3d at 934 (noting that “a presumption of punitiveness arises” because the  
19 plaintiff experienced, among other things, “significant limitations on, or total  
20 denials, of recreational activities, exercise, phone calls, visitation privileges, out-of-  
21 cell time, [and] access to religious services”).

22           Indeed, Defendants employ far more restrictive conditions and correctional  
23 practices toward ICE detainees at FCI Victorville than criminal prisoners at BOP  
24 minimum-security facilities. *See supra* II.A. Because the confinement conditions of  
25

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26 <sup>44</sup> “Congress has authorized immigration officials to detain some classes of aliens  
27 during the course of certain immigration proceedings.” *Jennings v. Rodriguez*, 138  
28 S. Ct. 830, 836 (2018).

1 ICE detainees at FCI Victorville are similar to, or worse than, the confinement  
2 conditions of criminal prisoners at FCI Victorville and at BOP's minimum-security  
3 facilities, they are presumptively punitive and unconstitutional.

4 Defendants are unlikely to rebut this presumption. To the extent Defendants  
5 claim that they shackle and strip search ICE detainees, restrict their access to fresh  
6 air and opportunities for socialization, deny them sufficient time to consume their  
7 food, provide them with inadequate mental health care and medical care, and  
8 severely limit their religious exercise in order to ensure their presence at their  
9 removal proceedings, the objective plainly "could be accomplished in so many  
10 alternative and less harsh methods." *King*, 885 F.3d at 558 (citations omitted).  
11 Defendants must pursue those alternative methods, even if doing so would create  
12 additional financial obligations for the government: "Lack of resources is not a  
13 defense to a claim for prospective relief because prison officials may be compelled  
14 to expand the pool of existing resources in order to remedy continuing . . .  
15 [constitutional] violations." *Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014)  
16 (en banc).

17 **B. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**  
18 **OF THEIR FIFTH AMENDMENT CLAIM REGARDING**  
**DENIAL OF ADEQUATE HEALTH CARE**

19 "There is no question that [ICE] detainees are entitled to 'adequate medical  
20 care.'" *Doe v. Kelly*, 878 F.3d 710, 722 (9th Cir. 2017) (citations omitted). The  
21 constitutional standard governing civil detainees' entitlement to adequate health care  
22 "differs significantly from the standard for convicted prisoners, who may be subject  
23 to punishment that does not violate the Eighth Amendment's ban on cruel and  
24 unusual punishment." *Pierce v. County of Orange*, 526 F.3d 1190 (9th Cir. 2008),  
25 opinion amended and superseded on denial of reh'g, 519 F.3d 985 (9th Cir. 2008).  
26 While a convicted prisoner must show subjective deliberate indifference to establish  
27 a violation of the Eighth Amendment, the analysis differs for pretrial detainees  
28 seeking to establish that a denial of medical care violates the Fourteenth

1 Amendment.

2 [T]he elements of a pretrial detainee’s medical care claim against an  
 3 individual defendant under the due process clause of the Fourteenth  
 4 Amendment are: (i) the defendant made an intentional decision with  
 5 respect to the conditions under which the plaintiff was confined; (ii)  
 6 those conditions put the plaintiff at substantial risk of suffering serious  
 7 harm; (iii) the defendant did not take reasonable available measures to  
 8 abate that risk, even though a reasonable official in the circumstances  
 9 would have appreciated the high degree of risk involved—making the  
 10 consequences of the defendant’s conduct obvious; and (iv) by not  
 11 taking such measures, the defendant caused the plaintiff’s injuries.

12 *Gordon v. Cty. Of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018).

13 Here, Plaintiffs are entitled to greater protection than both convicted prisoners  
 14 and criminal pretrial detainees. *See Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir.  
 15 2004) ; *see also King v. County of Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018)  
 16 (same). Accordingly, deprivations of medical care that violate the rights of  
 17 convicted prisoners or criminal pretrial detainees *a fortiori* violate the rights of civil  
 18 immigration detainees like Plaintiffs. *See Unknown Parties v. Johnson*, 2016 WL  
 19 8188563, at \*4 (D. Ariz. Nov. 18, 2016), *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710  
 20 (9th Cir. 2017) (“Conditions of confinement that violate the Eighth Amendment  
 21 necessarily violate the Fifth Amendment, but the reverse is not necessarily true. In  
 22 other words, Plaintiffs are protected by both the Fifth and Eighth Amendments.”).<sup>45</sup>

### 23 1. Minimal Requirements of a Prison Health Care System

24 In the prison context, the Ninth Circuit has set forth the elements of a  
 25 minimally adequate health care system:

26 The Eighth Amendment requires that prison officials provide a system  
 27 of ready access to adequate medical care. Prison officials show  
 28 deliberate indifference to serious medical needs if prisoners are unable  
 to make their medical problems known to the medical staff. Access to  
 the medical staff has no meaning if the medical staff is not competent  
 to deal with the prisoners’ problems. The medical staff must be

<sup>45</sup> Because of the relative dearth of cases involving the health care rights of civil detainees, this brief relies primarily on cases involving criminal pretrial detainees and convicted prisoners.

1 competent to examine prisoners and diagnose illnesses. It must be able  
2 to treat medical problems or to refer prisoners to others who can. Such  
3 referrals may be to other physicians within the prison, or to physicians  
4 or facilities outside the prison if there is reasonably speedy access to  
5 these other physicians or facilities. In keeping with these requirements,  
6 the prison must provide an adequate system for responding to  
7 emergencies. If outside facilities are too remote or too inaccessible to  
8 handle emergencies promptly and adequately, then the prison must  
9 provide adequate facilities and staff to handle emergencies within the  
10 prison. These requirements apply to physical, dental and mental health.

11 *Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982) (citation omitted), overruled  
12 on other grounds by *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293 (1995).; *see*  
13 *also Brown v. Plata*, 563 U.S. 493, 510-11 (2011) (“Just as a prisoner may starve if  
14 not fed, he or she may suffer or die if not provided adequate medical care. A prison  
15 that deprives prisoners of basic sustenance, including adequate care, is incompatible  
16 with the concept of human dignity and has no place in civilized society.”).

