

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. 2084CV01035

AMERICAN CIVIL LIBERTIES UNION OF )  
MASSACHUSETTS, INC., )  
Plaintiff, )  
v. )  
BRISTOL COUNTY SHERIFF'S OFFICE, )  
Defendant )

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Massachusetts Rules of Civil Procedure and Superior Court Rule 9A, Plaintiff American Civil Liberties Union of Massachusetts ("ACLUM") submits the following Statement of Material Facts in Support of its Motion for Summary Judgment against the Defendant Bristol County Sheriff's Office ("BCSO").

**A. The Immigration Detention Program at the Bristol County Sheriff's Office.**

1. Prior to May 20, 2021, the Bristol County Sheriff's Office (the "BCSO") had executed an Intergovernmental Services Agreement (the "IGSA") with U.S. Immigration and Customs Enforcement ("ICE"). Under the IGSA, ICE paid BCSO to house federal civil immigration detainees at the Bristol County House of Correction. Ex. 16 (Intergovernmental Services Agreement between BCSO and ICE) at 1.

**A. Admitted.**

2. In 2019, the Office of the State Auditor for the Commonwealth of Massachusetts found, among other things, that the BCSO had unlawfully retained, and failed to remit to the Commonwealth, more than \$300,000 in payments that it had received from ICE for the housing and transportation of civil immigration detainees under the IGSA. Ex. 17 (Audit of the Bristol County Sheriff's Office) at 8.

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public records. Without waiving the objection, denied.**

3. In 2020, in *Savino v. Souza*, C.A. No. 20-10617 (D. Mass), the U.S. District for the District of Massachusetts found that the BCSO had “likely display[ed] deliberate indifference to a substantial risk of serious harm” to immigration detainees by failing to take COVID-19 safety precautions. See Ex. 18 (*Savino v. Souza*, 459 F. Supp. 3d. 317, 331 (D. Mass. 2020)).

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public records. Without waiving the objection, is denied as a mischaracterization of the opinion.**

4. In 2020, the Civil Rights Division of the Office of the Massachusetts Attorney General (the “AGO”) found that, during a violent incident on May 1, 2020 (the “Incident”), BCSO used “excessive and disproportionate” force against immigration detainees, and “acted with deliberate indifference to a substantial risk of serious harm to the health of the [immigration] detainees” when deploying an “excessive amount” of chemical irritants such as pepper spray and pepper-ball projectiles. Ex. 1 (AGO Report) at 1. The AGO also found that two detainees were

transported to the hospital following the Incident, and a third was revived with emergency chest compressions but continued to be held on site. *See id* at 1–2.

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public documents. Without waiving the objection, the allegations of the AGO are denied in that the AGO based its findings on ignorance of proper correctional responses to riot conditions.**

5. In 2020, the Committee on Post Audit and Oversight of the Massachusetts Senate found that, on May 2, 2020, “the BCSO violated applicable state law and their own policies and procedures when they denied Senator Chang-Diaz entry to” the Bristol County House of Correction for an oversight visit. Ex. 5 (Senate Report) at 4.

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public documents. Without waiving the objection, denied as the committee found that the Senator presented no documents identifying her as a member of the legislature.**

6. From April 12 to April 16, 2021, the United States Immigration and Customs Enforcement Office of Professional Responsibility Office of Detention Oversight conducted an inspection of BCSO’s Facility (the Ice Inspection). Ex. 26 (ICE Inspection Report) at 4. The ICE inspection found BCSO to be out of compliance with 6 out of 20 standards reviewed. *Id.* at 12. One deficiency involved BCSO staff indicating in interviews that the Facility would not release audiovisual records of use of force if authorized to do so by ICE in accordance with ICE’s rules of accountability. *Id.* at 10.

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public documents. Without waiving the objection, asserts aside from minor issues, the BCSO passed the audit with good marks.**

7. In 2021, the Hon. Alejandro N. Mayorkas, Secretary of Homeland Security, found “ample evidence” that the BCSO’s immigration detention center’s “treatment of detained individuals and conditions of detention are unacceptable,” and directed ICE to terminate all agreements with BCSO, including the IGSA for immigration detention. Ex. 19 (Mayorkas Memo) at 2.

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public documents. Without waiving the objection, denied that Mayorkas found any evidence of wrongdoing.**

**B. The Incident and ACLUM’s Complaint.**

8. At the time of the Incident, the Facility housed approximately 25 civil immigration detainees pending either the resolution of their immigration proceedings or their deportation from the United States. *See* Ex. 3 (Transcription of Sherriff Hodgson’s June 11 Podcast) at pg. 5, lines 106-112; Ex. 1 (AGO Report) at 13.

**A. Admitted.**

9. The identities of many of these detainees are publicly available through a settlement agreement reached in *Savino v. Souza*, No. 20-cv-10617. Ex. 2 (Savino Settlement) at 3–4.

**A. Admitted that some were disclosed but most present on May 1, 2020 were not disclosed.**



10. Shortly after the Incident, BCSO began to make statements to the press absolving itself of any blame in connection with the altercation. On May 2, 2020 Sheriff Hodgson gave a press conference during which he made various detailed assertions about the Incident.<sup>1</sup> Sheriff Hodgson further stated that “we have it all on film.”<sup>2</sup> That same day, Sheriff Hodgson invited members of the press into the affected immigration detention unit, where he allowed them to inspect and photograph the Facility’s interior.<sup>3</sup>

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public documents. Without waiving that objection, admitted that the Sheriff held a press conference and allowed the press inside to view the damage caused by the detainees. Denied that he revealed any sensitive or tactical information.**

11. Sheriff Hodgson has continued to make numerous statements regarding the Incident in the press and on social media. For example, on May 4, 2020 Sheriff Hodgson again gave a detailed account of the Incident during a more than 30 minute interview with WBSM’s Chris McCarthy Show.<sup>4</sup> Most recently, on June 11, 2021 Sheriff Hodgson released a 22 minute podcast

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<sup>1</sup> New Bedford Guide, Sheriff Hodgson Conducting a Press Conference, May 2, 2020, *available at* [https://m.facebook.com/NewBedfordGuide/videos/662822427595859/?refsrc=deprecated&ref=watch\\_permalink.Sheriff&\\_rdr](https://m.facebook.com/NewBedfordGuide/videos/662822427595859/?refsrc=deprecated&ref=watch_permalink.Sheriff&_rdr).

<sup>2</sup> *Id.*

<sup>3</sup> Mary Serreze, “Photos: Ice Lockup at Bristol County Jail Trashed by Detainees,” May 3, 2020, *available at* <https://wbsm.com/photos-ice-lockup-at-bristol-county-jail-trashed-by-detainees/>.

<sup>4</sup> Chris McCarthy Show, Sheriff Assaulted on May Day by Criminal Aliens, May 4, 2020, *available at* <https://www.youtube.com/watch?v=4nJ6xZf8Tug>.

(the “June 11 Podcast”) where he again recounted in detail his version of what occurred during the Incident. *See* Ex. 3 (Transcription of Sherriff Hodgson’s June 11 Podcast). There, Sheriff Hodgson admitted that he had personally initiated the use of force during the Incident by forcibly removing a phone from a detainee’s hand while the detainee attempted to speak with his attorney. *Id.* at pg. 6, lines 124–28.

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public documents. Without waiving that objection, admitted that the Sheriff gave interviews but denied that he initiated use of force.**

12. During the June 11 Podcast, Sheriff Hodgson stated, among other things, that disclosure of the facts of the Incident was “long overdue.” Ex. 3 at pg. 1, lines 1–4. He further stated that, even though a federal investigation was reportedly pending, it was “in its final draft form,” and “enough time has passed that . . . we’re just gonna go ahead and tell you what happened.” *Id.* at pg. 1, lines 2–9.

**A. Admitted that the Sheriff spoke about the incident and expressed frustration that the federal investigation, though reportedly in draft form, was being withheld by current administration.**

**C. Investigations into the Incident.**

13. As noted in paragraph 4, above, the AGO investigated the Incident. Ex 1 (AGO Report) at 1. The AGO issued its report concerning the Incident on December 15, 2020. *See id.*

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public documents. Without waiving the**

**objection, the allegations of the AGO are denied in that the AGO based its findings on ignorance of proper correctional responses to riot conditions.**

14. Also on December 15, 2020 the AGO submitted a letter to this Court stating that the AGO had concluded its investigation of the Incident, that it supported disclosure of records pertaining to the Incident, and that such disclosure would not reveal confidential investigatory methods. Ex. 4 (AGO Letter) at 1. It included a copy of its report, entitled *Investigation Into the Events of May 1, 2020 at the C. Carlos Carreiro Immigration Detention Center, Unit B, Bristol County Sheriff's Office* (the AGO Report) with its letter. *See id.*

**A. Admitted that the AGO intervened in the case and reported that release on information would not reveal any confidential information relative to how the AGO investigated the matter.**

15. On May 8, 2020, the Massachusetts Senate Committee on Post Audit and Oversight began an investigation into the Incident. As noted in paragraph 5, above, that investigation concluded with a report issued on December 18, 2020. Ex. 5 (Senate Report) at 4.

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public documents. Without waiving that objection, the committee also began an investigation into the May 1, 2020 Incident and has either not concluded that investigation or refused to release its findings.**

16. No later than May 4, 2020, the Office of the Inspector General for the Department of Homeland Security (the "DHS OIG") opened an investigation into the Incident. Ex. 20 (Dec. 23 Production) at 755.

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public documents. Without waiving that objection, admitted that an investigation is still ongoing at the DHS OIG.**

17. As of the date of service of this Statement, DHS OIG has not issued any report concerning the Incident.

**A. Admitted.**

18. There is no evidence that DHS OIG opposes the disclosure of records concerning the Incident.

**A. Admitted as there is no evidence that the Plaintiff has made a request under the FOIA to the DHS.**

19. There is no evidence that the DHS OIG investigation into the Incident would be prejudiced by disclosure of records concerning the Incident.

**A. Denied as only the DHS OIG can speak to what may prejudice its investigation.**

20. To the extent BCSO conducted an internal investigation of the Incident, it has concluded. *See* Ex. 21 (Declaration of Ira Alkalay) at ¶¶ 2–3.

**A. This fact should be stricken as it is violative of Superior Court Rule 9(A)(b)(5)(i)(a) containing facts not material to the issue of public documents. Without waiving that objection, admitted the BCSO investigation is complete.**

**D. BCSO Issues a Blanket Denial of ACLUM's Public Records Request.**

21. On May 4, 2020, ACLUM sent BCSO a public records request requesting ten categories of responsive materials relating to the Incident (the "Requests"). Ex. 23 (ACLUM's Public Records Request) at 1-3.

**A. Admitted on or about that date.**

22. The Requests were:

1. All audio and visual recordings of or concerning the Incident, including but not limited to recordings from any and all installed cameras. We understand this would include, but is not limited to, all audio and visual recordings of the B Wing of the BCSO's immigration detention facility, and events taking place therein, from 4:00 p.m. to midnight on May 1, 2020.
2. All still photographs of or concerning the Incident.
3. All reports and other records prepared by BCSO's employees, agents, and contractors concerning the Incident, including but not limited to, reports describing the Incident, and any reports describing the BCSO's response to the Incident (including any reports documenting or concerning any use of force, chemical agents, and/or ammunition).
4. All records collected, made, or prepared during any investigation of the Incident by the BCSO, and a complete copy of any investigation file concerning the Incident.
5. All records containing any findings, conclusions, recommendations, or other results of any investigation by the BCSO concerning the Incident.
6. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and any federal department or agency (including the Department of Homeland Security and U.S. Immigration and Customs Enforcement), on the other, concerning the incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.
7. All documents, audio and visual recordings, and other records provided by the BCSO to the Department of Homeland Security and/or to U.S. Immigration and Customs Enforcement in connection with any investigation into the Incident.

8. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Office of the Inspector General for the Department of Homeland Security, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.
9. All documents, audio and visual recordings, and other records provided by the BCSO to the Office of the Inspector General for the Department of Homeland Security in connection with any investigation into the Incident.
10. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Executive Office of the President, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto. *Id.*

**A. Admitted.**

23. On May 7, 2020 BCSO responded with a blanket refusal to release any records responsive to the Requests. Ex. 22 (BCSO's Response to ACLUM's Public Records Request) at

1. BCSO asserted that all responsive materials were exempt from disclosure under G.L. c. 4 § 7(26) (f) and (n), the investigatory and antiterrorism exemptions, respectively. Ex. 22 (BCSO's Response to ACLUM's Public Records Request).

**A. Admitted.**

24. BCSO's blanket denial three days after ACLUM's requests failed to indicate whether BCSO had even attempted to locate responsive materials. *See id.* Instead, BCSO merely stated generally that 1) all requested materials were central to ongoing investigations and thus exempt from disclosure under the investigatory materials exemption, and 2) that photographs and videos of its facility and its response to the May were exempt from disclosure under the public safety exemption because their release would endanger public safety. *Id.*

**A. Admitted.**

25. ACLUM filed this lawsuit on May 18, 2020, seeking, among other things, injunctive relief requiring that BCSO produce all responsive materials without charge to ACLUM, and a declaratory judgment finding that the requested records were public records subject to public disclosure under the Massachusetts Public Records Law.

**A. The pleadings will speak for themselves and are not properly facts.**

26. On June 5, 2020, BCSO opposed ACLUM's request for declaratory and injunctive relief, reiterating its blanket claims that all responsive materials were protected by the investigatory and anti-terrorism exemptions. Ex. 6 (Def's Opp. to Plaintiff's Request for Injunctive Relief) at 7–11. Additionally, BCSO claimed that certain responsive materials that revealed the identities of corrections officers or detainees were exempt from disclosure under G.L. c. 4 § 7(26) (c), the privacy exemption. *Id.* at 11–12.

**A. The pleadings will speak for themselves and are not properly facts.**

27. To date, BCSO has produced a total of two (2) records in response to the Requests. (All other documents it has produced have either been provided *in camera* or under seal.) One is an email chain containing a May 4, 2020 email from DHS OIG stating that it was “opening an investigation” into the Incident and requesting certain records. Ex. 20 (Dec. 23, 2020 Production) at 755. The second is a May 6, 2020 letter from BCSO to DHS OIG requesting, in summary, that DHS OIG write a letter informing Massachusetts investigators that “any requests for documents or material relative to the [Incident] must be referred to and approved by” DHS OIG. *Id.* at 754.

**A. Admitted that the BCSO has submitted documents in camera pursuant to the court's order.**

**E. The Court Orders BCSO to Produce the Withheld Records for In Camera Review.**

28. On June 9 2020, the Court held a hearing for a motion for judgment on ACLUM's pleadings. Dkt. No. 7 (Decision and Order On Plaintiff's Request for Injunctive Relief) at 3. After that hearing, this Court issued its Decision and Order on Plaintiff's Request for Injunctive Relief on June 25, 2020 (the "June 25 Order"), having converted ACLUM's motion to a motion for summary judgment. *Id.* at 1–3. The court then directed BCSO to provide, under seal to the Court within 30 days, 1) all materials that it claimed were entirely exempt from disclosure, 2) all materials for which redaction of names would allow for release, and 3) all materials for which redaction of names and camera locations would allow for release. *Id.* at 4.

**A. The court order will speak for itself and is not properly a fact.**

29. On August 4, 2020, BCSO submitted to the Court under seal photocopies of 719 records—including photos, phone call transcripts, and incident reports—and five flash drives containing thirty four video recordings. Dkt. No. 8 (Def's Response to Court's Order to Produce Records Under Seal to Court) at 9. It further provided an index of these documents that included claimed exemptions. *See* Ex. 7 (Bristol County Sherriff's Office Custodial Index of Records ("Index")).

**A. Admitted.**

30. In the Index, BCSO

- a. continued to claim that all responsive materials filed with the Court were exempt under G.L. c. 4 § 7(26) (c), (f), or (n), *id.* at 1-79;
- b. claimed that the investigatory materials exemption protected every responsive record, *id.* at 1-79;
- c. justified its reliance on the investigatory materials exemption with only boilerplate assertions, such as each photograph showing property damage under investigation by BCSO and federal law enforcement agencies, "the disclosure of which would probably so prejudice the possibility of effective law



enforcement that such disclosure would not be in the public interest,” *id.* at 5.; and

- d. made no attempt to show why redaction of detainee names or other identifying information could not enable disclosure of documents allegedly protected by the privacy exemption. *See id.* at 1-79.

**A. Admitted.**

31. On October 27, 2020, the Court entered an Order directing ACLUM to review records filed with the court under seal by BCSO, and thereafter to prepare a memorandum indicating what records it believed should be disclosed under G.L. c. 66 § 10. Dkt. No. 11 (Second Order On Plaintiff’s Request for Injunctive Relief).

**A. The court order will speak for itself and is not properly a fact.**

**F. BCSO Did Not Search For Records Responsive to Requests 6, 8, and 10.**

32. In Requests 6, 8, and 10, ACLUM requested communications between BCSO and various federal entities concerning the Incident. Ex. 23 (ACLUM’s Public Records Request) at 2–

**A. Admitted that the requests were made.**

33. BCSO’s Index, filed August 4, 2020, did not include any such communications responsive to Requests 6, 8, 10. *See* Ex. 7 (BCSO’s First Custodial Index).

**A. Admitted.**

34. In an October 27, 2020 Order, the Court found that “[t]he [Index] does not appear to include any responsive materials relating to plaintiff’s requests # 6, 8, or 10” and ordered BCSO to “provide a written response and affidavit attesting to the existence or non-existence of any materials responsive to these requests.” Dkt. 11 (Second Order On Plaintiff’s Request for Injunctive Relief) at 3.

**A. The court order will speak for itself and is not properly a fact.**

35. As of December 17, 2020, BCSO had not provided the written response and affidavit concerning Requests 6, 8, and 10 ordered by the Court on October 27. *See* Affidavit of C. Hart at ¶ 5. ACLUM informed the Court and BCSO of this noncompliance in a December 17, 2020 request for a status conference. *Id.* ¶ 6.

**A. Admitted that the matter was discussed in the conference and the efforts being made by the BCSO to comply were discussed.**

36. There is no evidence that, prior to December 17, 2020, BCSO conducted a search for emails and other electronic records responsive to Requests 6, 8, and 10. *Id.* at ¶ 7.

**A. Denied.**

37. On December 23, 2020, BCSO stated for the first time that it had conducted a “preliminary search” for electronic records responsive to Requests 6, 8, and 10, and also requested for the first time that ACLUM either narrow Requests 6, 8, and 10 or provide electronic search terms. Ex. 24 (Affidavit of L. Rousseau) at 3–4.

**A. The affidavit will speak for itself.**

38. ACLUM provided BCSO with proposed search terms to collect electronic records responsive to Requests 6, 8, and 10 on January 28, 2021. Ex. 10 (Proposed Search Terms) at 1.

**A. Admitted.**

39. On March 3, 2021, BCSO communicated to ACLUM that it had run a test search using the domain names indicated in Requests 6, 8, and 10, but that it had not yet run specific search terms provided by ACLUM to narrow the scope of Request 6. Ex. 11 (BCSO Email Regarding Test Search) at 1.

**A. Admitted.**

40. From March 4 to 24, 2021, BCSO did not provide ACLUM with any information concerning any search for electronic records responsive to Requests 6, 8, and 10. *See* Affidavit of C. Hart at ¶ 8.

**A. Admitted.**

41. On March 24, 2021, ACLUM sent BCSO a request for an update any search for electronic records responsive to Requests 6, 8, and 10. Ex. 12 (March 24 Email) at 1.

**A. Admitted.**

42. On April 9, 2021, BCSO produced 43 emails and an index purportedly responsive to Requests 6, 8, and 10. Ex. 25 (Email from Lorraine Rousseau Regarding April 9 Production) at 1.

**A. Admitted.**

43. BCSO has asserted that the records produced on April 9, 2021, are exempt from disclosure and were produced solely for *in camera* inspection, but did not assert that any specific exemptions to the Public Records Law that would protect the Emails from disclosure. *See id.*

**A. Denied as the Plaintiff well knew what exceptions the BCSO was claiming.**

44. The emails BCSO produced on April 9, 2021, include the following:

- a. Seventeen daily facility status reports.
- b. Seven communications with attorneys [REDACTED]

- c. Two communications with immigration Judge Maureen O'Sullivan [REDACTED]  
[REDACTED]
- d. Thirteen emails reflecting communications between BCSO and the Office of the Inspector General of the Department of Homeland Security [REDACTED]  
[REDACTED]
- e. Two emails [REDACTED] Ex. 13 (April 9 Emails).

**A. Admitted.**

45. BCSO represented it would continue to “work with emails” and “finish this up,” indicating it had more documents to review and produce after April 9. Ex. 25 (April 9, 2021 email from L. Rousseau).