17 “That the Eighth Amendment protects against future harm to inmates is not a  
18 novel proposition.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). In an injunctive  
19 case, the plaintiff need not show actual physical injury; rather, the Constitution is  
20 violated by an unreasonable *risk* of harm. *Id.* at 33, 34 (noting that it “would be odd  
21 to deny an injunction to inmates who plainly proved an unsafe, life-threatening  
22 condition in their prison on the ground that nothing yet had happened to them”); *see*  
23 *also Brown*, 563 U.S. at 531-32 (“Even prisoners with no present physical or mental  
24 illness may become afflicted, and all prisoners in California are at risk so long as the  
25 State continues to provide inadequate care. . . . [P]risoners who are not sick or  
26 mentally ill . . . [are] in no sense [] remote bystanders in California’s medical care  
27 system. They are that system’s next potential victims.”); *Parsons v. Ryan*, 754 F.3d  
28 657, 677 (9th Cir. 2014) (“we have repeatedly recognized that prison officials are  
constitutionally prohibited from being deliberately indifferent to policies and  
practices that expose inmates to a substantial risk of serious harm”).

1                   **2. Defendants’ Failure to Provide Adequate Intake Health**  
2                   **Screening Violates the Constitution**

3                   Defendants’ failure to conduct adequate physical health screenings of  
4 detainees when they are admitted to FCI Victorville subjects detainees to an  
5 unnecessary risk of serious harm. It is well established that correctional institutions  
6 must conduct adequate health screenings in order to identify individuals’ health  
7 needs and risk factors. *Plata v. Schwarzenegger*, Case No. C01-1351-TEH, 2005  
8 WL 2932253, at \*12 (N.D. Cal. 2005) (“An adequate intake exam should take  
9 fifteen to twenty minutes for a young healthy prisoner and thirty to forty minutes for  
10 prisoners with more complicated health problems.”). By failing to do so, Defendants  
11 violate the Constitution. *See Gibson v. Cty. of Washoe, Nev.*, 290 F.3d 1175, 1188-  
12 90 (9th Cir. 2002), overruled on other grounds by *Castro v. Cty. of Los Angeles*, 833  
13 F.3d 1060 (9th Cir. 2016), cert. denied *sub nom. Los Angeles Cty., Cal. v. Castro*,  
14 137 S. Ct. 831 (2017); *Madrid v. Gomez*, 889 F. Supp. 1146, 1205 (N.D. Cal. 1995)  
15 (citing “grossly inadequate” intake health screenings).

16                   Defendants also violate the Constitution by failing to provide adequate mental  
17 health screenings and evaluations upon intake. *Coleman v. Wilson*, 912 F. Supp.  
18 1282, 1298 n.10 (E.D. Cal. 1995) (obligations include “a systematic program for  
19 screening and evaluating inmates to identify those in need of mental health care”  
20 and “a basic program to identify, treat, and supervise inmates at risk for suicide”).  
21 Defendants’ reliance on short, written surveys as the only form of mental health  
22 screening for ICE detainees at FCI Victorville is insufficient to meet their  
23 constitutional obligations. *See* Doc. 1-19 at ¶ 6 (describing questionnaire used in  
24 lieu of mental health screening). This approach is particularly reckless in light of the  
25 fact that many ICE detainees are known to be fleeing traumatic and violent  
26 circumstances in their home countries. *See, e.g.*, Exhibit 4 at ¶ 4 (detainee was  
27 locked up and tortured with electrical shocks in his home country); *see also* Doc. 1-  
28 6 at ¶¶ 11, 14 (“I got really depressed. [. . .] I began thinking about . . . the horrible

1 things that had happened to us that caused us to come to the U.S.”); Doc. 1-17 at ¶  
2 16 (“I spend much of my time being anxious and worrying about the safety of my  
3 family members). As a result, I have not slept at all in the past three nights.”).

4 Defendants’ failure to provide adequate medical and mental health screening  
5 reflects the shortage of health care professionals to meet the basic needs of detainees  
6 at FCI Victorville. Courts have held that prison facilities must have adequate  
7 staffing levels to deliver medical and mental health services to prisoners. *Plata v.*  
8 *Schwarzenegger*, 2005 WL 2932253, at \*5-12 (N.D. Cal. 2005); *Madrid v. Gomez*,  
9 889 F.Supp. 1146, 1257 (N.D. Cal. 1995); *see also French v. Owens*, 777 F.2d  
10 1250, 1254-55 (7th Cir. 1985). Prison systems also must ensure that medical care is  
11 performed by qualified personnel. *Plata*, 2005 WL 2932253, at \*5; *see also Casey*  
12 *v. Lewis*, 834 F.Supp. 1477, 1545 (D. Ariz. 1993).

13 Defendants’ failure to provide adequate health screening to ICE detainees at  
14 FCI Victorville also violates BOP and ICE health care policies. *See Program*  
15 *Statement 6031.04*, Federal Bureau of Prisons, 1, 23 (June 3, 2014),  
16 [https://www.bop.gov/policy/progstat/6031\\_004.pdf](https://www.bop.gov/policy/progstat/6031_004.pdf) (“An initial screening physical  
17 examination to determine medical needs will be done within 14 days of admission  
18 on the appropriate physical examination form”); *Program Statement P6340.04*,  
19 *Federal Bureau of Prisons* (Jan. 15, 2005),  
20 [https://www.bop.gov/policy/progstat/6340\\_004.pdf](https://www.bop.gov/policy/progstat/6340_004.pdf); *see also ICE Performance-*  
21 *Based National Detention Standards 2011 (PBNDS 2011) §§ 4.3 II(14)* (“Each  
22 detainee shall receive a comprehensive medical, dental and mental health intake  
23 screening as soon as possible, but no later than 12 hours after arrival at each  
24 detention facility”); *II(15)* (“Each detainee shall receive a comprehensive health  
25 assessment, including a physical examination and mental health screening, by a  
26 qualified, licensed health care professional no later than 14 days after entering into  
27 ICE custody or arrival at facility”); *see also id.* at §§ 4.3 V(A)(1) and (J) (requiring  
28 initial screening to include screening for communicable diseases).

1                   **3. Defendants' Failure to Provide Access to Emergency and**  
2                   **Routine Health Care Violates the Constitution**

3           Defendants' failure to provide a functional system to respond to the routine  
4 and emergent health care needs of ICE detainees in their custody likewise violates  
5 their due process rights. *See Hoptowit*, 682 F.2d at 1253; *Madrid*, 889 F. Supp. at  
6 1257; *cf. Estate of Prasad ex rel. Prasad v. County of Sutter*, 958 F. Supp. 2d 1101,  
7 1114 (E.D. Cal. 2013) (failure to maintain around-the-clock medical personnel in  
8 jail constitutes deliberate indifference). As set forth above, ICE detainees at FCI  
9 Victorville report that Defendants do not respond to their requests for urgent  
10 medical attention, and even instruct them not to press the emergency call buttons in  
11 their cells unless they are "dying." Doc. 1-11 at ¶¶ 7-8.

12           Nor do defendants provide a reliable system for detainees to access routine  
13 health care. Detention facilities must "provide a system of ready access to adequate  
14 medical care," *Hoptowit*, 682 F.2d at 1253. Such a system must obviously include a  
15 means for detainees "to make their medical problems known to the medical staff."  
16 *Id.* At FCI Victorville, however, Plaintiffs report being unable to access medical  
17 attention, even when they are in significant pain and distress.

18           These failures are compounded by Defendants' denial of consistent language  
19 interpretation services during medical encounters for detainees who do not speak  
20 English. *See Anderson v. County of Kern*, 45 F.3d 1310, 1316-17 (9th Cir.), opinion  
21 amended on denial of reh'g, 75 F.3d 448 (9th Cir. 1995) (affirming injunction  
22 requiring provision of non-detainee translators for medical encounters). Defendants'  
23 inappropriate reliance on other detainees to serve as translators, including for  
24 sensitive medical encounters, violates the Constitution as well as state and federal  
25 health privacy laws and ICE's own detention standards. *See Anderson*, 45 F.3d at  
26 1317 ("The testimony was undisputed that inmate translation was inappropriate and  
27 potentially inaccurate"); *see also* PBNDS 2011 § 4.3 III (25) ("Medical and mental  
28 health interviews, screenings, appraisals, examinations, procedures and

1 administration of medication shall be conducted in settings that respect detainees’  
 2 privacy”); *id.* § V (E) (“Where appropriate staff interpretation is not available,  
 3 facilities will make use of professional interpretation services. Detainees shall not be  
 4 used for interpretation services during any medical or mental health service.”).

5 **4. Defendants’ Failure to Provide Adequate Mental Health**  
 6 **Care Violates the Constitution**

7 In a detention setting, “the requirements for mental health care are the same  
 8 as those for physical health care needs.” *Doty v. Cty. of Lassen*, 37 F.3d 540, 546  
 9 (9th Cir. 1994). The Constitution requires Defendants to provide “a treatment  
 10 program that involves more than segregation and close supervision of mentally ill  
 11 inmates” and “employ[] ... a sufficient number of trained mental health  
 12 professionals.” *Coleman*, 912 F. Supp. at 1298 n.10; *see also Balla v. Idaho State*  
 13 *Bd. of Corr.*, 595 F. Supp. 1558, 1577 (D. Idaho 1984) (adequate “treatment requires  
 14 the participation of trained mental health professionals, who must be employed in  
 15 sufficient numbers to identify and treat in an individualized manner those treatable  
 16 inmates suffering from serious mental disorders”) (citation omitted). Defendants’  
 17 failure to provide meaningful assessment or treatment of Plaintiffs’ mental health  
 18 needs violates their constitutional rights.

19 The failure to provide adequate mental health care also violates ICE and BOP  
 20 standards. *See* PBNDS 2011 § 4.3 N(3) (requiring referral when detainee is  
 21 exhibiting symptoms of serious mental health issues); *Program Statement 5310.16*,  
 22 Federal Bureau of Prisons, 1, 2 (May 1, 2014),  
 23 [https://www.bop.gov/policy/progstat/5310\\_16.pdf](https://www.bop.gov/policy/progstat/5310_16.pdf) (BOP should “ensure that inmates  
 24 with mental illness are identified and receive treatment”).

25 **5. Defendants’ Failure to Provide Adequate Medication**  
 26 **Violates the Constitution**

27 Defendants’ failure to provide necessary medications to ICE detainees at FCI  
 28 Victorville also violates the Constitution. *See Arnett v. Webster*, 658 F.3d 742, 752



1 (7th Cir. 2011) (failure to provide prescribed medication); *Steele v. Shah*, 87 F.3d  
2 1266, 1269-70 (11th Cir. 1996) (abrupt and unsupported discontinuation of  
3 medications could support finding of Constitutional violation). In addition,  
4 medication regimes must be supervised by qualified health care staff. *See Gates v.*  
5 *Cook*, 376 F.3d 323, 342-43 (5th Cir. 2004) (monitoring and assessment of  
6 psychotropic medication levels required); *Wellman v. Faulkner*, 715 F.2d 269, 272-  
7 73 (7th Cir. 1983) (psychiatrist must supervise psychotropic medication); *Coleman*,  
8 912 F. Supp. at 1309-10 (finding constitutional violation when “defendants’  
9 supervision of the use of medication is completely inadequate; prescriptions are not  
10 timely refilled, there is no adequate system to prevent hoarding of medication, there  
11 is no adequate system to ensure continuity of medication, inmates on psychotropic  
12 medication are not adequately monitored, and it appears that some very useful  
13 medications are not available because there is not enough staff to do necessary post-  
14 medication monitoring”). By failing to provide access to necessary medications to  
15 the ICE detainees in their custody, Defendants violate the Constitution.

16 **6. Custody Staff Violate the Constitution by Using Threats and**  
17 **Retaliation to Improperly Interfere with Health Care**

18 Custody staff violate the Constitution when they “intentionally deny[] or  
19 delay[] access to medical care or intentionally interfer[e] with the treatment once  
20 prescribed.” *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *see also Plata v.*  
21 *Schwarzenegger*, *supra*, 2005 WL 2932253, at \*15 (“custody staff present a  
22 determined and persistent impediment” and have “a common lack of respect” for  
23 medical staff); *Madrid*, 889 F. Supp. at 1257-58 (prison officials may not prevent  
24 treatment that is medically necessary in the judgment of the treating doctor); *Casey*,  
25 834 F. Supp. at 1545 (same); *see also Marcotte v. Monroe Corr. Complex*, 394 F.  
26 Supp. 2d 1289, 1296 (W.D. Wash. 2005) (denial of health care and threat of  
27 retaliation if further requests were made raised a factual dispute as to intent to deny  
28 summary judgment on deliberate indifference claim). By retaliating against

1 Plaintiffs for requesting medical care and demanding that they do not request  
2 medical assistance, custody officers at FCI Victorville have obstructed Plaintiffs'  
3 access to such care, in violation of the Constitution.