**A. Admitted.**

46. Since April 9, 2021, BCSO has not provided ACLUM with any additional records. Affidavit of C. Hart at ¶ 9. At a meet and confer on December 17, 2021, counsel for BCSO represented that it intended to “complete” its production of email as soon as possible, and no later than December 24, 2021. *Id.* at ¶ 11. It further represented that it would produce any additional documents under seal, and would continue relying on all claimed exemptions. *See id.*

**A. Admitted only that the BCSO promised to complete the production as soon as possible.**

**G. ACLUM Reviews Impounded Documents**

47. Because of various access restrictions to Suffolk Superior during the Covid-19 pandemic, undersigned counsel was not readily able to review the documents BCSO filed under seal in August (the “Impounded Documents”). Over a series of visits from March through May,

2021, and in coordination with the Clerk's office, undersigned counsel reviewed the unredacted documents, including video that BCSO produced. *See* Affidavit of C. Hart at ¶ 10.

**A. The Defendant has no information to either admit or deny.**

Date: January 31, 2022

Respectfully submitted,  
The Defendant,  
By its attorney,

/s/ Bruce A. Assad  
Bruce A. Assad, Esq., BBO# 022980  
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**CERTIFICATE OF SERVICE**

I, Bruce A. Assad, Esq., hereby certify that I have caused a copy of the foregoing document to be served by first class prepaid postage to Christopher Hart, Esq., Foley Hoag, LLP, Seaport West, 155 Seaport Boulevard, Boston, MA 02210-2600 and Stephen Garvey, Esq., Foley Hoag, LLP, Seaport West, 155 Seaport Boulevard, Boston, MA 02210-2600, and by email transmission to [CHart@foleyhoag.com](mailto:CHart@foleyhoag.com) and [SGarvey@foleyhoag.com](mailto:SGarvey@foleyhoag.com) on this 31<sup>st</sup> day of January, 2022.

/s/ Bruce A. Assad  
Bruce A. Assad, Esq.

# **EXHIBIT 1**

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**INVESTIGATION INTO THE  
EVENTS OF MAY 1, 2020 AT THE  
C. CARLOS CARREIRO IMMIGRATION  
DETENTION CENTER, UNIT B,  
BRISTOL COUNTY SHERIFF'S OFFICE**

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**OFFICE OF THE MASSACHUSETTS ATTORNEY GENERAL  
CIVIL RIGHTS DIVISION**

**DECEMBER 15, 2020**

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## **I. EXECUTIVE SUMMARY**

On May 5, 2020, the Civil Rights Division of the Massachusetts Attorney General's Office (the "AGO") opened an investigation into a disturbance that took place on May 1, 2020 at the Bristol County Jail and House of Correction (the "May 1 Incident"). The disturbance involved twenty-five immigration detainees housed in Unit B of the C. Carlos Carreiro Immigration Detention Center (the "ICE B detainees" or the "detainees") and multiple employees of the Bristol County Sheriff's Office (the "BCSO"), including Sheriff Thomas M. Hodgson himself. This report memorializes the AGO's findings and conclusions based on a thorough and comprehensive review of the available evidence.

To begin, we acknowledge that the May 1 Incident was deeply traumatic and upsetting for many of the ICE B detainees and BCSO employees who responded that day. And the result was not inevitable. Indeed, our central conclusion is that a series of institutional failures and poor decisions by BCSO leadership throughout the late afternoon and evening of May 1 culminated in a calculated—that is, planned and deliberate—use of force against the ICE B detainees that was disproportionate to the security needs at that time and that unnecessarily caused, or risked causing, harm to all involved.

In particular, our review of the available evidence supports the conclusion that the BCSO violated the civil rights of the ICE B detainees on May 1 in two distinct ways.

First, the evidence shows that the BCSO's use of force on May 1 was excessive and disproportionate based on the totality of the circumstances. The BCSO's calculated use of force included the use of a variety of less-lethal but dangerous weapons—including a flash bang grenade, pepper-ball launchers, pepper spray canisters, anti-riot shields, and canines—against detainees who had exhibited calm and nonviolent behavior for at least an hour before this operation. The BCSO deployed these weapons both indiscriminately upon entry and also specifically against particular detainees who were not combative, assaultive, or otherwise actively resisting staff. Informing our conclusion that the BCSO's use of force was excessive, we identified myriad violations of the BCSO's policies and procedures, as well as the Immigration and Customs Enforcement ("ICE") National Detention Standards. We are particularly troubled by the BCSO's unlawful use of canines, lack of attempt to de-escalate the situation or otherwise avoid further conflict, and failure to warn the detainees, including those who may not have understood verbal directives because of language barriers, before using substantial force against them.

Second, we found ample evidence that the BCSO acted with deliberate indifference to a substantial risk of serious harm to the health of the detainees. In particular, the BCSO used an excessive amount of pepper spray and pepper-ball, including against detainees with serious pulmonary or respiratory conditions, such as chronic obstructive pulmonary disease ("COPD") and asthma. In the end, so much pepper spray was used that two detainees were taken to the hospital with symptoms of

respiratory distress,<sup>1</sup> a third required the administration of emergency chest compressions to be revived, and many detainees reported breathing difficulties in the days and weeks after the May 1 Incident. Many of the detainees also were not given adequate medical attention following exposures to pepper spray, nor were they provided with a timely and sufficient opportunity to decontaminate. And perhaps most shocking, the detainee who required emergency chest compressions was not taken to the hospital for a medical evaluation or assessment, but was instead placed in solitary confinement.

There is no dispute that the May 1 Incident started with the non-violent refusal of ten ICE B detainees to consent to COVID-19 testing and isolation. We do not, and cannot, question the clinical and operational judgment of BCSO staff that these particular detainees required testing and isolation, even when those detainees may have sincerely feared the conditions that they would face during their period of isolation. There is also no question that some detainees engaged in destructive conduct that damaged the unit and threw plastic chairs at BCSO staff members earlier in the day. By focusing this report primarily on the BCSO's role in the May 1 Incident, we neither intend to suggest that the detainees' conduct in this regard was appropriate, nor do we intend to minimize the impact of this conduct on the BCSO security staff who were there at the time. On the contrary, the BCSO was entitled to take reasonable and proportional steps necessary to restore institutional order at the time that the detainees were engaging in that conduct. But because the detainees' conduct largely stopped in the intervening hour before the tactical and canine teams entered the unit, it simply did not justify the level of force that was ultimately applied, nor does it excuse the ultimate disregard for the health of the detainees.

During his press conference about the May 1 Incident, Sheriff Hodgson said, "if we're falling short, we need to know why and what we can do to fix it." We take this statement at face value and hope that the BCSO will implement the series of recommendations and suggested reforms included at the end of this report. We believe that, if implemented, these reforms will help protect the people who depend on the BCSO for a safe place to serve their sentences or await future court proceedings, and the employees and contractors who depend on BCSO leadership to provide a safe working environment.

We thank and acknowledge the BCSO staff members who cooperated with our investigation, including those who spent time meeting with AGO attorneys to share their candid observations about the events of May 1 and the impact that it also had on them. We also thank and acknowledge the ICE B detainees, and their lawyers, advocates, family members, and friends, who provided substantial assistance in our investigation. Finally, we thank the BCSO, which voluntarily produced several sources of evidence in connection with our investigation.

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<sup>1</sup> A third detainee was also transported to the hospital for a shoulder injury.

## II. METHODOLOGY

The AGO's investigation of the May 1 Incident commenced on May 5, 2020 after we received multiple complaints that BCSO personnel, including Sheriff Hodgson, used excessive and disproportionate force against the ICE B detainees and denied them access to appropriate medical care for injuries and other medical conditions resulting from this use of force. Our investigation was focused on the May 1 Incident and sought to determine whether the BCSO violated the detainees' civil rights that day.

Our findings and conclusions (at pp. 24-53 of this report) are based on several sources of evidence. We relied, in substantial part, on the available video footage of the May 1 Incident. This footage included the available surveillance video from Unit B, short video clips taken on a BCSO employee's cell phone from inside the ICE B control room bubble,<sup>2</sup> and footage from three camcorders that began recording shortly before 6 pm from three different locations—the ICE B control room bubble, the recreation pen area, and with the Sheriff's Response Team ("SRT") as it made entry into Unit B later that evening.

We also relied extensively on over a thousand pages of documentary evidence, including without limitation: (1) incident reports by BCSO staff who responded to or were otherwise involved in the May 1 Incident (including Sheriff Hodgson, SRT officers, canine officers, and nursing or other clinical staff); (2) logbooks; (3) documentation relating to the placement of the detainees in the Restrictive Housing Unit (*e.g.*, segregated housing units/solitary confinement); (4) selected BCSO policies and procedures; (5) a collection of BCSO email communications; and (5) medical records and other documentation provided by the detainees and/or their families and advocates. We also reviewed audio recordings and transcriptions of non-legal phone calls placed by certain detainees on May 1, and over 300 photographs taken by BCSO personnel.

In addition to these sources of evidence, we also interviewed thirteen BCSO employees who responded to or otherwise participated in the May 1 Incident, including Superintendent Steven J. Souza, the commanding officers of SRT and the Canine Division (the "K9 Division"), the Watch Commander, the Director of Medical Services, and several corrections officers, including SRT and K9 officers. As to the ICE B detainees, fifteen participated in the AGO's investigation through interviews and/or the submission of written statements through their counsel, family members, and/or other advocates, which we carefully reviewed and considered. We also spoke with several lawyers, family members, community advocates, and other stakeholders who were in regular contact with detainees before, during, and/or after the May 1 Incident.

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<sup>2</sup> The "ICE B control room bubble" is a secure area in the detention center where, among other things, BCSO security staff can observe and monitor portions of ICE Unit B through a large window. The ICE B control room bubble is located next to the only interior point of egress/ingress for Unit B.

In addition to these sources of evidence, we also considered statements and other evidence provided to the federal district court by the parties in *Savino v. Souza*,<sup>3</sup> a class action lawsuit brought by immigration detainees in custody at the BCSO related to the COVID-19 pandemic, as well as Sheriff Hodgson's public statements, including his press conference about the May 1 Incident, and other publicly available information, including recent audit and inspection reports by various regulators. We also relied on the relevant ICE National Detention Standards and other best practices related to the use of force and the provision of medical care in correctional settings.

Although our investigation into the May 1 Incident was thorough and robust, there are two notable limitations on its scope. First, we did not interview every witness. We determined that extensive witness interviews were unnecessary in this case due to the availability of other substantial sources of evidence including video footage, contemporaneous audio recordings, and numerous written statements by the detainees and BCSO personnel. This limitation, therefore, has no meaningful impact on our findings and conclusions, each of which is independently supported by the evidence that we reviewed.

Second, while we very much appreciated the BCSO's voluntary cooperation and production of several sources of evidence, the BCSO did not provide documents in response to all of our requests for information. In particular, the BCSO did not provide information related to the BCSO's participation in the 287(g) program<sup>4</sup> (which the BCSO asserted was irrelevant) and the investigations and disciplinary files for the SRT and K9 officers who responded to the May 1 Incident (which the BCSO asserted were irrelevant because no disciplinary action had been taken against any of these officers related to the May 1 Incident). We also requested, but did not receive, video footage from Sheriff Hodgson's cell phone.

### **III. BACKGROUND**

#### **a. Overview of the Bristol County Sheriff's Office**

Each county in Massachusetts has a sheriff's office that is responsible for operating jails and correctional facilities within the county.<sup>5</sup> County jails and correctional facilities generally house pretrial detainees and convicted offenders who are serving a sentence of 2 ½ years or less.<sup>6</sup>

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<sup>3</sup> No. 1:20-cv-10617 (D. Mass., filed March 27, 2020).

<sup>4</sup> The BCSO's participation in federal immigration enforcement, including its participation in the 287(g) program is discussed on pp. 10-11 of this report.

<sup>5</sup> See Mass. Gen. Laws ch. 37, §§ 1-26 (duties and obligations of county sheriffs).

<sup>6</sup> The BCSO was established as an independent state agency on August 6, 2009; however, the Sheriff has retained administrative and operational control over the BCSO. See

The BCSO operates a large detention complex in North Dartmouth, Massachusetts, which includes the Bristol County Jail and House of Correction (the “BHOC”), the Women’s Center, and the C. Carlos Carreiro Immigration Detention Center (the “Detention Center”), which houses federal immigration detainees at all levels of custody classification.<sup>7</sup> The BHOC is comprised of several decentralized housing units, including three special management units where prisoners may be segregated and isolated from the general population for administrative, disciplinary, or protective reasons. Most immigration detainees at the BCSO are held in the Detention Center, but some are housed in other parts of the BHOC, including the modular housing and the special management units. These facilities are headed by Superintendent Souza.

In addition to the housing units, the BCSO also maintains specialty units that support the operations of BCSO facilities. In relevant part, these units include SRT, the K9 Division, and the Health Services Unit.

### *The Sheriff’s Response Team*

SRT is a paramilitary-style tactical response team that is tasked with “address[ing] security situations within the correctional facilities or other locations, when so authorized, including during an emergency situation.”<sup>8</sup> SRT officers work full-time as corrections officers (of various degrees of rank), but undertake additional responsibilities in the event of emergency or security situations. SRT is supposed to have a commander, but that position has been vacant for nearly three years. SRT has instead been led by the Assistant Commander.

SRT is organized into two “squads” totaling approximately twenty-two corrections officers, each with assigned team leaders and assistant team leaders. According to the relevant BCSO policy, SRT officers are required to follow the “Chain of Command” and are subject to disciplinary action for disobeying the command

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Chapter 61 of the Acts of 2009, An Act Transferring County Sheriffs to the Commonwealth, enacted August 6, 2009 (except where specified, transferring all functions, duties, and responsibilities of certain sheriffs’ offices, including the BCSO, to the Commonwealth).

<sup>7</sup> The BHOC is an eleven hundred-bed facility that houses post-conviction inmates and certain pre-trial detainees, and the Women’s Center houses up to 106 women serving sentences. See BCSO, “Facilities,” <https://www.bcsoma.us/facilities.htm> (last visited December 3, 2020). In addition to the North Dartmouth detention complex, the BCSO also operates the Ash Street Jail and Regional Lockup, which houses up to 200 pre-trial detainees.

<sup>8</sup> Bristol County Sheriff’s Office, Policy No. 09.24.00, Sheriff’s Response Team (“SRT Policy”), at 09.24.02(A) (general operational procedures).

structure.<sup>9</sup> The SRT commander (in this instance, the Assistant Commander) reports to Superintendent Souza.

SRT officers are selected through a competitive application and screening process.<sup>10</sup> To be selected, SRT officers must satisfy certain physical fitness standards and complete various in-service training and weapons requirements. Once selected, SRT officers are issued equipment for use in emergency situations (e.g., gas masks, riot helmets with face shields, 24-inch collapsible batons),<sup>11</sup> and must complete annual training developed by the SRT commander.<sup>12</sup> These trainings must include use of force and restraint related topics; these trainings may include additional topics related to de-escalation and conflict avoidance, though such topics are not independently mandated by the relevant BCSO policy.<sup>13</sup> SRT officers also reported receiving some training on the ICE National Detention Standards as part of the annual in-service training for all BCSO officers, but only recalled isolated portions of those standards, such as the ban on the use of mace against ICE detainees.

### The K9 Division

The BCSO's K9 Division is used "for correctional, law enforcement, and crime prevention functions."<sup>14</sup> At BCSO facilities, the K9 Division is primarily responsible for patrolling and securing facility perimeters and conducting contraband searches. The K9 Division also supports local law enforcement activities and participates in a regional drug enforcement task force.<sup>15</sup> The K9 Division Captain is responsible for the day-to-day

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<sup>9</sup> *Id.* at 9.24.02(D) ("SRT members shall face disciplinary action for deliberately disobeying the chain of command."); *see also id.* at 09.24.06(C)(1) (noting that SRT members can also be removed for having "an uncooperative attitude" or for "irresponsibility" and "unprofessionalism," among other reasons). Notwithstanding this policy, the SRT Acting Commander told us that officers have the right to refuse orders.

<sup>10</sup> *Id.* at 09.24.04 (application and screening procedures), 09.24.05 (conditions for membership).

<sup>11</sup> *Id.* at 09.24.08 (uniform and equipment).

<sup>12</sup> *Id.* at 09.24.07(C) (noting that SRT members must complete 40 hours of entry level training within the first year of membership, followed by 16 hours of annual in-service SRT training in subsequent years).

<sup>13</sup> *Id.* at 09.24.07 (Sheriff's Response Team training procedures).

<sup>14</sup> Bristol County Sheriff's Office, Policy No. 09.07.00, Canine Division Operations ("K9 Policy"), at 09.07.02(A) (general policy).

<sup>15</sup> Many sheriffs' offices in Massachusetts maintain canine units to assist in patrol and/or contraband or explosive detection within county houses of correction and jails. Although

operation of the K9 Division. K9 officers are assigned full-time to the K9 Division. At the time of the May 1 Incident, the BCSO's K9 Division was comprised of seven active duty dogs (Rony,<sup>16</sup> Eros, Will, Sharpy, Jerry, Kofy, and Xiro) and their handlers.<sup>17</sup> These dogs are all large breed dogs, including German Shepherds, Dutch Shepherds, and Belgian Malinois, and may weigh up to 80 pounds.

Each member of the K9 Division is required to attend a sixteen-week training academy, where the "canine team" (meaning the dog and handler pair) learns "tracking, criminal apprehension, building searches, crowd control, felony car stops, jail cell extractions,<sup>18</sup> article searching, legal issues and K-9 first aid." Each K9 team must also complete 16 hours of monthly in-service training.

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the BCSO K9 Division's other "law enforcement" and "crime prevention" activities are beyond the scope of this report, we note that the primary purpose of any sheriff's office in Massachusetts is the care and custody of inmates and detainees and the effectuation of service of process, not community policing. *Compare* Mass. Gen. Laws ch. 41, § 98 (authorizing the appointment of police officers for cities and towns) and *Commonwealth v. Gernrich*, 476 Mass. 249, 253-55 (2017) (describing the differences between the powers of deputy sheriffs and police) *with* Mass. Gen. Laws ch. 37, § 13 (describing peace officer powers of sheriffs) and Lyle Moran, "Mass. Sheriffs Draw Criticism as They Broaden their Activities, Lowell Sun (December 5, 2010), <https://www.lowellsun.com/2010/12/05/mass-sheriffs-draw-criticism-as-they-broaden-their-activities/> ("[Sheriff] Hodgson said sheriffs have every right and responsibility to step in when they feel local law-enforcement officers are not fulfilling their duties. He cited a time when he sent some of his men into New Bedford to halt drug-dealing activity because local police did not have a plan to stem the drug flow in certain neighborhoods.").

<sup>16</sup> K9 Rony has since retired.

<sup>17</sup> BCSO K9 Program, <https://www.bcsoma.us/k9.htm>. An eighth canine, Robika, was in training at the time of the May 1 Incident.

<sup>18</sup> Canines are prohibited from participating in cell extractions in Massachusetts, 103 CMR 924.10(6), which is also true in most of the rest of the country and world. *See generally* Human Rights Watch, *The Use of Dogs in Cell Extractions for U.S. Prisons* (October 9, 2006), <https://www.hrw.org/report/2006/10/09/cruel-and-degrading/use-dogs-cell-extractions-us-prisons>. The ban on the use of canines for cell extractions is accurately reflected in the BCSO's K9 Policy. *See* K9 Policy at 09.07.12(B) ("No Canine Officer shall use their dog to extract inmates from their cells. This is prohibited."). Nevertheless, the events of May 1—which began with the detainees' refusal to leave the unit for testing and isolation and ended with the forceful removal of the detainees from their housing unit—culminated in a cell extraction and forced move within the meaning of the BCSO's cell extractions and forced movements policy. *See, e.g.*, Bristol County Sheriff's Office, Policy No. 09.18.00, Cell Extractions and Forced Inmate Movements ("Cell Extractions Policy"), at 09.18.01(A) (defining a cell extraction as the "forcible

### The Health Services Unit

Inmates within the BCSO are entitled to “unimpeded access to a continuum of health care services so that their needs . . . are met in a timely and efficient manner.”<sup>19</sup> The BCSO contracts with a private for-profit company, Correctional Psychiatric Services, P.C. (“CPS”),<sup>20</sup> to provide health care services to inmates, including ICE detainees. Such contracts have been criticized by some for the ways in which contracted medical care may limit access to adequate medical care and/or disincentivize the use of hospitals and other external providers.<sup>21</sup>

CPS has appointed a licensed physician to serve as the Medical Director<sup>22</sup> for BCSO facilities. The Medical Director is responsible for clinical decision-making at BCSO facilities, including the type of medical treatment to be provided to an inmate, whether on or off-site.<sup>23</sup> The Medical Director is also responsible for medical treatment

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removal of an inmate from their cell or other living quarters”). Therefore, canines should not have been utilized. Some BCSO officers and Superintendent Souza told us that the BCSO’s forcible removal of the detainees on May 1 was not a cell extraction because of the scale of the extraction and the number of detainees involved. But this distinction is neither reflected in the text of the BCSO’s cell extractions policy, which does not differentiate between an extraction and forced move in a single bed cell, a multi-bed cell, or a bunkroom and which expressly applies to the Detention Center (*see* Cell Extractions Policy at 09.18.15), nor is it consistent with the spirit of the policy, which is intended to govern the forcible removal of inmates from their living quarters by a tactical response team—in other words, precisely what happened on May 1. And in any event, the use of canines on May 1 equally violated the ICE National Detention Standards which prohibit the use of canines for “force, control or intimidation” of immigration detainees. *See infra* pp. 20-21.