4 **C. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**  
5 **OF THEIR RFRA CLAIM**

6 In institutionalized settings like FCI Victorville, “the government exerts a  
7 degree of control unparalleled in civilian society and severely disabling to private  
8 religious exercise.” *See Cutter v. Wilkinson*, 544 U.S. 709, 720-21 (2005).  
9 Accordingly, Congress has provided “expansive protection” for incarcerated  
10 individuals to practice their religious beliefs through the Religious Freedom  
11 Restoration Act, 42 U.S.C. § 2000bb et seq., and the Religious Land Use and  
12 Institutionalized Persons Act, 42 U.S.C. §§ 2000cc et seq. *See Holt v. Hobbs*, 135 S.  
13 Ct. 853, 859-60 (2015).<sup>46</sup>

14 Under RFRA, the government may substantially burden a person’s sincere  
15 exercise of religious beliefs *only if* the government can demonstrate that the  
16 challenged conduct is the least restrictive means of furthering a compelling  
17 governmental interest. 42 U.S.C. § 2000bb-1(b). RFRA’s reach is wide: It subjects  
18 to strict scrutiny “all Federal law, and the implementation of that law, whether  
19 statutory or otherwise,” and it protects “any exercise of religion, whether or not  
20 compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7).

21 At FCI Victorville, civil immigrant detainees of faith are unable to attend  
22 religious services or engage in other congregate worship and are limited in their

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23  
24 <sup>46</sup> With respect to prisoners’ religious exercise, RFRA and RLUIPA apply identical  
25 legal standards. *See Holt*, 135 S. Ct. at 860; *Garner v. Kennedy*, 713 F.3d 237, 242  
26 (5th Cir. 2013); *Fowler v. Crawford*, 534 F.3d 931, 937 (8th Cir. 2008); *DeHart v.*  
27 *Horn*, 390 F.3d 262, 274-75 (3d Cir. 2004). Accordingly, in this motion, Plaintiffs  
28 treat as interchangeable cases applying either of the statutes.

1 ability to participate in group prayer and religious study. They have no access to  
 2 religious counseling and consultation with clergy or a spiritual adviser. And they are  
 3 restricted in obtaining and possessing religious headwear, jewelry, texts, and other  
 4 religiously significant items. FCI Victorville officials have even admonished  
 5 detainees for worshipping alone *inside their own cells*. As one detainee, a Seventh  
 6 Day Adventist, explained: “We are also not allowed to sing prayers or hymn songs.  
 7 This is an important part of my religion. But we are not allowed. Last night, I heard  
 8 the guards stop another detainee from singing the songs of his faith. He [the officer]  
 9 hit his door as he shouted for him to be quiet.” Exhibit 3 at ¶ 24. Subjecting  
 10 Plaintiffs and other detainees to FCI Victorville’s restrictions, which prevent them  
 11 from exercising their religious beliefs, violates RFRA.<sup>47</sup>

12 **1. FCI Victorville’s Limitations on Religious Expression and**  
 13 **Practices Substantially Burden Plaintiffs’ and Other**  
 14 **Detainees’ Religious Exercise**

14 “[G]overnment action places a substantial burden on an individual’s right to  
 15 free exercise of religion when it tends to coerce the individual to forego her  
 16

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17 <sup>47</sup> Defendants’ conduct also violates the Free Exercise Clause of the First  
 18 Amendment. *See* Doc. 1 at ¶¶ 131-33. Because RFRA provides “greater protection  
 19 for religious exercise than is available under the First Amendment,” *Holt*, 135 S. Ct.  
 20 at 859-60, Plaintiffs need only establish a likelihood of success on their RFRA  
 21 claim. *See Harbor Missionary Church Corp. v. City of San Buenaventura*, 642 F.  
 22 App’x 726, 728 (9th Cir. 2016) (applying same reasoning to claim brought under  
 23 RLUIPA). However, Plaintiffs also are likely to succeed under the First Amendment  
 24 because: (1) There is no “valid, rational connection” between subjecting detainees to  
 25 FCI Victorville’s religious restrictions and “a legitimate government interest”; (2)  
 26 few, if any, “alternative means” are available to detainees to exercise their religious  
 27 beliefs; (3) accommodating detainees’ religious exercise would not “have a  
 28 significant impact on guards and other inmates”; and (4) there are several “ready  
 alternatives.” *See Pierce v. County of Orange*, 526 F.3d 1190, 1209 (9th Cir. 2008)  
 (upholding injunction that prohibited jail from denying access to religious “group  
 services, chapel visits, or meetings with religious advisers” based only on prisoner’s  
 security classification) (internal quotation marks omitted).

1 sincerely held religious beliefs or to engage in conduct that violates those beliefs.”  
2 *Jones v. Williams*, 791 F.3d 1023, 1033 (9th Cir. 2015) (forcing Muslim prisoner to  
3 cook pork substantially burdened his religious exercise). This coercion can take  
4 various forms. “[A]n outright ban on a particular religious exercise is a substantial  
5 burden on that religious exercise.” *Greene v. Solano Cty. Jail*, 513 F.3d 982, 988  
6 (9th Cir. 2008). So too are government actions that indirectly put “substantial  
7 pressure on an adherent to modify his behavior and to violate his beliefs.” *See*  
8 *Warsoldier v. Woodford*, 418 F.3d 989, 995 (9th Cir. 2005) (internal citations and  
9 quotation marks omitted) (punishing prisoner who refused to cut his hair for  
10 religious reasons substantially burdened his religious exercise). “[A] substantial  
11 burden may also be found where ‘alternatives require substantial delay, uncertainty,  
12 and expense.’” *Nance v. Miser*, 700 F. App’x 629, 632 (9th Cir. 2017) (internal  
13 quotation marks omitted).

14 Defendants deny FCI Victorville detainees adequate opportunities for  
15 religious worship services, congregate prayer, and religious counseling and  
16 consultation with clergy, as well as adequate access to religious garb, texts, and  
17 other items. These limitations on detainees’ ability to exercise their sincerely held  
18 religious beliefs are the very sort of restrictions recognized by courts as substantially  
19 burdening people of faith.

20 (i) ***Defendants’ ban on group worship and prayer***

21 Group worship is a core religious practice. *See Cutter*, 544 U.S. at 720  
22 (“[T]he ‘exercise of religion’ often involves . . . physical acts [such as] assembling  
23 with others for a worship service[.]”). Accordingly, the Ninth Circuit has held that  
24 barring prisoners from participation in group worship, prayer, and religious study  
25 substantially burdens the exercise of their religion. *Greene*, 513 F.3d at 988.  
26 Relatedly, “[t]he failure to provide otherwise available facilities” to facilitate the  
27 right to congregate prayer and worship “may . . . [be a] substantial a burden on that  
28 right.” *Small v. Lehman*, 98 F.3d 762, 767 (3d Cir. 1996) (internal quotation marks

1 omitted).<sup>48</sup>

2       Notwithstanding this clear precedent and their own policies providing for  
3 group worship and prayer, *see supra* II.A., Defendants have denied detainees the  
4 ability to exercise their faith in a congregate manner. They prohibit detainees from  
5 attending whatever religious worship services may be provided to the non-detainee  
6 population; they refuse to provide separate worship services for detainees; and they  
7 have restricted efforts to gather informally for group prayer and worship. *See supra*  
8 II.D. These restrictions substantially burden detainees’ religious exercise because  
9 they “meaningfully bar their ability to express adherence to their faith.” *See Small*,  
10 98 F.3d at 767-68.

11                               (ii)    ***The denial of access to clergy and religious counseling***

12       Detainees have no access to clergy or religious counseling. *See supra* II.D.  
13 Instead, it appears that Defendants have left the detainees to fend for themselves  
14 spiritually—at a time when many of them desperately need religious guidance and  
15 comfort. Inadequate access to religious counseling or spiritual advisers also  
16 substantially burdens detainees’ religious exercise. *See, e.g., Merrick v. Inmate*  
17 *Legal Servs.*, 650 F. App’x 333, 335–36 (9th Cir. 2016) (plaintiff adequately  
18 pleaded that “not allowing him to confess to clergy of his faith by way of  
19 unmonitored, unrecorded phone calls substantially burdened his religious exercise”);  
20 *Pierce*, 526 F.3d at 1210 (upholding injunction where evidence did not support  
21 defendant’s contention that it provides “opportunities for inmates to participate in  
22 religious services and counseling”).

23

24

25 <sup>48</sup> The plaintiff-prisoner in *Small* filed a RFRA claim against a state department of  
26 corrections. In *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997), the Supreme  
27 Court held that RFRA was unconstitutional insofar as it applied to state and local  
28 governments. The statute remains good law as applied to the federal government.  
*See, e.g., Holt*, 135 S. Ct. at 859-60.

1 (iii) *Defendants’ restrictions on personal religious items*

2 Defendants routinely confiscate detainees’ personal religious items, including  
3 religious texts, headwear, and jewelry. *See supra* II.D. They refuse to return these  
4 items to detainees or provide adequate replacements. *Id.* Depriving detainees of  
5 access to religious texts results in a substantial burden on their religious exercise.  
6 *See, e.g., Harris v. Escamilla*, No. 17-15230, 2018 WL 2355123, at \*1 (9th Cir.  
7 May 24, 2018) (officer’s desecration of prisoner’s Quran, so that prisoner was  
8 unable to read his required ten daily verses, was a substantial burden on prisoner’s  
9 religious exercise); *Washington v. Klem*, 497 F.3d 272, 282 (3d Cir. 2007)  
10 (limitation on number of books prisoner could retain substantially burdened his  
11 religious exercise because it “severely inhibit[ed]” his ability to read four new books  
12 per day, as required by his religious beliefs); *cf. Sutton v. Rasheed*, 323 F.3d 236,  
13 257 (3d Cir. 2003) (noting that a Christian “could [not] practice his faith,” if  
14 “deprived of a Bible”).

15 Defendants’ interference with detainees’ ability to wear religious headgear  
16 and jewelry also imposes a substantial burden on detainees’ religious exercise.<sup>49</sup>  
17 Defendants have purported to make turbans available for purchase via the prison  
18

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19 <sup>49</sup> *See, e.g., Ortiz v. Downey*, 561 F.3d 664, 669-70 (7th Cir. 2009) (prisoner  
20 adequately stated claim showing substantial burden under RLUIPA where he  
21 alleged denial of access to rosary and prayer booklet); *Singh v. McHugh*, 185 F.  
22 Supp. 3d 201, 205, 217 (D.D.C. 2016) (holding that Army’s denial of religious  
23 accommodation constituted a substantial burden where Sikh plaintiff sincerely  
24 believed that not wearing his turban would dishonor and offend God); *Singh v.*  
25 *Goord*, 520 F.Supp.2d 487, 503 (S.D.N.Y. 2007) (prohibiting Sikh prisoner from  
26 wearing his turban during outside transports and limiting wear of kara to 30 minutes  
27 per day substantially burdened his exercise of religious beliefs that required him to  
28 wear both at all times); *cf. Anli v. Stephens*, 69 F. Supp. 3d 633, 644 (E.D. Tex.  
2014), *aff’d*, 822 F.3d 776 (5th Cir. 2016) (prison rule barring religious headwear  
outside of cells and religious services substantially burdened prisoner’s sincere  
belief that he must wear a kufi at all times).

1 commissary. *Supra* II.D. However, detainees still face substantial delays and  
 2 hurdles in obtaining them, and suffer shame and spiritual harm in the meantime. *See*,  
 3 *e.g.*, Exhibit 9. Many detainees, moreover, cannot afford to purchase turbans from  
 4 the commissary, no matter the cost. *Supra* II.D.