<sup>19</sup> Bristol County Sheriff’s Office, Policy No. 12.01.00, Health Care Management and Organization (“HSU Policy”), at 12.01.03 (treatment philosophy/access to care).

<sup>20</sup> Dun & Bradstreet reports that CPS has received approximately \$12.6 million in revenue in 2020. Dun & Bradstreet, Correctional Psychiatric Services, P.C., [https://www.dnb.com/business-directory/company-profiles.correctional\\_psychiatric\\_services\\_pc.1d6692d4db058c5355cbfc89e1198e28.htm](https://www.dnb.com/business-directory/company-profiles.correctional_psychiatric_services_pc.1d6692d4db058c5355cbfc89e1198e28.htm) 1 (last visited December 3, 2020).

<sup>21</sup> *See, e.g.*, Beth Healy and Christine Willmsen, “Pain and Profits: Sheriffs Hand Off Inmate Care to Private Health Companies,” WBUR (March 24, 2020), <https://www.wbur.org/investigations/2020/03/24/jail-health-companies-profit-sheriffs-watch>.

<sup>22</sup> HSU Policy at 12.01.01 (definitions) and 12.010.02 (general operational procedures).

<sup>23</sup> *Id.* at 12.01.02(J) (definition of “Medical Director”).



decisions for ICE detainees. In medical emergencies, the Medical Director is exclusively responsible for making such decisions for ICE detainees.<sup>24</sup>

The Medical Director is on-site at the beginning of each week. CPS also provides other clinical staff, including nurses of varying degrees of professional licensure, advance practice clinicians, and mental health workers. These clinicians are responsible for much of the day-to-day medical and mental health care at the Dartmouth Complex.<sup>25</sup> CPS physicians are also “on-call” outside of normal hours.

The BCSO also employs a “Director of Medical Services” who is responsible for, among other things, liaising between the BCSO and CPS, ensuring compliance with all policies, procedures, and standards relating to the provision of health care services to inmate and detainees, advising the Sheriff and other BCSO staff on the specific health care needs of the inmate population,<sup>26</sup> consulting on lawsuits and inmate grievances that relate to health care, and ensuring that inmates or detainees with special needs have access to whatever assistive devices or medication are necessary.

The current Director of Medical Services is a licensed attorney, and holds no medical or clinical licenses.

*Sheriff Thomas M. Hodgson*

Sheriff Thomas M. Hodgson has served as the Bristol County Sheriff since 1997 and was last elected in 2016. During Sheriff Hodgson’s lengthy tenure, the BCSO has garnered criticism for its treatment of inmates and detainees,<sup>27</sup> including taking such steps as instituting chain gangs,<sup>28</sup> attempting to charge inmates for room and board,

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<sup>24</sup> *Id.* at 12.01.04(F) (responsibilities of the contracted medical provider – ICE detainees).

<sup>25</sup> See Office of the State Auditor, Other Matters in the Audit of the Bristol County Sheriff’s Office (February 13, 2019), <https://www.mass.gov/info-details/other-matters-in-the-audit-of-the-bristol-county-sheriffs-office> (reviewing staffing levels in the health services unit).

<sup>26</sup> HSU Policy at 12.01.05 (responsibilities of the Director of Medical Services).

<sup>27</sup> For example, in response to a troubling increase in the rate of inmate suicides at BCSO facilities, just two years ago, the AGO asked the Massachusetts Executive Office of Public Safety and Security to investigate the conditions at BCSO facilities.

<sup>28</sup> “County Sheriff Brings Back Chain Gangs,” *Chicago Tribune* (June 17, 1999), available at <https://www.chicagotribune.com/news/ct-xpm-1999-06-17-9906170166-story.html>.

medical services, and haircuts,<sup>29</sup> and offering to send detainees to work in chain gangs to build President Donald J. Trump’s border wall.<sup>30</sup>

**b. The BCSO’s Participation in Federal Immigration Enforcement**

The BCSO has opted to participate in federal immigration enforcement. The BCSO does so primarily in two ways: (1) through an Intergovernmental Services Agreement (“IGSA”) between the BCSO and ICE, which governs the BCSO’s immigration detention program; and (2) through the 287(g) program.

ICE enters into IGSA’s (which are contractual agreements between government entities) with state or local jails or prisons to provide detention beds for people in ICE custody. The BCSO first entered into an IGSA with ICE in 2000, and has continually renewed its contract with ICE since that time. The BCSO’s IGSA includes standard provisions that address covered services (*e.g.*, bed space and basic needs), medical care, facility inspections, transportation, and the fixed per-detainee reimbursement rate paid to the facility by ICE. The IGSA also requires that the BCSO comply with the “most current edition of ICE National Detention Standards.”<sup>31</sup>

The BCSO also participates in the federal government’s 287(g) program. The 287(g) program authorizes state and local law enforcement officers to collaborate with the federal government in the enforcement of federal immigration laws. In specific, Section 287(g) of the Immigration and Nationality Act (“INA”) allows the Department of Homeland Security (“DHS”) to enter into formal written agreements with state or local police departments and deputize selected law enforcement officers to perform the functions of federal immigration agents.

Massachusetts is the only New England state with local agencies that participate in the 287(g) program,<sup>32</sup> and it is an open question whether or not the BCSO has the authority to enter into a 287(g) agreement or an IGSA for immigration detention. *See*

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<sup>29</sup> *Souza v. Sheriff of Bristol County*, 455 Mass. 573 (2010) (Sheriff acted in excess of statutory authority by charging higher fees for haircuts than authorized and by imposing fees for cost-of-care, medical visits, and GED testing).

<sup>30</sup> Shannon Dooling, “Bristol County Sheriff Offers Up Inmates to Build the Border Wall Trump Promises,” *WBUR* (January 5, 2017), <https://www.wbur.org/morningedition/2017/01/05/sheriff-hodgson-inmates-border-wall>.

<sup>31</sup> Inter-Governmental Service Agreement between the DHS ICE Office of Detention and Removal and the Bristol County Sheriff’s Office, September 27, 2007.

<sup>32</sup> *See* U.S. Immigration and Customs Enforcement, Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, <https://www.ice.gov/287g> (last updated August 8, 2020).

*Souza*, 455 Mass. at 583-85 (“A government agency or officer does not have authority to issue regulations, promulgate rules, or . . . create programs that conflict with or exceed the authority of the enabling statutes.”); *Lunn v. Commonwealth*, 477 Mass. 517, 531-36 (2017) (state law enforcement officers cannot arrest and hold an individual solely on the basis of an immigration detainer); *see also* 8 U.S.C. § 1357(g) (authorizing state and local governments to enter into 287(g) agreements “to the extent consistent with State and local law.”). The BCSO has participated in the 287(g) program since 2017. The BCSO’s Memorandum of Agreement with ICE outlines the process for appointing and training officer-participants in the 287(g) program, ICE’s supervision of designated officers, and the scope of authorized 287(g) activities, which is limited to the following activities: (1) interrogating persons in custody at BCSO facilities regarding their right to be or remain in the United States and processing for immigration violations any removable person who has been arrested for any violation of state or federal law; (2) serving warrants of arrest for immigration violations; (3) administering oaths, taking and considering evidence, and completing required processing in connection with immigration violations; (4) preparing charging documents; (5) issuing immigration detainers (among other documents); and (6) detaining and transporting arrested people subject to removal to ICE-approved detention facilities.<sup>33</sup>

**c. The BCSO’s Response to the COVID-19 Pandemic**

Before the COVID-19 pandemic took hold in Massachusetts, the BCSO housed a daily average of 943 detainees and convicted prisoners,<sup>34</sup> of whom 148 were immigration detainees as of March 27, 2020.<sup>35</sup> ICE Unit B is a large communal bunkroom with shared bathrooms, laundry facilities, and an enclosed recreation pen.

Once the COVID-19 pandemic took hold in Massachusetts, the immigration detainees at the Dartmouth Complex began to advocate for access to COVID-19 testing, improved sanitation measures, and institutional depopulation to safeguard against the spread of COVID-19. In part, this advocacy was driven by the fact that the communal nature of the bunkrooms, which each housed at that time up to 66 detainees at once, made it impossible to practice social distancing. In part, it was driven by detainees who reported medical conditions or histories that left them particularly vulnerable to COVID-

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<sup>33</sup> Memorandum of Agreement between U.S. Immigration & Customs Enforcement and the Bristol County Sheriff’s Office (January 18, 2017), *available at* [https://www.ice.gov/doclib/287gMOA/Bristol\\_MOA\\_01182017.pdf](https://www.ice.gov/doclib/287gMOA/Bristol_MOA_01182017.pdf).

<sup>34</sup> Massachusetts Sheriffs’ Association, County Populations – Average Daily Population Report – March 2020, <https://www.mass.gov/lists/county-population-reports#fy2020-county-population-reports> (last visited December 5, 2020).

<sup>35</sup> *Savino v. Souza*, 459 F. Supp. 3d 317, 321 (D. Mass. May 12, 2020).

19, including, for example, chronic medical conditions such as asthma, diabetes, COPD, and emphysema.<sup>36</sup>

In February 2020, the BCSO put in place some measures designed to curtail the spread of COVID-19, including restricting outside visitors, conducting temperature screenings, and splitting up detainees during meal and recreation times.<sup>37</sup> The BCSO insisted that they did not have any COVID-19 cases in any BCSO facility as late as May 2, 2020.<sup>38</sup>

On March 27, 2020, federal immigration detainees held at the Detention Center filed a class action lawsuit, *Savino v. Souza*,<sup>39</sup> in federal district court seeking emergency release due to COVID-19. The district court expeditiously began to consider each immigration detainee individually for bail. However, ICE and the BCSO consistently objected, throughout the *Savino* suit, to the release of the detainees on bail.

On April 23, 2020, the federal district court ordered the BCSO to submit a report on the results of COVID-19 testing of the detainees on or before May 7, the date of the hearing on the detainees' motion for a preliminary injunction.<sup>40</sup> By May 1, however, no detainee had been tested for COVID-19.

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<sup>36</sup> Letter from ICE Unit B Detainees to ICE, *et al.*, March 23, 2020, at p. 3.

<sup>37</sup> *Savino v. Souza*, 453 F. Supp. 3d 441, 441-42 (D. Mass. April 8, 2020).

<sup>38</sup> See Sheriff Hodgson Press Conference, May 2, 2020, [https://www.facebook.com/watch/live/?v=662822427595859&ref=watch\\_permalink](https://www.facebook.com/watch/live/?v=662822427595859&ref=watch_permalink). Sheriff Hodgson emphasized during this press conference that the BCSO had no COVID-19 cases at the facility at the time of May 1 Incident. We do not know how Sheriff Hodgson could have credibly made this claim since none of the detainees had been tested for COVID-19 by this time, except for one detainee who had tested positive on May 1 at the hospital following the May 1 Incident.

<sup>39</sup> *Savino v. Souza*, No. 1:20-cv-10617, ECF No. 1.

<sup>40</sup> *Savino v. Souza*, No. 1:20-cv-10617, ECF No. 132 (April 23, 2020). On May 12th, the federal district court found that the BCSO likely acted with "deliberate indifference" to the substantial risk of serious harm faced by the immigration detainee class members because of "three cavernous holes in [the BCSO's] mitigation strategy . . . [that] it has obstinately refused to plug throughout this litigation": (1) the rigid and blanket objection to the release of any ICE detainee, (2) lack of testing, and (3) lack of contact tracing. The federal district court again ordered that all individuals in immigration detention at the BCSO, as well as all staff who come into contact with them, be tested for COVID-19 as soon as reasonably possible; that no new individuals be admitted to immigration detention at the BCSO; and that no transfers be made from the BCSO to another facility until the required testing has taken place and come back negative. *Savino*, 459 F. Supp. 3d at 328-31.

#### **d. The ICE B Detainees**

By the time of the May 1 Incident, twenty-five<sup>41</sup> immigration detainees were housed in ICE Unit B, most of whom were subject to detention under 8 U.S.C. §1226(a), which governs the detention of noncitizens who do not have a serious criminal history,<sup>42</sup> or under 8 U.S.C. § 1231, which governs the detention of noncitizens who are subject to a final order of removal. Some of the detainees have lived and worked in the United States for decades. Many have spouses, children, and other family members and friends in or around New England and have worked and gone to school in these communities. Some may have viable defenses to removal that would permit them to remain in the United States. Others are recent arrivals who have no or limited English language proficiency and instead speak a range of different languages and dialects including Spanish, Portuguese, Kichwa, and Jamaican Patois.

#### **IV. LEGAL FRAMEWORK**

The Massachusetts Attorney General is the chief lawyer and law enforcement officer in Massachusetts. Mass. Gen. Laws ch. 12, §§ 3, 10. The Attorney General is authorized by statute to take cognizance of, investigate, and institute civil or criminal proceedings to protect the general welfare of the people. Mass. Gen. Laws ch. 12, § 10; *see also Attorney General v. Sheriff of Worcester Cty.*, 382 Mass. 57, 58-60 (1980). And the Attorney General is specifically authorized by statute to investigate and bring civil actions “[w]hensoever any person or persons, whether or not acting under color of law, interfere by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons

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<sup>41</sup> Twenty-six detainees resided in ICE Unit B as of May 1, but one of those detainees had been transferred to the HSU by the time of the May 1 Incident.

<sup>42</sup> Sheriff Hodgson emphasized the criminal histories of the detainees during his press conference about the May 1 Incident—at one point calling them “bad people” and “bad apples” and at another point referring to select portions of specific criminal histories. However, this is *civil* and not *criminal* detention, and these detainees are held because of alleged civil immigration violations, and not because they have been convicted of or accused of any crimes. And whether or not these detainees had convictions or arrests before their civil detention is irrelevant to the BCSO’s use of force and related treatment of the detainees on May 1. Indeed, aside from Sheriff Hodgson’s public statements after the May 1 Incident, no BCSO security staff member that we interviewed cited any detainee’s criminal history as a factor in determining their response on May 1. And although we have reviewed the detainees’ criminal histories in view of Sheriff Hodgson’s public statements after the May 1 Incident, we have considered those histories only to the extent that they involved convictions that would bear on a witness’s credibility or veracity.

of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth.” Mass. Gen. Laws ch. 12, § 11H.

The INA permits the federal government to detain noncitizens during the pendency of their removal proceedings and noncitizens who are subject to a final order of removal. *See* 8 U.S.C. §§ 1226, 1231. Immigration detainees are protected by the Due Process Clause of both the Fourteenth Amendment of the United States Constitution, which extends to “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent,” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), and article 12 of the Massachusetts Declaration of Rights. And these protections apply equally in civil detention (including immigration detention), as well as in criminal detention. *Id.* at 690.<sup>43</sup>

The Due Process Clause prohibits “the use of excessive force that amounts to punishment” against immigration detainees and pretrial detainees. *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989). The use of force against a detainee is constitutionally excessive if “the force purposely or knowingly used against him was objectively unreasonable.” *Kingsley v. Hendrickson*, 576 U.S. 389, 396-97 (2015).<sup>44</sup> This turns on the “facts and circumstances of each particular case,” looking at the situation “from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight.” *Id.* at 397 (quoting *Graham*, 490 U.S. at 396). The inquiry takes into account “the ‘legitimate interests that stem from [the government’s] need to manage the facility in which the individual is detained,’ appropriately deferring to ‘policies and practices that in th[e] judgment’ of jail officials ‘are needed to preserve internal order and discipline and to maintain institutional security.’” *Id.* (quoting *Bell v. Wolfish*, 441 U.S. 520, 540, 547 (1979)). The following nonexclusive list of factors may “bear on the reasonableness or unreasonableness of the

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<sup>43</sup> Federal courts of appeals across the country have held that immigration detainees are entitled to the same constitutional protections as criminal pretrial detainees. *See, e.g., Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2020); *E. D. v. Sharkey*, 928 F.3d 299, 306–07 (3d Cir. 2019); *Chavero-Linares v. Smith*, 782 F.3d 1038, 1041 (8th Cir. 2015); *Belbachir v. County of McHenry*, 726 F.3d 975, 979 (7th Cir. 2013); *Porro v. Barnes*, 624 F.3d 1322, 1326 (10th Cir. 2010); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000); *see also Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (“[T]he Supreme Court has recognized that criminal detention cases provide useful guidance in determining what process is due non-citizens in immigration detention.”).

<sup>44</sup> The standard under the Massachusetts Declaration of Rights is likely the same as under federal law. *See, e.g., Commonwealth v. Adams*, 416 Mass. 558, 571, n. 1 (1993) (Lynch, J., concurring) (arguing that the objective reasonableness standard is the appropriate standard to test excessive force claims under the Fourth Amendment); *Foster v. Comm’r of Corr.*, 484 Mass. 698, 719 n. 17 (2020) (rejecting the application of the *Kingsley* standard to a conditions-related lawsuit on the grounds that the “objective reasonableness” standard applies to excessive force claims).

force used: the relationship between the need for the use of force and the amount of force used; the extent of the [detainee's] injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the detainee was actively resisting." *Id.* (citing *Graham*, 490 U.S. at 369).

The government also violates the Due Process Clause when it "so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety." *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989).<sup>45</sup> In specific, the Due Process Clause obliges the government "to refrain at least from treating a pretrial detainee with deliberate indifference to a substantial risk of serious harm to health." *Coscia v. Town of Pembroke*, 659 F.3d 37, 39 (1st Cir. 2011). "Proof of deliberate indifference requires a showing of greater culpability than negligence but less than a purpose to do harm," *id.* (citing *Farmer v. Brennan*, 511 U.S. 825, 835 (1994)), "and it may consist of showing a conscious failure to provide medical services where they would be reasonably appropriate," *id.* (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)).

#### The BCSO's Policies and Procedures

In addition to and informing the bounds of constitutionally permissible (*i.e.*, objectively reasonable) use of force in the specific context of the BCSO, various policies and procedures place limits on the conduct of officers and other staff in their interactions with ICE detainees. The BCSO has adopted policies that govern many of the issues within the scope of this investigation, including in relevant part, Use of Force (09.06.00), Use of Canines (09.07.00), Use of Restraint Equipment (09.09.00), Emergency Management System (09.15.00), Cell Extraction and Forced Inmate Movements (09.18.00), Special Management Units (10.03.00), and Special Needs Inmates (12.03.00).

The BCSO's Use of Force Policy prohibits the use of "excessive force," which is defined as "[a]n application of force that exceeds the use of reasonable force or a use of force that was reasonable at the start but continued beyond the need of its necessary, reasonable, and suitable application."<sup>46</sup> The Use of Force Policy contains a Use of Force continuum<sup>47</sup> and defines "[r]easonable force" as "the legal, reasonable, and suitable

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<sup>45</sup> This standard is essentially the same under article 26 of the Massachusetts Declaration of Rights. *See, e.g., Foster*, 484 Mass. at 716.

<sup>46</sup> Bristol County Sheriff's Office, Policy No. 09.06.11, Use of Force (the "Use of Force Policy"), at 09.06.01(K) (definitions).

<sup>47</sup> *Id.* at 09.06.05 (use of force continuum). The use of force continuum makes clear that "compliance techniques" (such as pepper spray) is only appropriate in the case of "active resistance" (meaning "us[ing] strength or muscle to resist control") and not "passive resistance" (which does not involve muscle or strength), and that "defensive tactics"

amount of force necessarily applied during a given situation, based on the totality of the circumstances, the amount/type of resistance presented, and the degree of danger displayed. Reasonable force shall only be justified and lawfully applied when some form of resistance is present.”<sup>48</sup>

“Calculated” uses of force can be used against an inmate in the following circumstances: (1) when an inmate refuses an order to be placed into restraints and exit a cell; (2) when an inmate exhibits threatening behavior; (3) when an inmate possesses a weapon; and/or (4) when an inmate creates property damage.<sup>49</sup> The Use of Force Policy is clear that “de-escalation/non-confrontation techniques” must be used before a calculated use of force,<sup>50</sup> and that less-lethal force can only be applied after verbal warnings have not resulted in compliance.<sup>51</sup> And the BCSO’s Emergency Management policy (which applies to inmate disturbances, including riots) requires the BCSO to make “translation services available for involved inmates during a hostage crisis or other emergency management situation, if necessary and when time permits.”<sup>52</sup>

Prior to a calculated use of force, a “qualified health care practitioner” must “conduct a review of the inmate’s health record for medical contraindications” in order to assess whether the calculated use of less lethal force should be deployed based on the inmate’s medical history.<sup>53</sup> The notification to medical providers, the provider’s review

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(such as “empty hand or baton striking techniques”) are only appropriate in the case of assaultive conduct (meaning “attempting to harm the employee or another”). *See also id.* at 09.06.04(C), 09.06.06 (less-lethal force).

<sup>48</sup> *Id.* at 09.06.02(E) (expected practices); *see also* Bristol County Sheriff’s Office, Policy No. 09.09.00, Use of Restraint Equipment (“Restraints Policy”), at 09.09.02(B) (noting that the application of restraint equipment is considered a use of force, subject to certain limited exceptions).