5 **2. Subjecting Detainees to FCI Victorville’s Current Religious-**  
 6 **Exercise Restrictions Is Not the Least Restrictive Means of**  
 7 **Furthering a Compelling Governmental Interest.**

8 Because FCI Victorville’s restrictions on detainees’ religious practices  
 9 substantially burden their exercise of sincerely held religious beliefs, “the burden  
 10 shifts to [D]efendants to prove that subjecting [P]laintiffs to . . . [these] polic[ies] is  
 11 the least restrictive means of achieving a compelling interest.” *See Gartrell v.*  
 12 *Ashcroft*, 191 F. Supp. 2d 23, 38 (D.D.C. 2002). Defendants’ burden under RFRA is  
 13 heavy. *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 475 (5th Cir.  
 14 2014). Courts may not give “unquestioning deference” to government officials.  
 15 *Holt*, 135 S. Ct. at 864. In particular, “the least-restrictive-means standard is  
 16 exceptionally demanding, and it requires the government to sho[w] that it lacks  
 17 other means of achieving its desired goal without imposing a substantial burden on  
 18 the exercise of religion by the objecting part[y].” *Id.* (internal citation and quotation  
 19 marks omitted). Where a less restrictive means “is available for the Government to  
 20 achieve its goals, the Government *must* use it.” *Id.* (internal quotation marks  
 21 omitted) (emphasis added). Here, even if Defendants could identify a compelling  
 22 interest that is furthered by their limitations on detainees’ religious exercise, which  
 23 they cannot, they have several alternatives available to them that are much less  
 24 restrictive.

24 **(i) ICE, BOP, and Victorville All Have Written Religious-**  
 25 **Exercise Policies That Are Less Restrictive Than The**  
 26 **Limitations Currently Placed on Detainees**

27 Defendants’ own policies make clear that FCI Victorville’s current limitations  
 28 on detainees’ religious exercise are not the least restrictive means available to  
 Defendants. FCI Victorville, the BOP, and ICE all have policies that explicitly allow

1 prisoners to engage in the religious practices Defendants have obstructed here.  
2 Those policies are strong evidence that Defendants’ religious-practice restrictions  
3 violate RFRA.

4 The BOP’s Religious Beliefs and Practices Program Statement provides that:

- 5 • “Authorized congregate services will be made available for all inmates  
6 weekly with the exception of those detained in any Special Housing  
7 Units (SHUS).” Section 7(a).
- 8 • “Institutions shall have space designated for the conduct of religious  
9 activities” that “will be sufficient to accommodate the needs of all  
10 religious groups in the inmate population fairly and equitably.” Section  
11 11(c).
- 12 • “Inmate religious property includes but is not limited to rosaries and  
13 prayer beads, oil, prayer rugs, phylacteries, medicine pouches, and  
14 religious medallions.” Section 14(a).
- 15 • Jewish prisoners may wear yarmulkes “throughout the institution”;  
16 Muslims may wear Kufis; Native Americans may wear headbands,  
17 Rastafarians may wear crowns; and Sikhs may wear turbans. Section  
18 14(b)(1).
- 19 • Religious books, magazines, and periodicals are permitted in  
20 accordance with the general rules pertaining to personal property.  
21 (Section 14(c)).
- 22 • “If requested by an inmate, the chaplain shall facilitate arrangement for  
23 pastoral visits by a clergy person or representative of the inmate’s  
24 faith.” Section 17.<sup>50</sup>

25 Moreover, Victorville’s Inmate Handbook promises prisoners that “the

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26 <sup>50</sup> *Program Statement P5360.09*, Federal Bureau of Prisons, 1, 3-4, 9, 11-15, 16  
27 (Dec. 31, 2004), [https://www.bop.gov/policy/progstat/5360\\_009.pdf](https://www.bop.gov/policy/progstat/5360_009.pdf).



1 Religious Services Department would like to help you any way we can,” advising,  
2 “Please do not put your life on hold for the period of time that you are with us!”  
3 FCC Victorville Inmate Handbook (2015) 25,  
4 [https://www.bop.gov/locations/institutions/she/SHE\\_fdc\\_aohandbook.pdf](https://www.bop.gov/locations/institutions/she/SHE_fdc_aohandbook.pdf) (emphasis  
5 in original). The handbook announces that “[c]haplains’ [sic] are available to all  
6 residents at FCI Victorville,” and touts the availability of religious headwear,  
7 religious medallions and specialty items, religious literature, and pastoral care and  
8 counseling. *Id.* at 25-28. According to the handbook, the prison also “provides a  
9 variety of worship services, study groups, and prayer/meditation meetings each  
10 week,” as well as “special activities such as seminars, liturgical meals, fasting  
11 periods, holidays, and other events” throughout the year. *Id.* at 26. Purportedly,  
12 “[a]ll residents are welcome to attend any religious programs without regard to their  
13 religion of record.” *Id.* The welcoming picture painted by the prison’s Inmate  
14 Handbook stands in stark contrast to the reality of detainees’ day-to-day lives.

15 Victorville’s Inmate Handbook, as well as the BOP Religious Beliefs and  
16 Program Statement, illustrate that the current limitations on the Religious Freedom  
17 Subclass’s religious exercise are not anywhere near the least restrictive means by  
18 which Defendants could further any governmental interest they might possibly  
19 assert. *See, e.g., Ware v. Louisiana Dep’t of Corr.*, 866 F.3d 263, 269 (5th Cir.  
20 2017) (“[I]n the face of evidence of contrary policies, we may not defer to prison  
21 officials’ mere say-so that they could not accommodate [the plaintiff’s] request  
22 because these other policies indicate that a less restrictive means may be available.”)  
23 (internal quotation marks omitted), *cert. denied*, 138 S. Ct. 1181 (2018); *Davila v.*  
24 *Gladden*, 777 F.3d 1198, 1207 (11th Cir. 2015) (noting that a “prison’s own policy  
25 contemplat[ing] exemptions from . . . requirement [that prisoners order religious  
26 item from prison catalog] undercuts the Defendants’ argument that a categorical  
27 prohibition on non-catalog religious objects is the least restrictive means of  
28 achieving their objectives”). Indeed, the BOP and FCI Victorville policies,

1 themselves, *are* less restrictive means that Defendants could employ here. *See, e.g.,*  
2 *Gartrell*, 191 F. Supp. 2d at 40 (pointing out that “BOP’s own Designation Manual”  
3 already required “taking inmates’ religious beliefs into consideration” in making  
4 prison assignments, and ordering BOP to cease placing class members at Virginia  
5 prisons where they could not grow religiously mandated beards).