<sup>49</sup> Use of Force Policy at 09.06.01(C)(definitions), 09.06.04(B) (reasonable force).

<sup>50</sup> *See, e.g., id.* at 09.06.01(C), 09.06.06(B); *see also* Restraints Policy at 09.09.09(A)(1), 09.09.06(B)(1)(a) (“Restraint equipment can be applied once all other reasonable, non-confrontational control methods (such as verbal persuasion) have been tried and deemed inappropriate or impractical to address a situation.”); Cell Extractions Policy at 09.18.04, 09.18.06(B) (outlining de-escalation and conflict avoidance steps required to be taken prior to a cell extraction).

<sup>51</sup> Use of Force Policy at 09.06.06.

<sup>52</sup> Bristol County Sheriff’s Office, Policy No. 09.15.00, Emergency Management Systems (“Emergency Management Policy”), at 09.15.04(I).

<sup>53</sup> Use of Force Policy at 09.06.12(A)(1) (medical notification procedures). A separate portion of the policy that deals with special needs inmates (which includes those with



of the records, the recommendations made, and the high ranking officer's decision to proceed with the calculated force all must be documented by the medical provider and the officer.<sup>54</sup>

When chemical agents or less-lethal aerosols (such as oleoresin capsicum spray, commonly referred to as "O.C. spray" or "pepper spray," or pepper-ball, which is essentially powdered oleoresin capsicum delivered in pellet projectiles) are used, the Use of Force Policy outlines the decontamination procedures that must be followed, including that: (1) fresh air, clean water, and clean, dry clothes be provided as soon as possible; (2) inmates be "monitored constantly for possible medical concerns" and any inmate experiencing difficulty breathing, gagging, profuse sweating, loss of consciousness, or other related symptoms receive medical attention; and (3) EMTs be notified and made available on scene.<sup>55</sup> The Use of Force Policy also limits the use of distraction devices, such as extended range batons and flash bang grenades, to situations where there is a "reasonable belief that conditions are not safe to approach an individual within contact distance and the threat encountered may cause bodily injury" or "when an inmate or another person is displaying pre-attack indicators or when they are assaulting another person."<sup>56</sup>

Both the Emergency Management Policy and the Cell Extraction Policy make clear that the Use of Force Policy must be followed in responding to inmate disturbances and in conducting cell extractions.<sup>57</sup> The Cell Extraction Policy also makes clear that, prior to a cell extraction and in addition to employing de-escalation and conflict avoidance techniques, inmates must be "warned that the failure to modify their behavior and/or follow staff orders/rules will be a sufficient reason for the Sheriff's Office to conduct a cell extraction and move the inmate by force to a pre-determined housing location, such as a segregation unit."<sup>58</sup> If the inmate refuses to comply, the Cell Extraction Policy requires that a supervisor then repeat the warning "and also notify the

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medical conditions, such as asthma or COPD) reiterates that a medical review must be conducted before a calculated use of force. *Id.* at 09.06.12(C)(1); *see also* Restraints Policy at 09.09.01(C); 09.09.09(A)(1); Bristol County Sheriff's Office, Policy No. 12.03.00, Special Needs Inmates ("Special Needs Policy"), at 12.03.05 (governing use of force against special needs inmates).

<sup>54</sup> Use of Force Policy at 09.06.12(A)(1)(a).

<sup>55</sup> *Id.* at 09.06.13 (decontamination procedures).

<sup>56</sup> *Id.* at 09.06.14(A).

<sup>57</sup> Cell Extraction Policy at 09.18.03(A) (cell extraction); Emergency Management Policy at 09.15.10 (inmate disturbances).

<sup>58</sup> Cell Extraction Policy at 09.18.04(A).

inmate that the use of chemical agents, OC, special impact munitions, and/or a restraint chair may also be authorized.”<sup>59</sup> A cell extraction may proceed only if these warnings have failed to result in compliance.<sup>60</sup> And like the Use of Force Policy, a qualified medical professional must review the inmate’s or detainee’s medical history to determine if there are any contraindications or other concerns which may factor into the operation, particularly with respect to the use of chemical agents and O.C. spray, and the cell extraction team must wait for the results of that evaluation before the team is “put into action.”<sup>61</sup> Where there is a legitimate health concern, O.C. spray or other aerosols may be withheld.<sup>62</sup>

As to the application of restraint equipment (such as flex cuffs), the BCSO’s policies make clear that such equipment should only be applied “for the least amount of time necessary to achieve desired behavioral objectives,” that restraints may need to be “adjusted or modified, as needed, depending on the totality of the circumstances,” and that they should be applied in such a way to avoid causing “excessive physical pain” or “imped[ing] circulation.”<sup>63</sup> The BCSO’s policies also make clear that no “person shall be moved face down on their stomachs,” no employee or other person is permitted to “sit down or place their weight on a person’s back or chest area during or after the application of restraints, even if the restrained person continues to struggle,” and that O.C. spray, pepper-ball, or other chemical agents are not to be used against a person who is already restrained.<sup>64</sup>

As to documentation, the Use of Force Policy requires the Watch Commander to prepare a “Use of Force Packet” that includes the following documents: (a) a description of the events leading up to the use of force; (b) a precise description of the incident and the reasons for employing force; (c) a description of the severity of the security problem/crime at issue and perceived threats; (d) a description of the type of force used; (e) a description of whether the subject was actively resisting; (f) a description of observed injuries, extent of injuries and medical treatment given; (g) a list of known participants and witnesses; (h) related photos and/or audio/visual tapes collected; (i) related incident reports and disciplinary reports; (j) a use of force report, and (k) a

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<sup>59</sup> *Id.* at 09.18.04(B).

<sup>60</sup> *Id.*; *see also id.* at 09.18.06(B).

<sup>61</sup> *Id.* at 09.18.10(2).

<sup>62</sup> *Id.*

<sup>63</sup> Restraints Policy at 09.09.06(A), (B).

<sup>64</sup> *Id.* at 09.09.11(5), 09.09.13.

summary report.<sup>65</sup> The Use of Force Policy also requires the use of audio/visual cameras whenever a calculated use of force has been authorized to record, among other things, the name, title, and faces of all involved personnel, the de-escalation techniques and issuance of the use of force order, and the medical examinations of inmates following the calculated use of force, focusing on the presence or absence of any injury.<sup>66</sup> The Use of Force Policy requires an administrative review to be conducted by the Facility Major after each use of force to determine, among other things, whether any policies were violated and whether the use of force was reasonable.<sup>67</sup> After the completion of this administrative review, the entire use of force packet is required to be sent to the Superintendent's Office for final review.<sup>68</sup>

The K9 Policy makes clear that canines can never be used in cell extractions,<sup>69</sup> and integrates the Use of Force Policy with one noteworthy exception. The Use of Force Policy is clear that canines can never be used “for the force, control, or intimidation of ICE detainees.”<sup>70</sup> But the K9 Policy contains an exception to this prohibition that permits ICE detainees to come into “contact” with canines during an “emergency situation when the use of a Canine Unit (dog and handler) has been considered to be the most effective method to curtail a disturbance/riot and/or to save a life.”<sup>71</sup>

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<sup>65</sup> Use of Force Policy at 09.06.17(B). The only documentation requirement on the employees themselves is that they submit “truthful, legible and appropriate documentation to the incident” before the end of their shift, whenever possible. *Id.* at 09.09.17(A). This appears to be inconsistent with 103 CMR 924.09(4)(b), which requires that each sheriff's policy require each employee to submit documentation before the end of their shifts “unless prevented by extraordinary circumstances such as injury” that includes (1) an accounting of events leading up to the use of force; (2) a precise description of the incident and the reason for employing force; (3) a description of type of the force used; (4) a description of observed injuries and treatment given; and (5) a list of participants and witnesses. We found, during our investigation, that the incident reports prepared by the responding officers varied widely in terms of the level of details provided, ranging from a report that consisted of a single handwritten paragraph to comprehensive, multi-page reports.

<sup>66</sup> Use of Force Policy at 09.06.17(B)(7).

<sup>67</sup> *Id.* at 09.06.17(B)(3).

<sup>68</sup> *Id.* at 09.06.17(B)(3)-(4).

<sup>69</sup> K9 Policy at 09.07.12(B).

<sup>70</sup> Use of Force Policy at 09.06.02(L).

<sup>71</sup> K9 Policy at 09.07.10(C) (search of ICE detainee housing units).

And finally, the BCSO has a policy that governs special management inmates—that is, inmates who are placed in the Restrictive Housing Unit (“RHU”) for administrative, disciplinary, or protective reasons. The Special Management Inmates Policy sets forth the procedural requirements for transferring an inmate to the RHU, as well as the rights and privileges of the detainees after placement in the RHU. Among other requirements, this policy requires that detainees be provided with essential items (e.g., clothing) and that the BCSO adequately document when such items are denied for mental health or medical reasons.<sup>72</sup>

### ICE Detention Standards

As noted above, the BCSO’s IGSA with ICE requires that the BCSO comply with the “most current edition of ICE National Detention Standards.”<sup>73</sup> Some of the particularly relevant the ICE National Detention Standards (the “Detention Standards”)<sup>74</sup> are as follows:

- Canines “will not be used for force, control or intimidation of detainees.”<sup>75</sup>  
“Canine units (in facilities that have them) may be used for contraband detection

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<sup>72</sup> Bristol County Sheriff’s Office, Policy No. 10.03.00, Special Management Inmates (“Segregation Policy”), at 10.01.03 (H), (J)-(L).

<sup>73</sup> Inter-Governmental Service Agreement between the DHS ICE Office of Detention and Removal and the Bristol County Sheriff’s Office, September 27, 2007.

<sup>74</sup> See 2008 ICE Performance-Based National Detention Standards, <https://www.ice.gov/detention-standards/2008>. The most current edition of the ICE Detention Standards are the 2011 Performance-Based National Detention Standards as amended in 2016. However, because DHS has conducted recent compliance inspections of the BCSO pursuant to the 2008 Performance-Based National Detention Standards, see Office of Detention Oversight, Compliance Inspection, Enforcement and Removal Operations, Boston Field Office, Bristol County Detention Center, North Dartmouth, Massachusetts (July 20-23, 2020), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/bristolCoDetCntrNorthDartmouthMA\\_Jul20-23\\_2020.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/bristolCoDetCntrNorthDartmouthMA_Jul20-23_2020.pdf), we focus the foregoing analysis on those standards. And, in any event, which set of ICE Detention Standards applies to the BCSO is of no consequence for the purposes of this report because there are virtually no meaningful differences between the relevant portions of the 2008 and amended 2011 standards.

<sup>75</sup> ICE/DRO Detention Standard, Use of Force and Restraints (December 2, 2008), Section II(12), available at [https://www.ice.gov/doclib/dro/detention-standards/pdf/use\\_of\\_force\\_and\\_restraints.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/use_of_force_and_restraints.pdf) (“Use of Force Detention Standard”); ICE/DRO Detention Standard, Emergency Plans (December 2, 2008), Section V(D)(6), available at [https://www.ice.gov/doclib/dro/detention-standards/pdf/emergency\\_plans.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/emergency_plans.pdf) (“Emergency Plans Detention Standard”) (noting that

when detainees are not present, but canine use for force, intimidation, control, or searches of detainees is prohibited.”<sup>76</sup>

- “Facilities will endorse the concept that confrontation avoidance is the recommended method for resolving situations and should always be attempted prior to any calculated use of force,” including during emergency situations.<sup>77</sup>
- “Staff may not use restraint equipment or devices (for example, handcuffs) . . . [t]o cause physical pain or extreme discomfort. While some discomfort may be unavoidable even when restraints are applied properly, examples of prohibited applications include: improperly applied restraints [and] unnecessarily tight restraints.”<sup>78</sup>
- “The following acts and techniques are specifically prohibited . . . (4) striking a detainee for failing to obey an order . . . (6) using force against a detainee offering no resistance.”<sup>79</sup>
- Less-lethal weapons may be used in situations where a detainee is armed and/or barricaded, where a detainee cannot be approached without danger to self or others, or where a delay in controlling the situation would seriously endanger the

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any force used to control an emergency situation must comply with the Use of Force Detention Standard).

<sup>76</sup> ICE/DRO Detention Standard, Searches of Detainees (December 2, 2008), Section II(10), *available at* [https://www.ice.gov/doclib/dro/detention-standards/pdf/searches\\_of\\_detainees.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/searches_of_detainees.pdf) (“Detainee Searches Detention Standard”); *see also* ICE/DRO Detention Standard Facility Security and Control (December 2, 2008), Section V(F)(3), *available at* [https://www.ice.gov/doclib/dro/detention-standards/pdf/facility\\_security\\_and\\_control.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/facility_security_and_control.pdf). Superintendent Souza explained that ICE may grant the BCSO waivers from compliance with specific Detention Standards that conflict with existing BCSO policies, but that the BCSO had not received a waiver from the use of force detention standard that bars the use of canines with immigration detainees. And in any event, ICE’s annual compliance inspections have focused on the BCSO’s Use of Force Policy (which accurately states that canines can never be used for the “force, control or intimidation” of the detainees), and not the BCSO’s K9 policy, which contains an exception to this prohibition.

<sup>77</sup> Use of Force Detention Standard at Section II(2); Emergency Plans Detention Standard at Section V(D)(6).

<sup>78</sup> Use of Force Detention Standard at Section V(B)10).

<sup>79</sup> *Id.* at Section V(E).

detainee or others or would result in a major disturbance or serious property damage.<sup>80</sup>

- Only certain less-lethal weapons can be used against detainees—namely, O.C. spray, collapsible steel batons, and riot batons. However, “[s]taff shall consult medical staff before using pepper spray or other [less lethal] weapons unless escalating tension makes such action unavoidable. When possible, medical staff shall review the detainee’s medical file for a disease or condition that [a less lethal] weapon could seriously exacerbate, including, but not limited to, asthma, emphysema, bronchitis, tuberculosis, obstructive pulmonary disease, angina pectoris, cardiac myopathy, or congestive heart failure.”<sup>81</sup>
- In a calculated use of force, “the ranking detention official, a designated health professional, and others as appropriate shall assess the situation. Taking into account the detainee’s history and the circumstances of the immediate situation, they shall determine the appropriateness of using force.”<sup>82</sup> Qualified health professionals are required to determine, after gaining control of the situation, whether the detainee or detainees require continuing care and to treat any injuries and document the medical services provided.<sup>83</sup>
- The detention facility is also required to conduct an “After-Action Review” to “assess the reasonableness of the actions taken and determine whether the force used was proportional to the detainee’s actions.” This review is required to assess, among other steps, “[w]hether team members applied only as much force as necessary to subdue the detainee, including whether team members responded appropriately to a subdued or cooperative detainee or a detainee who discontinued his/her violent behavior;” “[w]hether the detainee received and rejected the opportunity to submit to restraints voluntarily before the team entered the cell/area. If he or she submitted, team action should not have been necessary;” “[t]he amount of time needed to restrain the detainee. Any non-resisting detainee restrained for longer than necessary could indicate training problems/inadequacies;” “[w]hether a medical professional promptly examined the detainee, with the findings reported on the audiovisual record;” and “[w]hether use of

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<sup>80</sup> *Id.* at Section V(G)(3).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at Section V(I)(1); *see also* Section (V)(I)(3)(d) (requiring the shift supervisor in a calculated use of force to “seek the advance guidance of qualified health personnel (based on a review of the detainee’s medical record) to identify physical or mental problems and, whenever feasible, arrange for a health services professional to be present to observe and immediately treat any injuries.”).

<sup>83</sup> Use of Force Detention Standard at Section V(H).

chemical agents, pepper spray, etc., was appropriate and in accordance with written procedures.”<sup>84</sup>

- “Searches of detainees, housing, and work areas will be conducted without unnecessary force and in ways that preserve the dignity of detainees . . . A strip search will be conducted only when there is reasonable suspicion that contraband may be concealed on the person, or when there is a reasonable suspicion that a good opportunity for concealment has occurred, and when properly authorized by a supervisor.”<sup>85</sup>
- Information must be provided to detainees in a language or manner that the detainees can understand throughout the detention process, including with respect to the provision of medical care and in connection with obtaining informed consent for treatment.<sup>86</sup>
- Detainees in special management units “may be denied such items as clothing, mattress, bedding, linens, or pillow for medical or mental health reasons if his or her possession of such items raises concerns for detainee safety and/or facility security. All denials of such items shall be documented.”<sup>87</sup>
- Detainees may only be subject to disciplinary segregation for no more than 60 days subject to certain procedural requirements, and detainees may be placed in administrative segregation for longer periods of time, but there are a number of procedural requirements that must be fulfilled, including periodic review at the 72-hour and 7-day benchmarks and on a weekly basis thereafter with increasing procedural requirements after 30 days.<sup>88</sup>

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<sup>84</sup> *Id.* at Section V(P).

<sup>85</sup> Detainee Searches Detention Standard at Section II(3), (6).

<sup>86</sup> ICE/DRO Detention Standard, Medical Care (December 2, 2008), at Section (V)(I), (T), *available at* [https://www.ice.gov/doclib/dro/detention-standards/pdf/medical\\_care.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf) (“Medical Care Detention Standard”). *See also* ICE Language Access Plan (June 14, 2015), 10, *available at* <https://www.ice.gov/sites/default/files/documents/Document/2015/LanguageAccessPlan.pdf> (noting that the 2008 and 2011 PBNDS requires that information be provided to the detainee in a language or manner that they can understand and that ICE frequently notifies detention facilities when a detainee with Limited English Proficiency is transferred into a detention facility).

<sup>87</sup> ICE/DRO Detention Standard, Special Management Units (December 2, 2008), at Section (V)(B)(11), *available at* [https://www.ice.gov/doclib/dro/detention-standards/pdf/special\\_management\\_units.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/special_management_units.pdf) (“Segregation Detention Standard”).

<sup>88</sup> *Id.* at Section V(C), (D).

## V. FINDINGS AND CONCLUSIONS

The AGO's findings support a conclusion that the BCSO violated the civil rights of the detainees on May 1 by using excessive force against the ICE B detainees and by acting with deliberate indifference to a substantial risk of serious injury or harm to the detainees and their health. To understand why and how the AGO has reached these conclusions, however, it is important to first understand what happened on May 1. So we begin with the facts.

### a. Factual Findings

#### The Detainees' Non-Violent Refusal of COVID-19 Screening

We start our discussion with an undisputed fact: the May 1 Incident started with COVID-19. Around 2 pm on May 1, a BCSO nurse entered ICE Unit B to screen the detainees for COVID-19 by asking them a series of questions about their symptoms. The screening was verbally conducted in English and no formal translation or interpretation services were provided.<sup>89</sup> English-speaking detainees attempted to translate for limited-English Proficient ("LEP") detainees, but those detainees were confused by the screening and did not understand the process or the purpose of the screening. Nevertheless, the detainees complied with the screening assessment.

Several of the detainees who understood English reported that the nurse who conducted the screening assessment did not adequately explain the purpose of the screening assessment, the process they were engaging in, or the risks and benefits of undergoing a COVID-19 diagnostic test in the event that symptoms were identified.

The screening assessment ultimately resulted in the identification of ten detainees who reported two or more symptoms consistent with COVID-19. Shortly thereafter, a BCSO staff member entered Unit B, along with a nurse, to transport these ten detainees to the HSU, where they would be tested for COVID-19 and then quarantined in isolation until they received a negative test result. The detainees expressed concern, anxiety, and fear related to the BCSO's plan to test and quarantine them. In particular, the detainees

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<sup>89</sup> Several BCSO security staff members suggested that translation and interpretation services were unnecessary because other detainees were available to translate and/or because the detainees seemed able to understand enough English to follow the conversation. We reject this explanation. There is ample evidence that some of the detainees did not understand English at all and/or were Limited English Proficient, including evidence provided by the BCSO itself showing that BCSO officers had to translate some of the medical and mental health evaluations in order to place the detainees in the RHU. In addition, it is inappropriate to rely on other detainees to accurately and reliably translate or interpret medical information necessary to obtain informed consent and/or to explain medical care or treatment.



explained to BCSO staff that they were afraid that they would be exposed to COVID-19 in the HSU because that unit serves the entire jail population, including individuals who had recently arrived at the jail from the community, and that they were concerned about the conditions that they would face in isolation. The detainees ultimately refused to leave Unit B.

Because the BCSO had not yet undertaken efforts to conduct widespread testing of the detained population, the BCSO had no protocol or contingency plan in place to address refusals to comply with testing and isolation orders. Without direction or guidance on how to respond to the detainees' refusal, the BCSO security staff member notified the Watch Commander. The Watch Commander, in turn, emailed the chain of command, including Superintendent Souza, to notify them that the detainees were "peacefully" refusing to go to the HSU and to ask: "What should be the next course of action? I don't want to handle this wrong."<sup>90</sup> The Watch Commander did not receive any instructions or guidance from his superiors in response to this email.