6 Even less restrictive than the BOP’s religion policies are ICE’s Detention  
7 Standards. *See* PBNDS 2011 § 5.5 at 375, [https://www.ice.gov/doclib/detention-](https://www.ice.gov/doclib/detention-standards/2011/5-5.pdf)  
8 [standards/2011/5-5.pdf](https://www.ice.gov/doclib/detention-standards/2011/5-5.pdf) (“Detainees shall have regular opportunities to participate in  
9 practices of their religious faiths, *limited only by a documented threat to the safety*  
10 *of persons involved in such activity itself or disruption of order in the facility.*”)  
11 (emphasis added). The ICE standards are—in several important ways—more  
12 solicitous of religious practice than the BOP and FCI Victorville policies, and the  
13 ICE standards reflect a special concern for cultural and religious competency that is  
14 simply missing from the BOP and FCI Victorville policies.

15 For instance, in recognition of the many different countries and cultures from  
16 which ICE detainees hail, the ICE detention standards affirmatively require officials  
17 to ensure that non-English speakers are able to benefit from religious programs.<sup>51</sup>  
18 Yet those standards have not been implemented at FCI Victorville.<sup>52</sup>  
19

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20  
21 <sup>51</sup> *See, e.g.,* PBNDS 2011, at 376 (“Language services *shall* be provided to detainees  
22 who have limited English proficiency to provide them *with meaningful access to*  
23 *religious activities.*”) (emphasis added). *See also id.* at 375-78.

24 <sup>52</sup> BOP policy is markedly less accommodating to the language needs of the detainee  
25 Subclass. Although “the warden may authorize the delivery of [religious] programs  
26 in other languages” if it is “appropriate to accommodate the overall needs of the  
27 population,” such accommodation is not required by BOP policy. Instead, the policy  
28 generally provides that “[s]ermons, original oratory teachings and admonitions *must*  
be delivered in English.” *Program Statement P5360.09*, Federal Bureau of Prisons,  
1, 3-4 (Dec. 31, 2004), [https://www.bop.gov/policy/progstat/5360\\_009.pdf](https://www.bop.gov/policy/progstat/5360_009.pdf)  
(emphasis added). Moreover, most detainees are not provided any information in  
(footnote continued)

1 With respect to religious headwear, although the BOP and ICE authorize the  
2 same type of head coverings to be worn throughout their facilities, ICE policy  
3 expressly mandates that “[r]eligious headwear and other religious property shall be  
4 handled with respect at all times, including during the in-take process.” PBNDS  
5 2011 § 5.5 at 375. BOP policy does not hold officials to this standard. Moreover,  
6 unlike BOP policy, ICE detention standards generally allow detainees to retain their  
7 personal religious headwear if it meets the facility’s standards; where “the  
8 detainee’s personal religious headwear does not conform to the standard, the facility  
9 *must ensure* that detainees are provided conforming religious headwear for free or at  
10 a de minimums [sic] cost.” *Id.* (emphasis added).

11 ICE detention standards also include the expectation that “the Chaplain or  
12 religious services coordinator will make documented efforts to recruit external  
13 clergy or religious service providers to provide services to adherents of faith  
14 traditions not directly represented by chaplaincy or religious services provider  
15 staff”—an affirmative obligation not imposed under BOP policy. *Id.*

16 These standards represent yet another, less restrictive alternative available to  
17 Defendants. *See Holt*, 135 S. Ct. at 866 (“While not necessarily controlling, the  
18 policies followed at other well-run institutions would be relevant to a determination  
19 of the need for a particular type of restriction.”) (quoting *Procurier v. Martinez*,  
20 416 U.S. 396, 414, n.14 (1974)); *Warsoldier*, 418 F.3d at 1000 (“[T]he failure of a  
21 defendant to explain why another institution with the same compelling interests was  
22 able to accommodate the same religious practices may constitute a failure to  
23 establish that the defendant was using the least restrictive means.”). At a minimum,

24 \_\_\_\_\_  
25 their native languages, including information about religious programming and  
26 religious accommodations. *See, e.g.*, Doc. 1-18 at ¶5 (detainee reporting that  
27 “[e]verything here is in English or sometimes Spanish”); Doc. 1-7 at ¶ 4 (French-  
28 speaking detainee has to rely on cellmate to help fill out forms and talk with staff).

1 the Court should order Defendants to apply ICE’s own detention standards to ICE  
2 detainees at FCI Victorville.

3 (ii) ***Ending placement of detainees at FCI Victorville is an***  
4 ***even less restrictive means available to Defendants***

5 Nothing requires Defendants to detain immigrants at FCI Victorville.  
6 Defendants have asserted publicly that detaining immigrants is necessary to ensure  
7 that they attend their immigration proceedings. But even assuming that were true,  
8 and that the policy actually furthers a compelling interest,<sup>53</sup> assigning detainees to  
9 ICE facilities bound by ICE Detention Standards—rather than assigning them to  
10 FCI Victorville—would achieve that interest all the same “without imposing a  
11 substantial burden” on detainees’ exercise of religion. *See Holt*, 135 S. Ct. at 864.  
12 Ending placement at Victorville, and directing detainees to other facilities, is even  
13 less restrictive of religious exercise than ordering Victorville to apply ICE Detention  
14 Standards, as Victorville officials already have demonstrated that they have no  
15 compunction about denying detainees the ability to engage in basic religious  
16 practices, even when doing so violates BOP (and their own) policies.

17 By ending placement at Victorville, Defendants can ensure that no detainee is  
18 ever again subjected to Victorville’s untenable restrictions on religious exercise. *See*  
19 *Gartrell*, 191 F. Supp. 2d at 39-40 (holding that BOP’s placement of federal  
20 prisoners at Virginia state prisons, where they could not grow religiously mandated  
21 beards, was not the least restrictive means of furthering a compelling governmental

22 \_\_\_\_\_  
23 <sup>53</sup> Plaintiffs do not concede that detaining asylum applicants generally or subjecting  
24 them to Victorville’s religious-exercise restrictions, more specifically, furthers a  
25 compelling governmental interest. To satisfy their burden under RFRA’s “rigorous”  
26 compelling-interest prong, Defendants must affirmatively demonstrate that the  
27 challenged conduct “actually furthers” their asserted justifications and that those  
28 justifications are permissible. *See Holt*, 135 S. Ct. at 864. As discussed above, for  
example, detaining immigrants to deter them from asserting their legitimate claims  
for asylum is not a permissible governmental interest. *Supra* III.A.1.