At the same time that the Watch Commander was notified of the situation, the nurse notified the Director of Medical Services (not to be confused with the Medical Director, who is a licensed physician). The Director of Medical Services, in turn, notified the Sheriff of the emerging situation in ICE Unit B. Sheriff Hodgson then decided—in a departure from customary practice<sup>91</sup>—to speak directly and in-person with the detainees about their refusal to submit to testing and isolation.

#### *Sheriff Hodgson Arrives at the Unit and the Situation Rapidly Escalates*

Shortly before 5:30 pm, Sheriff Hodgson, along with Special Sheriff Bruce Assad, the Director of Medical Services, the Watch Commander, the nursing supervisor for the ICE units, and several corrections officers entered Unit B to speak with the detainees about their refusal to leave the unit for testing and isolation. All detainees were ordered to gather together near the control desk, and the detainees complied. Sheriff Hodgson spoke in English and did not provide translation or interpretation services for those who did not speak English. And, once again, some of the detainees reported that they were not able to understand what was happening or what was being said. Several detainees reported that Sheriff Hodgson appeared to become increasingly agitated and told the detainees that

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<sup>90</sup> Email to Superintendent Souza (May 1, 2020, 5:17 pm).

<sup>91</sup> We did find one other example where Sheriff Hodgson addressed the detainees directly. This event also involved the ICE B detainees and occurred approximately 4-6 weeks before the May 1 Incident. Like the May 1 Incident, this event involved the detainees' concerns related to the BCSO's response to the COVID-19 pandemic and an associated work stoppage, but unlike the May 1 Incident, this situation resolved through communication and conflict avoidance techniques without a need for any force.

they would be transported by force, if necessary.<sup>92</sup> When Sheriff Hodgson finished speaking, he instructed a corrections officer to read aloud the names of the ten detainees slated to be transported and tested, and reiterated the directive to comply with this order.

The first detainee whose name was called refused to go and attempted to explain why he had identified certain symptoms in response to the COVID-19 screening assessment.<sup>93</sup>

The next detainee (“M.B.”<sup>94</sup>) whose name was called had, by this point, left the area to call his attorney at the telephone kiosk in the far corner of the bunkroom. Sheriff Hodgson and a corrections officer (“A.S.”) approached the phone kiosk and told M.B. to hang up the phone. What happened next is unclear.

M.B. alleges that Sheriff Hodgson grabbed the phone out of his hand, shoved him against the phone kiosk, and then pulled him into close proximity in a threatening manner. M.B.’s attorney, who was on the phone at the time, reported that he overheard M.B. “crying out as if in pain” and “scuffling sounds” before the phone call was terminated.

Sheriff Hodgson denies M.B.’s account of this incident. While Sheriff Hodgson acknowledged in his incident report that he approached the phone kiosk to address M.B. and that he “reached to take hold of the receiver to terminate the telephone call,” Sheriff Hodgson maintains that M.B. “pulled the receiver over to his left shoulder,” “put the mouthpiece of the telephone close to his own mouth, and began shouting ‘don’t you touch me don’t you put your hands on me’.” Sheriff Hodgson claims that M.B. “was attempting to falsely portray that he was being assaulted and that he was in a physical struggle with [me].”

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<sup>92</sup> Several BCSO security staff reported that Sheriff Hodgson appeared relatively calm when he arrived on the unit, but acknowledged that the situation became more “argumentative” as it went on and that Sheriff Hodgson told the detainees that they would be “escorted out” if necessary.

<sup>93</sup> In response to the screening assessment, this detainee, who is Muslim, told us that he reported a persistent cough, which he attributed to his medical history (which included tuberculosis), and diarrhea, which manifested acutely when this detainee began fasting for Ramadan and consumed large quantities of milk to compensate for the BCSO’s refusal to provide his meals after sunset. According to this detainee, BCSO medical staff never discussed with him his symptoms or explained to him why, in view of his medical history, he should be tested for COVID-19 and subjected to a period of isolation. Absent that information, this detainee refused to be tested for COVID-19 on May 1.

<sup>94</sup> Where necessary in this report to identify specific detainees or BCSO staff members, we refer to them by initials to protect their privacy and confidentiality.

Officer A.S., who was present with Sheriff Hodgson for some or all of this incident, offered a third version of this event. Officer A.S. claims that he approached the phone kiosk by himself and ordered M.B. to terminate the phone call. According to this officer, Sheriff Hodgson then approached the telephone kiosk while M.B. was continuing to refuse direct orders. When Sheriff Hodgson arrived, M.B. supposedly raised into the air his left hand while holding the phone receiver in an “attempt to assault Sheriff Hodgson” and got into a “fighting stance” in relation to the Sheriff. Officer A.S. claims that he then grabbed M.B.’s hand and shirt collar, and pinned M.B. against the wall.

Several detainees claim that they witnessed Sheriff Hodgson “grab,” “drag,” and/or “assault” M.B. at the phone kiosk. Several BCSO security staff members initially claimed in their incident reports that Sheriff Hodgson did not physically touch or assault M.B. However, many of these officers explained in interviews that they did not actually witness this incident and, instead, based their written statements on what they overheard—that is, a struggle involving a detainee and Sheriff Hodgson—or what they had been later told.

Beyond these conflicting witness statements, there is no other evidence that sheds light on what happened at the phone kiosk. There was surveillance footage from Unit B at the time, but the view is obstructed by another phone kiosk. But regardless of what happened at the phone kiosk, the struggle resulted in a dramatic escalation of the situation—an escalation that detainees and BCSO security staff alike uniformly described as “scary” (albeit for very different reasons).

At approximately 5:47 pm, several other BCSO security staff members and many of the detainees rushed toward the phone kiosk area. The evidence shows that, at that point, there was a struggle involving many of the BCSO staff members and some of the detainees who sought to aid M.B. The evidence also shows that other detainees rushed to the area to observe the situation, but did not engage with or struggle against the BCSO staff.

During the ensuing struggle, one of the corrections officers (“G.C.”) deployed several bursts of O.C. spray in the direction of “multiple detainees.”<sup>95</sup> We do not know precisely how many detainees were exposed to O.C. spray, but Officer G.C. described spraying the O.C. in essentially a sprinkler head pattern with the goal of exposing as many detainees as possible. In disbursing the O.C. spray, Officer G.C. did not differentiate between those detainees who were involved in the melee and those who were bystanders. Officer G.C. told us that he gave verbal warnings in English before

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<sup>95</sup> Officer G.C. could not recall precisely how many bursts of O.C. spray he ultimately deployed, but estimated it to be around 10 bursts. At least one other corrections officer noted in his incident report that he had “retrieved” his O.C. spray canister, but determined that it was ultimately unnecessary to use it “to create a safe distance” for the BCSO personnel to exit the unit.

disbursing O.C. spray, but we note that he did not reference verbal warnings in his incident report.

Officer G.C. succeeded in exposing multiple detainees to O.C. spray. Many detainees reported that they were O.C. sprayed in the face, including in their mouths and eyes. This O.C. spray exposure caused detainees to experience burning sensations on their skin and in their eyes; in some instances, detainees experienced difficulty breathing. Several minutes later, some of these detainees can be heard coughing, wheezing, and/or struggling to breathe in recorded phone calls with their family and friends. Indeed, so much O.C. spray was used in the unit that many of the detainees became convinced that noxious gas was being pumped into the unit through the ventilation system,<sup>96</sup> and at least one other corrections officer was inadvertently O.C. sprayed in the face.

As the BCSO personnel exited the bunkroom, two or three unidentified detainees threw plastic chairs over the bunks in the direction of the corrections officers. These plastic chairs struck, but did not injure, three corrections officers. Sheriff Hodgson also reported being struck by a fourth chair and suffering a bruise as a result. Unlike the other instances of chair-throwing, however, this is not captured on the surveillance video. We have no reason to disbelieve Sheriff Hodgson's account, which was corroborated by one other corrections officer (although not Officer A.S. who was standing next to him), but, in the absence of independent corroborating evidence, we cannot conclude with any degree of reasonable certainty that a chair struck Sheriff Hodgson.

All of the BCSO personnel, including Sheriff Hodgson, were able to safely exit Unit B. The entire struggle between the detainees and the BCSO staff was over within seconds.

#### *Some Detainees Erupt in Destructive Conduct, Which Stops After SRT and K9 Arrive*

At approximately 5:50 pm, some of the detainees began engaging in destructive and disruptive conduct on the unit that included damaging property, such as breaking appliances, smashing through walls, breaking mirrors, sinks, and tiles in the bathroom, filling a trash can with hot water, dumping soap or shampoo on the floor, throwing liquid at the surveillance camera, and attempting to barricade the doors with tables, appliances, trash bins, mattresses, and other furniture.<sup>97</sup>

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<sup>96</sup> The ventilation system to the unit was shut off prior to SRT's later entry trapping on the unit whatever O.C. spray remained at that time and all of the subsequently deployed O.C. spray and pepper-ball. The BCSO also eventually shut down the water system in the unit.

<sup>97</sup> The video evidence from the May 1 Incident makes clear that only a handful of the detainees engaged in this conduct. Many detainees did not engage. Instead, they were on the phone or were walking around, sitting down, or simply watching the situation unfold.

This conduct continued in earnest for approximately five minutes. Then, most of the destructive conduct slowed and then largely stopped. By 6:10 pm, the vast majority of detainees are visible on the surveillance and other video footage walking around the unit, sitting in chairs, laying in bunk beds, and using the phone.

This calmer state in the bunkroom largely continued for the next hour, while SRT and the K9 Division arrived on scene and formulated a plan for a calculated use of force. During this time, two corrections officers in the ICE B control room bubble kept a contemporaneous log of destructive conduct on the part of the detainees, which identified those detainees who were observed damaging property or brandishing weapons. Between 6:10 pm and 7:15 pm, the only such conduct documented on the log involved a detainee who was observed throwing an object against the wall at 6:23 pm (which is visible on the video footage), detainees observed purportedly holding an item that might have been a pipe at 6:33 pm, 6:42 pm, 6:46 pm, and 6:54 pm (which is not clearly visible on the footage and, in any event, the last entry on the log at 7:04 pm states that the detainee no longer had whatever item this was), and a detainee who flashed a flashlight in the direction of the officers (which is visible on the footage).<sup>98</sup>

The log also notes that some detainees were wearing masks or towels on their heads “to conceal their identities.” The detainees have explained that they placed wet t-shirts and towels on their faces to alleviate the symptoms of O.C. spray exposure. We found some evidence to support the detainees’ explanation in the recorded phone calls. In particular, when a detainee reported to a family member the symptoms of O.C. exposure, that person encouraged the detainee to put a wet towel or t-shirt on his face to

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<sup>98</sup> The log starts with a series of entries without documenting the time. These entries are consistent with the initial barricading and destructive conduct immediately following the BCSO personnel’s exit from the unit. The log also documents some of the movements or other activities of some of the detainees during this intervening hour, but none of those entries involve conduct related to brandishing or possessing a weapon or actively destroying property.

alleviate those symptoms.<sup>99</sup> And because several detainees believed that noxious gas was being pumped into the unit through the ventilation system, they thought that face coverings might protect them against further exposure. Indeed, the video evidence shows detainees at various times pointing to the HVAC system in the ceiling while holding towels to their faces.

As noted above, during this hour while SRT and K9 continued to form outside the unit and plan their calculated use of force, several detainees contacted their family members, friends, lawyers, and advocates to ask for help. The recorded phone calls largely corroborate the statements of the detainees, and include near-contemporaneous explanations of their concerns related to COVID-19 testing, Sheriff Hodgson's altercation with M.B. at the phone kiosk, their exposure to large quantities of O.C. spray, and the ensuing period of property damage. Some of the detainees expressed concern about how Sheriff Hodgson would respond to the situation as they observed SRT and K9 forming outside the unit, including a detainee who told his wife that "I'm really afraid for my life right now;" a detainee with COPD and other serious medical conditions who told an advocate that he could not breathe and needed medical help; a detainee who told a friend that he could see the "SWAT team" outside the unit and was feeling "pretty scared;" and a detainee who told his wife that the Sheriff was acting "crazy," that he was scared, that she would need to take care of their kids if something happened to him, and asked to tell his son how much he loved him. Many of these detainees can be heard coughing, wheezing, and struggling to breathe throughout these phone calls. And detainees eventually wrote on a window facing out to the recreation pen where Sheriff Hodgson, SRT, and the K9 Division were located: "We need help" and "Help us!!"

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<sup>99</sup> BCSO security staff repeatedly emphasized that, based on their training and experience, the use of face coverings by inmates during a large-scale disturbance indicated both that the detainees were attempting to conceal their identities and that they were taking steps protect themselves from an anticipated use of O.C. spray so that they could "fight" through it. We have no reason to doubt that BCSO staff drew these assumptions based on their training and experience (although we do point out that none of the BCSO security staff with whom we spoke had ever responded to a disturbance of this magnitude before), and we understand why the use of face coverings by inmates in a disturbance may pose a security concern. But the problem is that the BCSO acted upon those assumptions without gathering additional information about why these detainees were wearing face coverings, and/or ordering the detainees to remove their face coverings prior to SRT's entry and giving them an opportunity to remove the coverings, or warning the detainees about the steps that would be taken if the coverings were not removed, and/or otherwise alerting the detainees of the significance of the face coverings to BCSO staff and how that would impact what happened next.

*The BCSO Fails to Take Any Steps to De-Escalate the Situation, Avoid Conflict, and to Appropriately Prepare for a Calculated Use of Force*

During this same approximately one-hour time period, SRT, the K9 Division, and several other corrections officers, as well as BCSO leadership (including Sheriff Hodgson, Special Sheriff Assad, and Superintendent Souza) gathered outside of Unit B to plan a calculated use of force. Yet, in planning the calculated use of force, the BCSO failed to take critically important steps that may have tempered or altogether eliminated the need for additional force and that would have better protected the detainees and BCSO staff.

First, at no point between the time when BCSO staff initially exited the unit around 6 pm and when SRT re-entered the unit around 7:15 pm did BCSO personnel take any steps to de-escalate the situation, to order or instruct the detainees on how they could avoid further conflict with BCSO staff, or to warn the detainees about what would happen if they continued to refuse to comply with orders. As the Watch Commander put it, it would have been practically impossible at that point for any or all of the detainees to remove themselves from the situation and avoid further conflict, even if some or all of the detainees wanted to comply.

Importantly, the detainees could see SRT (and their weapons systems and riot gear), as well as the K9 Division (and their unmuzzled and muzzled dogs) from the windows in the unit. As the BCSO staff explained, a simple “show of force” like this will often scare or intimidate detainees into compliance, obviating the need for further force.<sup>100</sup> And in this instance, the show of force outside of Unit B had the desired effect—the detainees were intimidated and scared by the mere presence of SRT and K9 outside of the unit, as reflected in their recorded phone calls prior to SRT’s entry. Yet there was no attempt by the BCSO to engage with the detainees to determine if they were ready to peacefully comply with BCSO orders.

Second, there is no evidence that the BCSO supervisors or other commanding officers on scene attempted to gather or rely on real-time information about what was happening inside the unit as they planned their calculated use of force. The two officers in the ICE control room bubble were monitoring the unit in real-time, but generally did not convey their observations to SRT or K9. When those officers did communicate information to SRT and K9, they relayed only specific instances of perceived misconduct and not information that would have been relevant to assessing the overall threat-level on the unit, such as the fact that most detainees were not engaging in disruptive or destructive conduct. Rather than relying on real-time information about the unit, SRT and K9 were told by Superintendent Souza (who had since appeared on-scene) that the detainees had make-shift weapons, including shivs, shanks, pieces of glass, pipe, and pieces of broken toilets, that they had donned multiple layers of clothing to prepare for a

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<sup>100</sup> At one point, a BCSO staff member can be overheard on the video footage saying, “When [the detainees] see K9 coming in, they’re going to love that.”

physical altercation, that they were actively rioting and engaging in property damage, that they were wearing face coverings to avoid the effects of O.C. spray, and that all twenty-five detainees were participating in the misconduct. Much of this information was demonstrably false or otherwise misleading, according to the evidence available to the AGO.<sup>101</sup> And there is no reason why the BCSO supervisors or commanding officers could not have gathered and provided accurate information about the detainees' conduct and changing threat-level as all of this information was readily available and accessible to those involved in planning the calculated use of force.

Finally, the BCSO took no steps whatsoever to evaluate the detainees' medical history or records for any potential contraindications to O.C. spray or to otherwise assess how the calculated use of force might have medically impacted the detainees. Some of these detainees suffered from respiratory or pulmonary illnesses, such as asthma or COPD, that put them at heightened risk of an adverse reaction to O.C. spray or pepper-ball. This omission is particularly troubling given that large quantities of O.C. spray had already been dispersed against multiple detainees, including those with pre-existing respiratory or pulmonary illnesses and including the ten detainees who had been identified as exhibiting symptoms of COVID-19—an infection that can cause severe respiratory illness.<sup>102</sup>

While the HSU and the CPS Health Services Administrator were notified of the calculated use of force consistent with the BCSO's policies,<sup>103</sup> no one notified the Medical Director (who is solely responsible for making treatment decisions for ICE detainees in emergency situations) or other on-call physicians, nor did they make EMTs available on-scene prior to, during, or immediately following the calculated use of force. While some BCSO nurses responded to the scene prior to SRT's entry to assist in treating any staff or detainees with injuries, these nurses can be heard on the video footage

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<sup>101</sup> In particular, prior to SRT's entry, the BCSO's staff documented only one possible weapon—an object that appeared to be a pipe that was alternately held by a few detainees. But even that object had not been observed in the hands of any detainee in the time leading up to SRT's entry. There is no evidence that any BCSO staff observed, in the time leading up to SRT's entry, any detainee holding or wielding a shiv or a shank or any piece of broken glass or toilet in a manner consistent with a weapon. Similarly, there is no evidence of active property destruction after 6:23 pm—more than 45 minutes before SRT's entrance.

<sup>102</sup> Superintendent Souza told us that any contraindications to O.C. spray or other less-lethal aerosols were not relevant to the calculated use of force because the BCSO was going to use O.C. spray and pepper-ball, regardless of any potential health risk to the detainees.

<sup>103</sup> The Health Services Administrator is the on-site administrator responsible for the daily operation of the inmate medical system and the contracted medical staff that facilitate this system. *See* HSU Policy at 12.01.01(H).



anxiously calling for emergency response equipment, like oxygen tanks, that would have been essential in the event of an adverse reaction to O.C. spray and should have been more readily available.

### *The BCSO's Calculated Use of Force*

Sixteen SRT officers, led by the Assistant Commander, ultimately responded on May 1. The SRT Bravo Squad Leader (“D.M.”) was armed with a flash bang grenade. In addition to O.C. spray canisters and 24-inch collapsible batons, SRT officers were also armed with other less-lethal weapons, including two polycaptor anti-riot shields, two shotguns with beanbag rounds, two pepper-ball launchers, and two battering rams.<sup>104</sup> SRT’s mission was to enter and “gain compliance” of the unit.

In addition to SRT, the entire K9 Division responded with all active duty dogs, three of which were muzzled and the rest of which were not. The K9 Division’s mission in responding to the May 1 Incident was twofold. First, the muzzled dogs would enter the unit with SRT to serve as a “compliance tool”—meaning, according to the Captain of the K9 Division, that the canines would scare and intimidate the detainees into compliance. In the event that the detainees were non-compliant or combative, the muzzled dogs would deliver “muzzle hits” or “muzzle strikes”—which, according to the K9 Division Captain, are akin to baton strikes. Second, the unmuzzled dogs would be staged around the perimeter of the recreation pen to apprehend any detainees who managed to escape. These dogs were unmuzzled for two reasons—to scare and intimidate the detainees and to engage in “bite work” should a detainee escape and require apprehension.

Another approximately twelve corrections officers were assigned to the restraint team. The restraint team’s mission was to enter the unit after the SRT and K9 teams “gained compliance” of the unit to restrain and remove the detainees from the unit.

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<sup>104</sup> For a discussion of some of these less-lethal weapons, see Kelsey D. Atherton, “What ‘Less Lethal’ Weapons Actually Do,” *Scientific American* (June 23, 2020), <https://www.scientificamerican.com/article/what-less-lethal-weapons-actually-do/>; see also Larry Neumeister, *Injuries at Protests Draw Scrutiny to Use of Police Weaponry*, *J. of Emergency Med. Servs.* (June 22, 2020), <https://www.jems.com/2020/06/22/injuries-at-protests-draw-scrutiny-to-use-of-police-weaponry/> (last visited Oct. 1, 2020) (noting that one study concluded that projectiles fired from non-lethal weapons had resulted in 53 deaths, 300 permanent disabilities, and 1,984 serious injuries in over a dozen countries from 1990 to 2015); David A. Koplow, *Tangled up in Khaki and Blue: Lethal and Non-Lethal Weapons in Recent Confrontations*, 36 *Geo. J. Int’l L.* 703, 709-11 (2005) (explaining that the use of so-called non-lethal or less-lethal weapons carries an “inherent, irreducible danger of fatalities” and that “projectile, chemical, or other mechanism that would merely disable or temporarily incapacitate one person . . . might well inflict mortal injury on another.”).