1 interest).

2

3 **D. DETAINEES WILL CONTINUE TO SUFFER IRREPARABLE**  
 4 **HARM, THE BALANCE OF HARDSHIPS TIPS SHARPLY IN**  
 5 **THEIR FAVOR, AND AN INJUNCTION IS IN THE PUBLIC**  
 6 **INTEREST**

7 The remaining equitable factors in the preliminary injunction analysis weigh  
 8 heavily in Plaintiffs' favor. First, detainees suffer irreparable harm each day as a  
 9 result of the degrading and dangerous conditions of confinement at Victorville. As  
 10 the Ninth Circuit recently held, "subpar medical and psychiatric care in ICE  
 11 detention facilities" constitute "irreparable harms imposed on anyone subject to  
 12 immigration detention." *Hernandez*, 872 F.3d at 994-95 (quoting *Melendres v.*  
 13 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)) (holding constitutional violations  
 14 sufficient to show irreparable injury, but describing harms "in more concrete  
 15 terms"). Moreover, "the deprivation of constitutional rights 'unquestionably  
 16 constitutes irreparable injury.'" *Melendres*, 695 F.3d at 1002 (citation omitted),<sup>54</sup>  
 17 because these violations "cannot be adequately remedied through damages," *Am.*  
 18 *Trucking Ass'ns, Inc. v. City of L.A.*, 559 F.3d 1046, 1059 (9th Cir. 2009) (internal  
 19 quotation and citation omitted).

20 Second, enjoining unconstitutional conditions of confinement at Victorville,  
 21 and violations of detainees' religious-exercise rights is squarely in the public  
 22 interest. Indeed, "it is always in the public interest to prevent the violation of a

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23 <sup>54</sup> Defendants' violation of detainees' RFRA rights also constitutes irreparable harm.  
 24 *See, e.g., Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) ("[A]lthough the  
 25 plaintiff's free exercise claim is statutory rather than constitutional, the denial of the  
 26 plaintiff's right to the free exercise of his religious beliefs is a harm that cannot be  
 27 adequately compensated monetarily. Courts have persuasively found that irreparable  
 28 harm accompanies a substantial burden on an individual's rights to the free exercise  
 of religion under RFRA.") (internal citations omitted).

1 party’s constitutional rights.” *Melendres*, 695 F.3d at 1002 (quoting *Sammartano v.*  
2 *First Jud. Dist. Ct.*, 303 F.3d 959, 974 (9th Cir. 2002)).

3 Finally, the balance of hardship tips heavily in Plaintiffs’ favor. Under this  
4 prong of the preliminary injunction analysis, courts “must balance the competing  
5 claims of injury and must consider the effect on each party of the granting or  
6 withholding of the requested relief.” *Winter*, 555 U.S. at 24 (internal quotation  
7 marks omitted). The Ninth Circuit has held that the interest in protecting individuals  
8 from physical harm outweighs monetary costs to government entities. *See Harris v.*  
9 *Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004) (“[F]aced with[ ] a  
10 conflict between financial concerns and preventable human suffering, [the court has]  
11 little difficulty concluding that the balance of hardships tips decidedly in plaintiffs’  
12 favor.”) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). Likewise,  
13 the Ninth Circuit has recognized that, where “plaintiffs have ‘raise[d] serious First  
14 Amendment questions” it “compels a finding that ... the balance of hardships tips  
15 sharply in [their] favor.” *Davies v. Los Angeles Cty. Bd. of Supervisors*, 177 F.  
16 Supp. 3d 1194, 1227 (C.D. Cal. 2016) (quoting *Sammartano v. First Judicial Dist.*  
17 *Court, in & for Cty. of Carson City*, 303 F.3d 959, 973 (9th Cir. 2002)).

18 Here, ICE detainees at FCI Victorville suffer serious risks from Defendants’  
19 inadequate health care practices and the excessively punitive conditions to which  
20 Defendants subject them. They also suffer the deprivation of one of our most  
21 cherished rights—the right to freely practice one’s faith. By contrast, the  
22 “government suffers no harm from an injunction that merely ends unconstitutional  
23 practices and/or ensures that constitutional standards are implemented.” *Doe v.*  
24 *Kelly*, 878 F.3d 710, 718 (9th Cir. 2017) (citation omitted) (upholding preliminary  
25 injunction requiring immigration authorities to provide constitutionally adequate  
26  
27  
28

1 conditions of confinement in Arizona temporary detention facilities).<sup>55</sup>

2 **IV. CONCLUSION**

3 For the foregoing reasons, Plaintiffs respectfully request that this Court issue  
4 the Proposed Order for Preliminary Injunctive, filed herewith.

5 DATED: September 5, 2018 Respectfully submitted,

6 By: /s/ Margot Mendelson

7 **PRISON LAW OFFICE**

8 Margot Mendelson

9 **Attorneys for Plaintiffs**

10 **ACLU FOUNDATION**

11 **CIVIL RIGHTS EDUCATION AND**  
12 **ENFORCEMENT CENTER**

13 **MEYERS, NAVE, RIBACK, SILVER &**  
14 **WILSON**

15  
16  
17  
18 <sup>55</sup> Plaintiffs seek a waiver of the security requirement for preliminary injunctions.  
19 Fed. R. Civ. P. 65(c). District courts have “discretion as to the amount of security  
20 required, *if any*.” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009)  
21 (internal quotations omitted) (emphasis in original). Security “is not required where  
22 plaintiffs are indigent or where considerations of public policy make waiver of  
23 a bond appropriate.” *Miller v. Carlson*, 768 F. Supp. 1331, 1340 (N.D. Cal. 1991).  
24 Plaintiffs are immigrants, challenging their conditions of confinement, detained  
25 without income far from their families and community resources, making them the  
26 prototypical class for whom requiring security is inappropriate. *See, e.g., Innovation*  
27 *Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1165 (D. Or. 2018) (concluding that “any  
28 security in this case would be unjust”); *Hernandez v. Cty. of Monterey*, 110 F. Supp.  
3d 929, 958-59 (N.D. Cal. 2015) (rejecting jail’s request for security in challenge to  
conditions of confinement because, *inter alia*, suit is on behalf of “poor persons”  
who derive no income while incarcerated, plaintiffs are likely to prevail on their  
constitutional challenges, and the suit is in the public interest).