Shortly before 7:15 pm, SRT marched in “stack formation” to the exterior entrance of Unit B, flanked by three canine officers with muzzled dogs. Sheriff Hodgson stood approximately 75 feet from the entrance to the door, outside the recreation pen. Four canine officers with unmuzzled dogs surrounded the recreation pen.

The entry into the unit was captured on video from multiple angles and documented in incident reports by participating officers. The evidence shows that Squad Leader D.M. opened the door to Unit B and threw in the flash bang grenade, which detonated with a bang and flash of light approximately 15-16 feet away from the detainees. Smoke immediately filled the bunkroom. Squad Leader D.M. yelled, “Get on the ground!” contemporaneously with throwing in the flash bang. At the same time, one other SRT officer motioned toward the ground with his finger, apparently to suggest to the detainees that they should get on the ground. However, because these warnings were essentially contemporaneous with the flash bag, the detainees had no meaningful opportunity to comply before the flash bang was used and/or to take steps to avoid injury.

After the flash bang grenade detonated, the detainees ran further inside the unit and away from the site of explosion. Because the door to the unit opened into the recreation pen, and opposite to the barricade, SRT officers were able to gain entrance to the unit almost immediately upon entry.<sup>105</sup> SRT officers repeatedly yelled at the detainees to get down on the ground, but all commands were given in English and no translation or interpretation services were provided. Pepper-ball launchers rapidly discharged from the moment of entry, even before the detainees could have reasonably been expected to comply with orders to get on the ground.

The video footage of the entry itself is relatively unclear due to rapid camera panning, but it does show that the majority of the detainees were compliant with verbal directives and/or were acting in a non-threatening manner. This is consistent with our interviews of SRT and K9 officers, who reported that most detainees were compliant with verbal commands and that many of those who were non-compliant were simply non-responsive to verbal commands, rather than combatting, assaulting, or actively resisting staff.

Despite the fact that detainees were largely compliant and not actively resisting or combative, the evidence shows that:

- At least thirty rounds of pepper-ball were fired at several detainees. In one instance, an SRT Team Leader (“C.G.”) (who was using the pepper-ball launcher

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<sup>105</sup> BCSO personnel suggested that the flash bang was necessary both because of the threat posed by the detainees and because they needed to distract the detainees while they removed the barricade of the door. We reject this explanation because the detainees no longer posed a serious threat to officer safety based on their conduct in the unit at the time of SRT’s entry and because the door opened into the recreation pen, and opposite to the barricade, and so the barricade was ineffectual.

for the first time outside of training) described inadvertently hitting one or two detainees with pepper-balls when he was attempting to fire at the floor to saturate the area with O.C. In another instance, Team Leader C.G. fired a volley of 4-6 pepper-balls at a detainee who stepped out from a corner in the TV room and moved toward where Team Leader C.G. was standing. Team Leader C.G. said that he fired these rounds because he was “scared” by the unexpected presence of a detainee in the corner and not because the detainee had assaulted or attempted to assault him.

- K9 officers deployed “muzzle hits” on detainees who were already on the ground and not combatting or assaulting staff.
- O.C. spray was used against multiple detainees, including in one incident where an unidentified SRT officer is visible on the camera aiming an O.C. canister at detainees in the bathroom who were already on the ground, and another incident where a single detainee was exposed to both O.C. spray and 4-6 pepper-balls, which had been fired at his extremities.
- SRT members applied “hands-on” force against several detainees.<sup>106</sup>
- Polycaptor shields were used to force detainees to the ground when they did not comply with verbal commands.
- Restrained detainees were forcefully pushed to the ground.

Notably, the vast majority of the forty-three incident reports by BCSO staff contain no indication that the detainees were non-compliant with verbal commands at the time of SRT’s entry or that the detainees were actively resisting, threatening, or fighting BCSO personnel. Six incident reports of BCSO officers who entered Unit B with SRT or as part of the restraint team indicate that some detainees were non-compliant with (English-language) verbal commands to get on the ground or to submit to flex cuffs, but those reports do not state that any of these detainees were acting in an assaultive or combative manner toward staff. These incident reports note that, where detainees did not respond to verbal commands, officers used a range of less-lethal weapons, including O.C. spray, pepper-ball, a polycaptor anti-riot shield, and canine muzzle hits, to “gain compliance” of these detainees, even though these detainees were not combatting, assaulting, or actively resisting staff. This is consistent with the account of several detainees who claimed that SRT officers O.C. sprayed or otherwise struck them, even though they were not resisting or fighting, but simply did not understand what was happening because they did not speak or understand English.

Seven incident reports by BCSO officers who entered the unit with SRT (including three from the K9 Division) or the restraint team state that less-lethal weapons,

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<sup>106</sup> We note that not all instances of hands-on force were noted in the incident reports.

including O.C. spray, pepper-ball, a closed fist punch, and canine muzzle hits were used against assaultive or combative detainees. However, we were unable to identify any of these incidents on the video footage. And we note in particular that the video actually appears to contradict one report issued by a K9 officer, who stated that, “I immediately proceeded to my left and saw multiple detainees running towards me. I gave several orders to get on the ground. Several of the detainees did not comply and I utilized [my] K9 to deliver muzzle hits in order to gain compliance.” The video shows a K9 officer who entered the unit and immediately went to the left was met with a single detainee who immediately got on the ground with his hands raised. And with respect to other incident reports, the officers we interviewed explained that they did not personally observe detainees engaging in assaultive or combative conduct, but rather either saw an officer go “hands-on” with a detainee, which led them to assume that the detainee was being combative or assaultive, or saw that the detainee was not presenting his hands for cuffing, despite orders to do so.

In addition to these specific instances of force, the detainees have alleged, among other things, that:

- SRT officers O.C. sprayed and/or fired pepper-balls at detainees *before* ordering them to get on the ground, even though the detainees were not resisting or acting in an assaultive or combative manner;
- SRT officers O.C. sprayed and/or fired pepper-balls at detainees who were already on the ground and/or restrained; and
- SRT officers and restraint team officers pressed their knees on the backs and/or necks of at least four detainees<sup>107</sup> who were already on the ground and/or restrained, causing them to struggle to breathe and/or forcing their heads into glass on the floor causing lacerations or abrasions to their faces.

After a few minutes, the restraint team entered the unit, most of whom were wearing gas masks, to restrain and remove any detainee who had not yet been restrained or removed. Superintendent Souza also entered Unit B to personally assist in restraining and removing the detainees.

#### *The Recreation Pen and the Provision of Emergency Medical Care*

After the detainees had been restrained, SRT and the restraint team took them outside one-by-one and placed them, with varying degrees of force, on their knees facing the wall in the recreation pen. At the same time, certain SRT officers searched the bunk

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<sup>107</sup> One of these detainees alleges that he informed a corrections officer, in response to a directive to submit to flex cuffs, that he had been recently diagnosed with a broken hand. Nevertheless, according to this detainee, he was flex cuffed in a painful position and forced to the ground, where the corrections officer stepped or kneeled on his neck.

area, which included flipping mattresses and rummaging through the detainees' personal effects. After all of the detainees were placed on their knees in the recreation pen, SRT officers conducted a thorough pat search for weapons, and none were found.

While the detainees were on their knees against the wall, three muzzled dogs were positioned a few feet behind them. The unmuzzled dogs were staged at spaced intervals on the other side of the recreation pen fence. The purpose of the continued presence of these dogs was to continue to ensure the detainees' compliance through intimidation, fear, and control. And even though all of the detainees were restrained in hand (and in some cases leg) restraints in a gated area surrounded by thirty or more officers, including Sheriff Hodgson himself, the unmuzzled dogs remained on-scene to apprehend and bite any detainee who managed to escape.

Shortly after the detainees were taken outside, one detainee ("G.L.") fell onto his back and appeared to be unconscious. It took nearly two minutes for a corrections officer to notice that G.L. was laying on his back, even though an officer walked by G.L. to address a different detainee. Several corrections officers ultimately responded to G.L., including an officer ("J.A."), who noted in his report that he "could hear a gurgling noise coming from his mouth along with small gasps" and "rendered medical aid with the assistance of" a different corrections officer ("M.A.").<sup>108</sup> Officer M.A. ultimately administered three chest compressions to revive G.L. Once G.L. had been revived, he was escorted outside the recreation pen, where he was briefly evaluated by a nurse in the parking lot before being transported to dispatch and ultimately the RHU.

At no point was G.L. taken to a hospital or evaluated by a medical doctor, notwithstanding his apparent cardiac arrest. There is no evidence that G.L. was monitored or evaluated for cardiac or pulmonary issues following this incident, nor that he was ever evaluated for potential injuries resulting from the administration of chest compressions, including potential injuries to his ribs, chest, or sternum. The Director of Medical Services told us that the administration of chest compressions should, of course, be documented and result in further medical evaluation or treatment. But, based on the information provided to the AGO, none of this happened. Instead, G.L. was placed in a solitary cell without any additional medical evaluation or care related to his apparent cardiac arrest or the administration of chest compressions.

Officer M.A. told us that he believed that G.L. was "faking it" and noted that he has administered chest compressions in other situations to detainees or inmates whom he believed to be "faking" their symptoms. We found no justification in the BCSO's policies

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<sup>108</sup> Officer M.A.'s report was just seven handwritten sentences that referred to the wrong ICE unit and said simply that "all detainees complied with all orders without further incident nor injury." Officer J.A.'s report, however, notes that M.A. "administered three chest compressions. On the third chest compressions [*sic*] [the] Detainee made a substantial gasp for air and began to have what appeared to be normal respirations. He was then assisted off the ground by two officers who then escorted him out of the recreation yard where they were met by medical staff."

or elsewhere—for the administration of chest compressions to a person whom the responding officer does not reasonably believe to be exhibiting symptoms of cardiac arrest.

After G.L. was removed from the recreation pen, another detainee (“F.P.”) began to exhibit symptoms of serious respiratory distress. F.P. had been positioned on his knees, in arm and leg restraints, close to the exterior door to Unit B. F.P. was struggling to breathe and to stay in an upright position on his knees for several minutes. Two corrections officers eventually tried to forcibly position F.P. upright on his knees, and when F.P. could not stay in that position, those officers dragged F.P. by his shoulders across the recreation pen, where they again attempted to force him into an upright position on his knees. In doing so, one of the officers appeared to forcefully pushed F.P.’s head into the wall. At this same time, an unmuzzled dog positioned on the other side of the fence, approximately two feet away from this detainee, intermittently barked in or near F.P.’s face while he gasped for air.

Eventually, F.P. fell over onto the ground. At this point, BCSO nursing staff entered the recreation pen and called for an ambulance after determining that his oxygen saturation was critically low. F.P. continued to violently gasp for air, and drifted in and out of consciousness, while BCSO nurses continually attempted to revive him with smelling salts. Eventually, F.P. was provided with oxygen and his arm and leg restraints were removed. But nearly half an hour had elapsed between the time when F.P. first began to exhibit respiratory symptoms and when he was finally transported to the hospital.

While F.P. struggled to breathe, other corrections officers began to load the detainees one-by-one into transport vans. Some of the detainees were put on their knees at the entrance to the recreation pen again to wait to be placed in a transport van. One detainee (“L.W.”), in particular, was forcibly brought to his knees at the entrance to the recreation pen in front of Sheriff Hodgson where leg restraints were applied. L.W. screamed out to the ICE nursing supervisor that he had “bad knees” and begged her to tell the corrections officers about his bad knees so that he would not have to kneel again. Corrections officers continued to force L.W. to his knees while he screamed in pain. At least one corrections officer had his arm near L.W.’s upper torso as they forced him to the ground and pressed his face into the fence.<sup>109</sup> Sheriff Hodgson personally observed this

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<sup>109</sup> A single incident report by Officer J.A. indicated that he overheard a struggle between corrections officers and L.W. at the recreation pen gate and that L.W. was attempting to “strike officers with his feet.” When we interviewed Officer J.A., however, he stated that he did not personally witness the initial interaction between SRT officers and L.W. By the time Officer J.A. became aware of the struggle, he saw L.W. “flailing his legs” in an attempt to resist the officers and Officer J.A. attempted to assist SRT officers by “grabbing hold of his knees” and “pushing him to the ground.” Officer J.A.’s clarified statement is important because there is a difference between a detainee who is actively trying to kick and assault staff, and a detainee who is requesting medical attention and attempting to avoid being needlessly placed in a painful position.

incident from where he was standing, just a few inches away. When asked about this incident, several corrections officers told us that they simply assumed that L.W. was lying about his knee pain because he had been kneeling without issue for several minutes just prior. We reject this explanation, however, as there are an array of knee problems that could cause a person to experience acute pain in connection with prolonged kneeling, and we note that a nurse could have evaluated L.W.'s knees at that time, but did not. We also note that the incident report from L.W.'s medical evaluation after the incident and before his placement in the RHU documented his report of bilateral knee pain and an injury to L.W.'s right knee.

At the same time, a K9 officer ("R.I.") brought an unmuzzled dog over to L.W. and positioned his dog's muzzle within just a few inches of L.W.'s face on the other side of the fence. A muzzled dog was also brought up behind L.W. from inside the recreation pen and brought into extremely close physical proximity to L.W. The unmuzzled dog aggressively barked in L.W.'s face, while the muzzled dog also barked within inches of L.W.'s feet and legs.<sup>110</sup> When asked why K9 Officer R.I. took these steps, he explained that he intended to scare and intimidate L.W. into compliance, and that he wanted to be nearby in the event that L.W. produced a weapon or escaped. We reject this explanation because L.W. had already been pat searched for weapons and none were found, and because L.W. was in hand restraints and surrounded by multiple SRT officers who were "hands-on" with him, which made the prospect of an escape impossible. The only plausible explanation, therefore, is that K9 Officer R.I. took these steps for the purpose of scaring and intimidating L.W. into compliance.

Eventually, SRT officers placed L.W. in leg restraints (in addition to the flex cuffs on his hands), and carried him to the transport van by his arms and feet in a prone position.

Shortly after this incident, yet another detainee ("D.M."), who had a known medical history that included COPD and other respiratory/pulmonary issues, began to exhibit serious symptoms of respiratory distress as a result of exposure to O.C. spray. Like the other detainees, D.M. had been placed on his knees against the wall in restraints, where he remained for approximately thirty minutes without medical attention. D.M. told the corrections officer positioned directly behind him that he was having trouble breathing and asked for assistance in retrieving his on-person inhaler. The officer refused

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<sup>110</sup> The video evidence is not clear whether or not this canine delivered a "muzzle strike" to L.W., and none of the K9 officers documented their involvement in this incident in their reports.

and instead summoned a nearby nurse to evaluate D.M.<sup>111</sup> By the time that D.M. was evaluated, however, his oxygen levels were concerningly low. The nurse then permitted D.M. to use his on-person inhaler, but it was no longer effective given his dangerously low oxygen level. The nurse administered oxygen and summoned a second ambulance to the scene.

The video footage of the recreation pen also shows several other noteworthy incidents, including the following:

- Officers were continually warned that the dogs on the exterior perimeter of the recreation pen were unmuzzled and that, for this reason, the officers needed to “be careful” when escorting detainees to the recreation pen.
- Muzzled dogs (who were inside the recreation pen) and unmuzzled dogs (who were outside the recreation pen) were repeatedly brought into close proximity to detainees as they were being escorted out of the recreation pen and in situations where detainees appeared to be non-compliant (for example, when F.P. was struggling to remain upright on his knees).
- Sheriff Hodgson was present outside the recreation pen and, at times, filmed the activity in the recreation pen on his cell phone. We noted two incidents in particular where officers brought detainees to their knees directly in front of Sheriff Hodgson before loading them in the transport van. Sheriff Hodgson did not intervene in any of the incidents described above.

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<sup>111</sup> This officer’s incident report notes that this detainee was “breathing erratically” and that the officer instructed him to “keep calm and breathe in through his nose out through his mouth to attempt to steady his breathing.” The report notes that this detainee requested assistance in accessing his on-person inhaler, but rather than assisting with such access, the officer summoned a nearby nurse. When we interviewed this officer, the officer explained that the nurse was able to respond within seconds and so this officer did not think it was necessary to give him permission to use or to help him access his on-person inhaler before he was evaluated. However, while summoning a nurse was certainly appropriate given D.M.’s symptoms, denying him access to an on-person inhaler—even if only briefly—defeats the purpose of having an on-person inhaler and undermines the clinical judgment that a detainee requires unfettered access to a rescue inhaler. This is particularly troubling given that the BCSO took no steps to evaluate detainees’ medical histories and prepare for the likelihood that detainees, like D.M., would experience serious medical contraindications to exposure to large quantities of O.C. spray.



- An unidentified corrections officer in a position of authority admonished other officers for being “pussies” in struggling to get a detainee (“A.F.”), who had become resistant, into the transport van.<sup>112</sup>
- Several detainees had circular residue on their clothing that appeared to be consistent with the use of less-lethal projectiles, like pepper-ball.
- SRT officers removed the detainees’ masks, latex gloves, and shoes before the pat search, putting the detainees and BCSO personnel at increased risk of COVID-19 exposure. This is particularly troubling because ten detainees had been identified as exhibiting COVID-19 symptoms and several BCSO staff members were in close proximity to those detainees without facemasks or other personal protective equipment (“PPE”).

### Medical and Mental Health Evaluations After the May 1 Incident

Each of the detainees (except for the two transported to the hospital from the recreation pen) were transported to the HSU for a medical evaluation related to their placement in the RHU and then to decontaminate from O.C. exposure. Some of these evaluations were filmed, and show a relatively cursory evaluation. Of those evaluations that were filmed, most of them were conducted in English. In some instances, however, corrections officers translated for LEP detainees. We note that the BCSO had access to a language line to provide interpretation services, but there is no evidence that it was used at any time.

During one medical evaluation, a detainee (“D.G.”) reported serious shoulder pain resulting from the incident. D.G. had circular powder residue on his clothing consistent with the use of pepper-ball. The nurse who conducted this evaluation concluded that D.G. had a “very limited range of motion,” and needed to be taken to the hospital. This nurse also noted that D.G. had “an open area on the top of his left ear.” D.G. was transported to the hospital, where he tested positive for COVID-19.

The BCSO nursing staff also prepared medical incident reports that were supposed to document the results of the medical and mental health evaluations conducted on each detainee. While these reports should have documented each symptom or injury reported by the detainees, they generally did not. Instead, each of these reports consists of one paragraph of about 3-4 sentences, many of which are very similar to one another. Few of the incident reports actually document any injuries or symptoms at all. Those incident reports that consistently documented injuries or symptoms were generally prepared by the same nurse, who noted that seven (out of eight) detainees that she evaluated after completion of the decontamination process had bilateral redness in both

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<sup>112</sup> A.F. repeatedly yelled out “Allahu Akbar,” which is part of a Muslim affirmation of faith. Multiple officers noted this statement in their incident reports or during their interviews as apparent evidence of an imminent threat, and the commanding officer of SRT described this statement as “terrorist words.”

eyes due to the use of O.C. spray and redness and irritation around the wrists. Among the remaining reports,<sup>113</sup> knee injuries were noted for three detainees, including L.W., abdominal pain was noted for two detainees, and a minor abrasion on a wrist was noted for one detainee. And of the three nursing staff reports for G.L., one notes that he was on the ground in the recreation pen because of his asthma,<sup>114</sup> another notes that he had no symptoms of respiratory distress, and a third notes that he had no symptoms or injuries whatsoever. None mention the administration of chest compressions.

Several detainees claim that they reported injuries to nursing staff, including lacerations caused by broken glass, welts and bruising due to the use of pepper-ball and/or hands-on force, respiratory symptoms and difficulty breathing, significant wrist pain due to the prolonged period of restraint in overly tight flex cuffs, and burning skin and eyes from the O.C. spray. Lawyers who interviewed the detainees in the aftermath of the May 1 Incident made personal observations of some of these injuries, including welts and bruises, lacerations, indentations on wrists consistent with overly tight flex cuffs, and persistent coughing/wheezing due to the lingering effects of O.C. spray.

With the exception of the incident reports described above, none of these symptoms or complaints appear in any of the medical reports associated with the May 1 Incident. Indeed, M.B. was filmed complaining to BCSO nursing staff about his wrists and the tightness of his flex cuffs, during which time indentations on his wrists from the flex cuffs were clearly visible, but none of these complaints appear in his medical incident reports. And, when M.B.'s flex cuffs were finally removed hours later, the video footage appears to show that M.B.'s hands were uncontrollably shaking.

#### *The BCSO Assigns All Detainees to Solitary Cells in the RHU*

After the HSU evaluations, the detainees were taken one-by-one to the RHU, where they were assigned to solitary cells. The detainees were strip-searched and finally, many hours later, permitted to decontaminate from O.C. exposure by taking brief cold-water showers to wash out the O.C. spray from their eyes and skin. Some detainees reported that they were not allowed an opportunity to adequately decontaminate from the O.C. spray exposure and that the O.C. spray continued to irritate their skin and eyes for several days. Three detainees were placed on mental health "eyeball" watches in the RHU, where they were denied access to clothing and provided with only a Ferguson blanket. With respect to one of these detainees, however, the medical incident reports

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<sup>113</sup> The medical reports for the three detainees taken to the hospital document the symptoms that necessitated emergency medical care.

<sup>114</sup> This medical report notes that the nurse was summoned to the scene to respond to a "Code 99" (the code used to indicate a possible cardiac arrest), and brought a defibrillator with her to the scene. But, as noted, this report makes no mention of any treatment or aid rendered to G.L. for his apparent cardiac arrest, nor does it indicate that this nurse took any steps at any point to evaluate or assess G.L.'s cardiac functioning or symptoms.

provided to the AGO state that he was medically “cleared” by the BCSO for the RHU and do not document any reason why he would have been placed on a mental health watch and denied access to clothing.<sup>115</sup>

The BCSO placed all twenty-five detainees in administrative segregation in either Unit EE (the segregation unit) or Unit EC (the special offenders unit), regardless of the degree or extent of the detainees’ participation in the disturbance.<sup>116</sup> The detainees were formally placed on administrative segregation (“ASO”) status on May 7 and were provided with paper and hygiene kits, underwear, and clean uniforms on that day.<sup>117</sup> We also found it noteworthy that none of the detainees had facemasks or PPE to mitigate the risk of COVID-19 exposure when they were placed in the RHU on May 1, and that masks were not requested for the detainees until May 4.<sup>118</sup> While in the RHU, the detainees were denied phone privileges (except for attorney calls, which had to first be approved by Superintendent Souza)<sup>119</sup> and visitation privileges, and were subject to a mail monitor.<sup>120</sup>

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<sup>115</sup> The BCSO’s failure to adequately document this denial of clothing and other essential health items in connection with the placement of this detainee into the RHU violates the Segregation Policy and the Segregation Detention Standard.

<sup>116</sup> Some of the detainees reported unsanitary conditions and other mistreatment in segregation, including repeated denial of access to medical treatment (including one detainee who required emergency medical treatment immediately upon arrival at a different ICE detention facility) and the inappropriate use of restraint equipment and O.C. spray. While these allegations were beyond the scope of our investigation, we note that, to the extent these allegations are true, they would provide a reasonable basis to conclude that the civil rights violations against the ICE B detainees were systemic and persisted beyond the May 1 Incident.

<sup>117</sup> Emails to and from Superintendent Souza (May 7, 2020, 9:04 am, 10:56 am, 11:54 am, 4:15 pm). *See also* Executed Notices of Placement into Awaiting Action or Administrative Segregation Order Status for the detainees (all dated May 7, 2020). Each of the Executed Restrictive Housing Transfer Orders for all of the detainees, dated May 1, 2020, makes clear that the RHU transfer was “due to Unit disturbance in ICE B” (as opposed to a medical need for isolation related to COVID-19) and so the failure to place the detainees on ASO status in a more expeditious manner delayed triggering certain time-based procedural protections for the detainees.

<sup>118</sup> Email to Steven Souza (May 4, 2020, 2:22 pm) (“25 masks needed.”).

<sup>119</sup> Email from BCSO Director of Immigration Services (May 5, 2020, 1:16 pm) (“Per the Superintendent, all phone call request[s] [from] attorney[s] for the detainees involved in the ICE B incident have to go to him for his approval.”).

<sup>120</sup> Email to Superintendent Souza (May 4, 2020, 11:37 pm); email from Superintendent Souza (May 4, 2020, 12:43 pm).

### *The BCSO's Investigation of the May 1 Incident*

After the May 1 Incident, the Special Investigations Unit (“SIU”) opened an investigation into the incident. The SIU investigation focused on identifying those detainees who participated in the destructive and disruptive conduct and/or those detainees who threw chairs at BCSO staff and Sheriff Hodgson.<sup>121</sup>

While the sufficiency of the BCSO’s internal investigation was beyond the scope of our investigation, we nevertheless identified some concerns about the integrity and independence of that investigation. First, while almost all BCSO security staff properly completed their incident reports before their shifts were over, we identified an email between the lead investigator and Superintendent Souza, in which the investigator indicated that he was going to review the incident reports and surveillance tape with certain BCSO staff members who were “in the building at the time with Sheriff Hodgson during the ICE B Disturbance” to see if “there is anything else they might remember.”<sup>122</sup> One of those meetings caused a commanding officer to issue an addendum to his report identifying a detainee whom he now believed to have thrown a chair that struck another officer. Another officer (who did not issue an addendum to his report) told us that he did not have to “change much” in the report, but when asked to clarify, this officer said that, in fact, “no changes” were made to his report. We do not know with any degree of certainty what happened with respect to this officer’s report, but we are nevertheless concerned about the impact that these meetings may have had on the incident reports and in shaping or influencing the recollections of the officers who responded to the May 1 Incident.

Second, we are concerned that the BCSO made little or no attempt to determine whether or not the BCSO’s use of force was appropriate. Indeed, we received no evidence suggesting that the BCSO undertook an After-Action Review as required by its policies<sup>123</sup> to ensure that the various uses of force against the detainees on May 1 were reasonable and proportional to the circumstances. Not only does this omission indicate (at best) a lack of interest on the part of BCSO leadership in ensuring that the force was used reasonably and proportionally to the circumstances and in a way that is consistent with BCSO policies, but it also indirectly communicates to officers that there will be no investigation into and no consequences for uses of force that may have crossed a line.

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<sup>121</sup> One of the SIU investigators who participated in the investigation reported that he had received largely “on the job” training in conducting internal investigations.

<sup>122</sup> Email to Superintendent Souza (May 7, 2020, 1:52 pm).

<sup>123</sup> Use of Force Policy at 09.06.17(B); *see also* Use of Force Detention Standard at Section V(P).

Finally, we note that some of the detainees reported that they were interrogated by BCSO staff as part of the BCSO internal investigation and denied access to counsel and/or interrogated after invoking their right not to answer questions. To the extent that these allegations are true, we emphasize that it is unconstitutional to deny access to counsel and/or coerce participation in a custodial interrogation in connection with a criminal investigation.

**b. Legal Conclusions**

We conclude that the evidence made available to us sufficiently supports the conclusion that the BCSO violated the civil rights of the ICE B detainees, as well as several applicable policies, procedures, and standards.

**i. Violations of the Detainees' Due Process Rights to Be Free from Excessive Force**

Based on our review of the available evidence, we conclude that the BCSO violated the civil rights of the ICE B detainees in two distinct ways: by applying constitutionally excessive force to the ICE B detainees and by acting with deliberate indifference to a substantial risk of serious harm to the detainees' health and safety.

The evidence made available to us—in particular, the video footage, recorded telephone calls, and BCSO witness interviews—supports the conclusion that the May 1 Incident involved disproportionate and excessive force that violated at least some of the detainees' rights under the Fourteenth Amendment and the Massachusetts Declaration of Rights. We start our discussion by acknowledging that protecting the health and safety of the people who live and work in correctional facilities is not easy. Effective communication by security staff and fostering trust by inmates in the operation of a jail are critical tools in maintaining institutional order. It requires leadership that is invested in the health, safety, and well-being of every person who walks through its doors—whether in chains or in uniform. And it is certainly true that, in prisons and jails, officers are frequently called upon to make snap judgments in responding to inmate disturbances without the benefit of time to consider alternatives to force or to safely attempt de-escalation and conflict avoidance techniques. But we confront here an entirely different situation: a *calculated* use of force—that is, a deliberate and intentional use of force—that was carefully planned by BCSO leadership over the course of an hour, during which time the BCSO could and should have taken steps to de-escalate the situation as required by its own policies and the Detention Standards and to ensure that the calculated use of force plan was proportionate to the threat and properly accounted for the health and safety of all involved.

Our conclusion that the BCSO violated the detainees' civil rights during the calculated use of force is based on several facts, including that the BCSO applied objectively unreasonable force—such as a flash bang grenade, pepper-ball launchers, and canines—against detainees who were not assaulting, combatting, or actively resisting staff and that the BCSO disregarded several provisions of its own policies and procedures

that were intended to protect the detainees and the BCSO officers during emergency situations.

In particular, the evidence shows that the calculated use of force plan bore little relationship to the threat demonstrated by the detainees in the hour before its execution. During that hour, the detainees appeared generally calm and nonviolent. Yet the BCSO carefully planned for the use of—and then indiscriminately deployed—multiple powerful less-lethal weapons immediately upon entry into the unit. *See, e.g., Kingsley*, 576 U.S. at 397. (the severity of the security problem at issue and the relationship between the need for the use of force and the amount of force used are factors that bear on the objective reasonableness or unreasonableness of the force used). Indeed, the BCSO detonated the flash bang grenade and launched multiple rounds of pepper-ball before detainees had any chance to comply with the entering team’s orders.

The BCSO staff that we interviewed cited the detainees’ initial disruptive and destructive conduct as a factor that influenced this plan. While there is no question that the disruptive and destructive conduct by the detainees, including throwing plastic chairs at security staff, posed a serious security threat at the time that it happened, the BCSO did not take any steps to determine during the intervening hour whether the need for force or the amount of force necessary had changed. Had the BCSO leadership taken those steps, they would have learned that the situation had substantially de-escalated on its own.<sup>124</sup> Instead, Superintendent Souza and others conveyed inaccurate and misleading information about the threat-level on the unit to the SRT and K9 officers in preparation for the calculated use of force. This included information that was demonstrably false (for example, that many or all of the detainees had make-shift weapons, such as shivs or shanks, and that all twenty-five detainees participated in the initial destructive conduct, when only a subset of detainees participated), or stale (for example, that the detainees were continuing to actively destroy property). No information was provided to these officers that reflected the reduced security risk evident from the evidence. If accurately conveyed, this information could have been factored into the calculated use of force plan and communicated to the SRT and K9 officers before they made entry, which likely would have reduced, or altogether eliminated, the force needed to gain compliance of the unit.

Moreover, the BCSO officers applied force against detainees who were not combative, assaultive, or actively resisting staff at the time of SRT’s entry. *See id.* at 397 (whether detainee was “actively resisting” is a factor that bears on the objective reasonableness or unreasonableness of the force used). Rather than engaging in

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<sup>124</sup> This information was readily available to the BCSO. Indeed, two officers were in the ICE control room bubble monitoring the situation in real-time and recording a log of supposedly relevant detainee conduct. This log—which is corroborated by the video evidence—shows almost no destructive or dangerous conduct on the part of the detainees between 6:10 pm and 7:15 pm—certainly not the type of conduct that would justify the extent of force ultimately applied.

combative or assaultive conduct or actively resisting the BCSO staff, the evidence shows that a handful of detainees did not immediately respond to verbal directives that were not necessarily given in a language or manner that they could understand—for example, detainees who failed to get on the ground but raised their hands in the air, or detainees who were already on the ground, but failed to present their hands for flex cuffing when and in the manner ordered to do so. The evidence shows that the BCSO used unreasonable force against some of these detainees, including pepper-ball, O.C. spray, muzzle hits, and hands-on force, despite the fact that these detainees offered no active resistance and were no longer a threat to officer safety.

In addition to this evidence, we also found evidence that, in some instances, the use of flex cuffs was objectively unreasonable insofar as they were applied in such a manner that caused some detainees to experience excessive physical pain and remained on those detainees beyond the amount of time reasonably necessary. Many detainees were left in flex cuffs for as long as two hours and, in at least one instance, a detainee complained repeatedly within that time period about the tightness of his flex cuffs. However, this detainee's flex cuffs were not adjusted or loosened until they were removed at around 9 pm. And when they were finally removed, the flex cuffs left visible and deep indentations on this detainee's wrists.

Our conclusion that the BCSO's use of force on May 1 was objectively unreasonable is also based on the BCSO's numerous violations of its own policies and procedures.<sup>125</sup> While violations of internal policies do not alone give rise to a constitutional violation, they are nevertheless "germane" to the reasonableness inquiry in an excessive force claim. *Scott v. Henrich*, 39 F.3d 912, 915-16 (9th Cir. 1994); *see also Tennessee v. Garner*, 471 U.S. 1, 18-19 (1985) (reviewing trends in police department policies as part of the reasonableness inquiry in a deadly force case); *Adams*, 416 Mass. at 562-63 (citing the "disregard" of Boston Police Rules as evidence of a constitutional violation in an excessive force case). And here, the myriad violations of BCSO policies in planning and executing the calculated use of force, coupled with the BCSO's failure to adequately train and supervise its officers to ensure compliance with those policies, supports the conclusion that the BCSO's use of force on May 1 was objectively unreasonable.

We are particularly troubled by the BCSO's violation of the total ban on the use of canines in cell extractions and the total ban on the use of canines for the force, control, or intimidation of immigration detainees.<sup>126</sup> Notwithstanding the ban on the use of

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<sup>125</sup> The use of force against detainees who were not actively resisting, assaulting, or attempting to assault staff and the application of restraint equipment for prolonged periods of time that resulted in extreme physical pain are also violations of the BCSO's Use of Force and Restraint Equipment Policies, as well as the Use of Force Detention Standard.

<sup>126</sup> As discussed *supra* at pp. 7-8, 19, this ban is not only found in the BCSO's Use of Force and Cell Extraction policies, but is also mandated by 103 CMR 924.10 (which

canines in both of these contexts, the commanding officer of the K9 Division, who is responsible for the training and day-to-day supervision of the BCSO's K9 officers, told us that the BCSO may use canines for the force, intimidation, or control of ICE detainees and in cell extractions as a tool of "last resort." But this is not consistent with the law, and the BCSO should never have deployed its K9 Division on May 1.

As one illustration of this unlawful use of canines, we highlight K9 Officer R.I.'s placement of his unmuzzled canine's face within inches of L.W.'s face, who was restrained and surrounded by multiple officers at the time. From that position, the unmuzzled canine proceeded to intermittently bark aggressively in L.W.'s face. And while muzzled canines (one of which was positioned directly behind L.W. during this particular incident) present less risk of serious injury to the detainees than the unmuzzled canines, the muzzled canines nevertheless delivered "muzzle hits" or "muzzle strikes" to multiple detainees inside Unit B—which one K9 officer described as akin to being struck

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applies to cell extractions) and the Use of Force Detention Standard. The ban on the use of canines in both of these contexts is based on the near universal recognition that even the most highly trained and effective canines are inherently less controllable and, therefore more dangerous to inmates, than other types or methods of force. Indeed, ICE banned the use of canines for the "force, control, or intimidation" of immigration detainees after several high profile incidents in which canines were used to intimidate and terrorize detainees in immigration detention facilities and following widely disseminated images of leashed unmuzzled canines terrorizing restrained detainees at the Abu Ghraib prison in Iraq. See, e.g., Nina Bernstein, "9/11 Detainees in New Jersey Say They Were Abused with Dogs," New York Times (April 3, 2006), <https://www.nytimes.com/2006/04/03/nyregion/911-detainees-in-new-jersey-say-they-were-abused-with-dogs.html>; see also Daniel Zwerdling, "Immigrant Detainees Tell of Attack Dogs and Abuse," National Public Radio (November 17, 2004), <https://www.npr.org/2004/11/17/4170152/immigrant-detainees-tell-of-attack-dogs-and-abuse>. Massachusetts banned the use of canines in cell extractions in recognition of the serious risks of injury to inmates associated with using large breed dogs in this context and because even the most highly trained and effective canines are simply not as controllable or predictable as other methods of force. Human Rights Watch, *Cruel and Degrading: the Use of Dogs for Cell Extractions in U.S. Prisons* (October 9, 2006) (<https://www.hrw.org/report/2006/10/09/cruel-and-degrading/use-dogs-cell-extractions-us-prisons>); see also Jonathan K. Dorriety, *Police Service Dogs in the Use-of-Force Continuum*, 16 Crim. Just. Pol'y Rev. 88, 94-95 (2005) (detailing the two primary apprehension techniques taught to police dogs, "bite and hold" and "circle and bark," and noting that even dogs trained to "circle and bark" will bite if it perceives the suspect as attempting to flee); Mark Weintraub, *A Pack of Wild Dogs: Chew v. Gates and Police Canine Excessive Force*, 34 Loy. L.A. L. Rev. 937, 974 (2001) (noting that even "find and bark" dogs, which are not trained to bite suspects unless threatened or attacked, still pose a risk of inflicting serious harm because such dogs are often trained to bite at movement).



with a “furry baton”<sup>127</sup>—who were already on the ground, not actively resisting, and no longer posed a threat to officer safety. Even in those very limited circumstances in which canines may be lawfully used to control criminal detainees or inmates (none of which are present here), canines certainly can never be used against individuals who are not actively resisting or assaulting officers. *See Kingsley*, 576 U.S. at 397 (whether detainee was “actively resisting” is a factor that bears on the reasonableness or unreasonableness of the force used); *see also Parker v. Gerrish*, 547 F.3d 1, 10 (1st Cir. 2008) (increasing the force applied after a person stops resisting and becomes largely compliant is unreasonable, even if the individual was harassing and/or actively resisting earlier in the encounter).

The BCSO also failed to comply with its de-escalation policy, which required the BCSO to take steps to de-escalate the situation and avoid further conflict before a calculated use of force.<sup>128</sup> The BCSO’s de-escalation policy is an important part of its Use of Force and Cell Extraction Policies because a successful de-escalation may temper, limit, or altogether eliminate the need for further force. *See, e.g., Kingsley*, 576 U.S. at 397 (efforts made by officers to “temper or limit the amount of force” is a factor that bears on the reasonableness or unreasonableness of the force used). But even though the BCSO had over an hour to attempt different conflict avoidance techniques or otherwise try to de-escalate the situation, they made no effort to do so.

And there is ample evidence that those efforts might have been successful. As discussed above, multiple SRT and K9 officers told us that, in past experiences, their mere presence on-scene—without taking any further action—provided such a strong deterrent and was so intimidating to prisoners that the situation resolved itself without the use of any force. So too here, the evidence shows that the arrival of the SRT and K9 teams had precisely that desired effect. Yet the BCSO took no steps to determine whether the arrival of SRT and K9 on scene had changed the dynamic in Unit B.

Instead of taking steps to de-escalate the situation and avoid further conflict as required by BCSO’s policies, several BCSO staff members told us that it was incumbent on the detainees to de-escalate the situation if they wanted to do so, and the fact that they did not suggested to those BCSO staff members that the detainees wanted a fight. However, when we asked those BCSO staff members how the detainees could have de-escalated the situation, we received a range of responses. For example, one officer suggested that the detainees could have “asked to speak to the Sheriff or the higher-ups.”

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<sup>127</sup> This K9 officer and the commanding officer of the K9 division said that “muzzle hits” or “muzzle strikes” are the equivalent to baton strikes on the Use of Force Continuum. We note that baton strikes are a level four on the Use of Force Continuum, which is just one level below deadly force and is only supposed to be used when an inmate or detainee is actively trying to harm an employee. Use of Force Policy at 09.06.05.

<sup>128</sup> In addition to de-escalation requirements contained in the BCSO’s Use of Force Policy, ICE’s Use of Force Detention Standard also required the BCSO to attempt to avoid conflict prior to the calculated use of force.

But the detainees had no means of reaching Sheriff Hodgson or Superintendent Souza. Other officers suggested that the detainees should have approached the door with their hands in the air, or laid on the ground in front of the windows, or returned to their bunks. But no one told them to do this. And, in any event, the evidence shows that at least some detainees did take steps to avoid further conflict, as detainee wrote “We need help” and “Help us!!” on the exterior window facing the BCSO staff, and other detainees returned to their bunks. Despite these actions, however, the BCSO did not make any effort to communicate with the detainees or take any steps to de-escalate the situation as required by their policies.

The BCSO also did not provide verbal warnings before using force against the detainees, even though it was feasible to do so and was required by its policies. *See also Conlogue v. Hamilton*, 906 F.3d 150, 155-56 (1st Cir. 2018) (noting that warnings should be given, when feasible, if the force used may result in serious injury or death and that the warning must be adequate under the circumstances); *see also Young v. City of Providence ex rel. Napolitano*, 404 F.3d 4, 23 (1st Cir. 2005) (same). We found the use of a flash bang grenade without advance warning to be particularly troublesome. The evidence shows that Squad Leader D.M. threw in the flash bang while yelling “Get on the ground!” However, the detainees had no practical opportunity to comply with the order to get on the ground before the flash bang grenade detonated, nor did they have any opportunity to take steps to protect themselves from the explosion. The flash bang grenade detonated just 15-16 feet away from the detainees—some of whom had no involvement in any of the conduct that gave rise the incident. Flash bang grenades pose a serious risk of injury—particularly when used in an interior space—and should only be used (if at all) when absolutely necessary because of a serious and active threat to officer safety, which was simply not the case here.<sup>129</sup> *See, e.g., Boyd v. Benton County*, 374 F.3d 773, 777-79 (9th Cir. 2004) (use of flash bang device constituted unconstitutional use of excessive force where police deployed it without either looking or sounding a warning when there were both suspects and innocents in the room); *Milan v. City of Evansville*, No. 3:13-cv-1-WTL-WGH, 2015 WL 71036, at \*5-\*6 (S.D. Ind. January 6, 2015) (canvassing case law on the reasonableness of the use of flash bangs); *see also United States v. Boulanger*, 444 F.3d 76, 85 (1st Cir. 2006) (recognizing the dangers associated with the use of flash-bang grenades and noting that such devices should not be used as a routine matter)

During the calculated use of force itself, some officers told us that they gave verbal warnings prior to using force against individual detainees, as required by the BCSO’s policies, and that those warnings often resulted in compliance without the need for any force. But others told us that they did not provide any verbal warnings before using force, such as pepper-ball or canines, nor did they provide an opportunity for compliance. And one officer told us that he exposed a detainee to O.C. spray after the

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<sup>129</sup> As discussed at p. 34, the flash bang was also not necessary to distract the detainees while officers removed the barricade because the barricade was totally ineffectual and the SRT officers were able gain entrance to the unit immediately upon entry.

detainee did not respond to an English-language warning or verbal commands. The officer thought that this detainee's non-responsiveness may have been attributable to a language barrier. Had the BCSO provided interpretation services as required by its policies and the Detention Standards, and had this warning been provided in a language that this detainee understood, it may not have been necessary to expose this detainee to O.C. spray at all.

In the end, the use of force against those detainees who were not actively resisting, combatting, or assaulting staff, and the BCSO's complete disregard of its policies and procedures provides compelling evidence that the BCSO's calculated use of force was objectively unreasonable.

ii. **The BCSO's Deliberate Indifference to a Substantial Risk of Serious Harm to the Detainees**

The evidence made available to us also supports the conclusion that the BCSO was deliberately indifferent to a substantial risk of serious harm to the health of the detainees. In particular, the evidence shows that the BCSO unreasonably exposed some detainees with serious respiratory and pulmonary conditions to large quantities of O.C. spray and pepper-ball without taking any advance precautions and then denied those detainees access to adequate medical care after the fact and the ability and opportunity to adequately decontaminate.<sup>130</sup> And not only was the extensive use of O.C. spray constitutionally excessive, but it was also extremely dangerous under the circumstances. Several detainees had documented medical conditions that put them at serious risk of complications resulting from exposure to O.C., including "special needs inmates" as defined by the BCSO's policies, and some of those detainees had also been identified as possibly having COVID-19. By failing to take any precautions—such as, for example, notifying the on-call physician or EMS and ensuring that they were on-scene before SRT's entry—the BCSO seriously endangered the lives of several detainees. And in the end, so much O.C. spray was used that two of these detainees had to be taken to the hospital, one had to be revived with chest compressions, and the BCSO was advised to throw away library books, magazines, and many of the detainees' personal cosmetics and other personnel effects due to the degree of O.C. contamination.<sup>131</sup>

We specifically conclude that the BCSO was deliberately indifferent to the substantial risk of serious harm to G.L.'s health. G.L. (an asthmatic) required emergency medical aid in the form of three emergency chest compressions in the recreation pen. Yet the BCSO failed to transport this detainee to a hospital for further evaluation, or provide

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<sup>130</sup> Even though the BCSO took no steps to determine whether or not any of the detainees were at risk of adverse health consequences from exposure to O.C. spray or pepper-ball, Superintendent Souza told us that this step in this case was unnecessary because the BCSO would have used O.C. spray against the detainees, regardless of any of their medical histories or any risks to their health and safety.

<sup>131</sup> Email to Superintendent Souza (May 4, 2020, 3:38 pm).

him with any medical attention to assess either his cardiac functioning or any injuries to his ribs, chest, or sternum from the chest compressions. Instead, G.L. was briefly assessed in a parking lot by a nurse and then ultimately transported to the RHU with the other detainees. To compound this already inexcusable indifference to G.L.'s health and safety, the BCSO did not document in the medical incident reports any of G.L.'s symptoms of cardiac arrest or the emergency treatment provided to him so that other BCSO clinical staff knew what had occurred in the event that he later developed symptoms or exhibited signs of injury. We also note that, even if we were to accept that the responding officer who applied the chest compressions believed this detainee to be "faking it" (which we do not), this explanation would not obviate the need for further medical evaluation given that this officer's belief is not based on clinical knowledge, that another responding officer documented symptoms of cardiac arrest, and that there are serious risks of injury associated with the act of applying chest compressions, even apart from any underlying cardiac arrest. And, in any event, the application of chest compressions to a person who is not exhibiting symptoms of cardiac arrest as a means of stopping a person from "faking" such symptoms would be, itself, an unreasonable use of force.

In addition to G.L., detainees D.M. and F.P.—both with pre-existing conditions—were transported to the emergency room with symptoms of respiratory distress. But in both of their cases, there was a substantial delay between the onset of symptoms and their transport to the hospital. In F.P.'s case, there was also a delay between when he first started audibly gasping for air and when his leg and arm restraints were ultimately removed and medical aid rendered by BCSO nursing staff. And in D.M.'s case—a detainee with COPD, basilar airspace disease, and bilateral carotid dissection resulting from a recent stroke—he was denied immediate access to an on-person inhaler and was not evaluated by a nurse until he began exhibiting symptoms of serious distress, when his oxygen level was already dangerously low. Fortunately, neither of these individuals required serious medical intervention at the hospital. But the failure to account and plan for the likelihood that some detainees with known medical histories would require emergency medical care put them at an unreasonable risk of serious illness or death.

We also conclude that the BCSO's provision of medical care to those detainees who were not taken to the hospital after the May 1 Incident was inadequate. In particular, the BCSO nursing staff on-site conducted only cursory evaluations of each detainee that consisted of a brief discussion, vitals, and a visual examination. When we compared the medical reports with the video footage of some of these evaluations, we noted instances where the detainees reported symptoms or injuries to nursing staff that were not captured in the medical reporting and were apparently not treated. This includes reported injuries resulting from overly tight flex cuffs and/or other injuries resulting from SRT's entry to the unit, and breathing difficulties associated with O.C. exposure, some of which were still visible or apparent to visiting attorneys days later.

Finally, our conclusion that the BCSO acted with deliberate indifference to a substantial risk of serious harm to the health of the detainees is informed, again, by several violations of the BCSO's own policies and procedures and the Detention

Standards. In particular, the BCSO did not ensure that a “qualified health care practitioner” conducted a review of the detainee’s health record for “medical contraindications” in connection with assessing whether the calculated use of force should be deployed based on the inmate’s medical history (in violation of the BCSO’s Use of Force Policy and the Use of Force Detention Standard); the BCSO did not notify the Medical Director of the situation, and the Medical Director was not consulted or otherwise involved in the emergency medical treatment decisions for G.L., F.P., D.M., and D.G. (in violation of the HSU Policy); and the BCSO failed to adequately document the injuries to the detainees and the treatments provided to them (in violation of the BCSO’s Use of Force Policy).

## **VI. RECOMMENDATIONS**

In determining what actions to take based on the findings of this investigation, the AGO determined that the interests of the detainees, the BCSO, and the public would be best served by providing the BCSO with an opportunity to implement necessary reforms and providing regulators, legislators, and other stakeholders with an opportunity to consider these findings without delay as they fulfill their respective roles. To that end, we issue the following recommendations that, taken together, lay out both short- and long-term remedies to the issues that we identified in our investigation. In particular, we issue recommendations to DHS and the Massachusetts General Court related to the limited issue of the BCSO’s involvement in federal immigration enforcement. We also issue equally important recommendations to the BCSO, the Massachusetts Department of Public Health (“DPH”), and the Massachusetts Executive Office of Public Safety and Security (“EOPSS”) that are intended to address the systemic issues across the BCSO that we identified in our investigation.

Of course, another avenue for seeking reform is litigation alleging violations of the detainees’ civil rights and requesting injunctive relief.<sup>132</sup> But we believe that the systemic changes that are necessary may best be achieved outside of litigation, and so we offer the following recommendations with that goal in mind and in the spirit of collaboration.

### **a. Recommendations Related to the BCSO’s Participation in Federal Immigration Enforcement**

The myriad violations of law and policy described in this report pose a serious and ongoing risk of harm to the immigration detainees in custody at the BCSO. And while we seriously question whether the BCSO actually has the authority to enter into IGSA and 287(g) agreements in the first instance, we nevertheless recommend that

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<sup>132</sup> While we certainly believe that these recommendations adequately and meaningfully address the issues that surfaced during our investigation, we reserve our right to pursue litigation on some or all of these issues in the event that these recommendations are not satisfactorily implemented or addressed.

formal action be taken to terminate the BCSO's participation in federal immigration enforcement. In particular, we recommend:

***Recommendation Number 1:*** As expeditiously as possible, DHS should terminate its IGSA and 287(g) agreement with the BCSO. In view of the clear evidence that the BCSO violated the Detention Standards, we urge DHS to terminate its partnership with the BCSO and immediately transfer all federal immigration detainees held at the BCSO to other detention facilities.

***Recommendation Number 2:*** As expeditiously as possible, the Massachusetts General Court should enact legislation that: (1) rescinds and/or terminates the authority of the Bristol County Sheriff to enter into IGSA's for the purposes of immigration detention and to enter into 287(g) agreements with DHS; (2) terminates, effective immediately, the IGSA's and 287(g) agreements that are currently in effect; and (3) prohibits the Bristol County Sheriff from participating in federal immigration enforcement in any respect.

**b. Recommendations to the BCSO**

Whether or not the BCSO continues to be permitted to participate in federal immigration enforcement, our findings suggest that changes are needed across the institution to address systemic problems identified by our investigation, particularly with respect to policies and procedures, as well as training and supervision.

For these reasons, we recommend as follows to the BCSO:

***Recommendation Number 3:*** The BCSO should review and revise its policies and procedures to ensure that they are in compliance with all applicable laws (including the relevant Detention Standards if the BCSO continues to house federal immigration detainees notwithstanding Recommendation Numbers 1 and 2). We found a number of examples of policies—for instance, the canine policy—that facially violate the Detention Standards.

***Recommendation Number 4:*** The BCSO should adopt enhanced language access policies, procedures, and protocols to ensure that information is conveyed to LEP individuals in a manner and language that they can understand. These policies must specifically address how translation and interpretation services will be provided in the context of a large-scale disturbance, the provision of medical care (including in emergency situations), and in providing verbal directives or commands that could result in force in the event of non-compliance. As part of these enhanced policies and procedures, the BCSO should make clear that the language line should be utilized to the maximum extent possible.

***Recommendation Number 5:*** The BCSO should adopt enhanced policies and procedures for progressive de-escalation and conflict avoidance within the context of a calculated use of force. These enhanced policies and procedures must include progressive warnings that specifically identify the means of less-lethal force that will be applied to gain compliance, and provide meaningful and multiple opportunities for detainees to come into compliance

prior to a calculated use of force. These enhanced policies and procedures must provide a mechanism to communicate with inmates (e.g., phones, intercom speakers, etc.) in a manner and language that they can understand during an emergency situation or large-scale disturbance. These enhanced policies and procedures must make clear that the burden of de-escalation and conflict avoidance is always on the BCSO staff members (and, in the context of a calculated use of force, the commanding officer on-scene), and not on the inmates or detainees. These enhanced policies and procedures also must require that each attempt at conflict avoidance and de-escalation be adequately documented, including when and how those attempts were made, by whom, in what language(s), and any response.

*Recommendation Number 6:* The BCSO should adopt enhanced policies and procedures for medical consultation and review before, during, and after a calculated use of force. The BCSO clearly violated its existing policy that requires a medical consultation and review before a calculated use of force, and that requires notification and presence and/or involvement of EMTs and the Medical Director. The BCSO should adopt more fulsome policies and procedures that address how this review will happen in the context of a large scale disturbance, who will conduct those reviews and what information they will consider, what medical staff will be available on-scene, and what steps they will take to immediately evaluate inmates or detainees, including special needs inmates and others with relevant medical conditions, following a chemical agent exposure. The BCSO should include within this enhanced policy a mechanism to review or audit compliance after any calculated use of force.

*Recommendation Number 7:* The BCSO should adopt enhanced use of force reporting requirements. We observed a wide degree of variability among the incident reports prepared by responding officers. Some reports failed to document when an officer applied hands-on force and what, if any, warnings were given before the application of that force. Others mischaracterized detainee conduct (for example, stating that a detainee was being assaultive and combative when, in fact, they were simply not complying with verbal directives). And others failed to document injuries to detainees and/or the provision of emergency medical treatment. The enhanced use of force reporting requirements must address and remedy all of these deficiencies, and provide a mechanism to audit compliance and to address and/or discipline officers who fail to submit accurate and timely reports. The enhanced use of reporting should make clear that an after-action review must be conducted by a committee comprised of senior facility staff who did not participate in the use of force. The BCSO is also strongly encouraged to utilize a checklist in connection with any calculated use of force that documents all steps that must be taken prior to a calculated use of force and that is included as part of the Use of Force packet.

*Recommendation Number 8:* The BCSO should adopt enhanced reporting requirements for health care staff following a calculated use of force. The medical incident reports following the May 1 Incident were grossly deficient. These enhanced requirements must make clear that *all* reported injuries and symptoms are to be documented, as well as what medical treatment was provided, the reason for the denial of any medical treatment, *any*

apparent contraindications to O.C. spray, pepper-ball, or any chemical agents, any necessary or clinically indicated follow-up, and whether translation or interpretation services were provided. These enhanced requirements must also clearly document any medical or mental health reason for denying an inmate or detainee access to any essential items, such as clothing.

*Recommendation Number 9:* The BCSO should adopt a robust training program that is focused on the implementation of these enhanced policies and procedures. The BCSO is strongly encouraged to distribute all revised and/or enhanced policies and procedures at roll call and require all security staff to execute a written acknowledgement that they reviewed and understood those policies and procedures. The BCSO should specifically require that SRT members undergo additional conflict avoidance and de-escalation trainings focused on large-scale disturbances and on addressing LEP individuals as part of the SRT annual in-service training.

*Recommendation Number 10:* The BCSO should include a training module for all staff and CPS contractors who work on-site on diversity, inclusion, and cultural humility. The purpose of this training is to ensure that BCSO staff approach their duties and responsibilities with cultural competence. This training should specifically address interacting with LEP individuals.

*Recommendation Number 11:* To the extent that the BCSO continues to house federal immigration detainees notwithstanding Recommendation Numbers 1 and 2, the BCSO should adopt a training module as part of its annual in-service training on federal immigration detainees. This module must emphasize that federal immigration detainees are civil detainees and are to be treated accordingly, and include, at a minimum, topics relating to LEP detainees and the relevant ICE Detention Standards.

*Recommendation Number 12:* To the extent that the BCSO continues to house federal immigration detainees notwithstanding Recommendation Numbers 1 and 2, the BCSO should immediately remedy all deficiencies identified in the recent DHS ERO inspection report<sup>133</sup> and, in particular, those that relate to special management inmates, use of force, and medical care.

*Recommendation Number 13:* The BCSO should retain an external auditor or consultant to assess its compliance across the institution with all relevant laws, policies, and procedures, including those that relate to the use of force, special needs inmates, cell extractions and forced moves, canines, special management units, emergency situations, and the provision health care. In the interests of promoting transparency and accountability, the BCSO should provide the results of this audit or compliance review to the public.

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<sup>133</sup> Office of Detention Oversight, Compliance Inspection, Enforcement and Removal Operations, Boston Field Office, Bristol County Detention Center, North Dartmouth, Massachusetts (July 20-23, 2020), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/bristolCoDetCntrNorthDartmouthMA\\_Jul20-23\\_2020.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/bristolCoDetCntrNorthDartmouthMA_Jul20-23_2020.pdf).



*Recommendation Number 14:* The BCSO should ensure that all members of the SIU receive adequate training in proper interviewing and investigative techniques in order to conduct meaningful internal investigations, and that all policies, procedures, and protocols associated with conducting internal investigations are in keeping with best practices.

*Recommendation Number 15:* The BCSO should revise and update its policies related to the chain of command, including the SRT chain of command, to make clear that officers will not be disciplined for disobeying actual or perceived unlawful orders. The BCSO should also adopt a bystander intervention policy that obligates officers to intervene in instances of unlawful or excessive force. This policy should be clear that bystanders will not be disciplined for intervening or attempting to intervene in situations involving actual or perceived excessive force, but will be disciplined for failing to do so.

**c. Recommendations to Other State Agencies**

We also acknowledge that DPH and EOPSS have regulatory oversight over the BCSO. Therefore, in light of the seriousness of our findings, we also recommend as follows:

*Recommendation Number 16:* DPH should conduct a robust and thorough review of the BCSO's compliance with 105 CMR 205.000 (minimum standards for medical records and the conduct of physical examinations in correctional settings), and take any necessary corrective action. We acknowledge that DPH inspected the facility in June 2020 to assess the BCSO's compliance with 105 CMR 451.00 (minimum health and sanitation standards) and identified some health and safety violations. Through our investigation, however, it became clear that inmate medical records may not be accurate or complete, and may not document all reported injuries and symptoms, all medical treatments or emergency aid rendered, and all clinical decision-making. We also found a wide variability among BCSO staff in understanding which inmates and detainees qualify as "special needs inmates" under BCSO's policies, and how those types of special needs are to be documented. For example, the Director of Medical Services defined "special needs inmates" as essentially confined to those individuals who need ambulatory or sensory assistance, which is inconsistent with the BCSO's policies and procedures. This poses a risk to those detainees with chronic medical conditions or "invisible illnesses" that their needs will not be recognized or addressed in emergency situations. As part of this review, DPH should specifically audit detainee and inmate medical records to ensure that all special needs detainees and inmates have been properly identified.

*Recommendation Number 17:* EOPSS should conduct a robust and thorough review of BCSO's policies and procedures to ensure that they meet the minimum regulatory requirements, including specifically those policies that address use of force, emergency management situations, cell extractions and forced moves, the provision of medical care, and special needs inmates. We found evidence indicating that some of the BCSO's policies and procedures may not sufficiently address and/or are inconsistent with 103

CMR 900.00 through 979.00. EOPSS should take all necessary steps to ensure that the BCSO's policies and procedures meet these minimum regulatory requirements. EOPSS should also audit the BCSO's compliance with these standards, and take any necessary corrective action. In particular, we recommend that EOPSS audit the BCSO's use of force reporting and evaluate the efficacy and sufficiency of the BCSO's training materials related to the use of force. For example, we found several examples of use of force reporting that fell below minimum regulatory requirements and where no corrective action had been taken by the BCSO with respect to those officers relative to those reports. And as to training, for example, while the BCSO's canine policy appears to comply with minimum regulatory requirements for the use of canines in county correctional facilities, canines were deployed in a cell extraction in violation of 103 CMR 924.10 and we found evidence that some BCSO canine officers believed that canines could be used in cell extractions in certain situations. Finally, we recommend that, as part of this review, EOPPS assess whether the appropriate BCSO personnel have been adequately informed of, and trained in, the institutional response plan for large-scale disturbances.

## **EXHIBIT 2**

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS**

MARIA ALEJANDRA CELIMEN SAVINO,  
JULIO CESAR MEDEIROS NEVES, and all  
those similarly situated,

Petitioners-Plaintiffs,

v.

STEVEN J. SOUZA,

Respondent-Defendant.

Case No. 1:20-cv-10617 WGY

**SETTLEMENT AGREEMENT**

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## I. PARTIES TO SETTLEMENT AGREEMENT

The Parties to this Settlement Agreement (“Agreement”) are:

1. Plaintiffs: On April 8, 2020, the Court certified the following Class: “All civil immigration detainees who are now held by Respondent-Defendants at the Bristol County House of Corrections and C. Carlos Carreiro Immigration Detention Center in North Dartmouth, Massachusetts.” ECF No. 64. For purposes of this Agreement, the Parties agree and stipulate that the “Class Members” consist of the following individuals and no others:<sup>1</sup>

- a) Individuals to be Released Pursuant to this Agreement

- (1) Augustin, Smith
    - (2) Kayitare, Fred\*<sup>2</sup>
    - (3) Wafula, Lloyd
    - (4) Ixcuna-Lucas, Miguel
    - (5) Guallan-Tixi, Diego
    - (6) Gomes, Marcio

- b) Individuals to be Provided Other Relief

- (1) Fernandes, Joao Lima
    - (2) Da Graca, Aires\*
    - (3) Lewis, Conroy\*
    - (4) Amado, Joao\*
    - (5) De Carvalho, Janito
    - (6) Mullings, Terrano
    - (7) Ali, Liban

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<sup>1</sup> The Parties agree to this definition of Class Members for settlement purposes only and reserve all rights should the issue of who is or is not a member of the certified class arise in the future.

<sup>2</sup> The individuals marked with an asterisk (\*) have current appeals of their bail denials in this Action pending in Appellate Proceedings (as defined herein). The Appellate Proceedings are being resolved as part of this Agreement, as addressed *infra* in Section VII.

c) Individuals Currently Released on Bail by Order of Judge Young:

- (1) Al Amiri, Salim
- (2) Almanzar, Juan
- (3) Candelario-Echegoyen, Hugo
- (4) Carangui, Carlos
- (5) Castillo-Malpica, Gabriel
- (6) Corleto, Kevin
- (7) Cruz Soares, Geraldo
- (8) De Jesus Concepcion, Angela
- (9) Ferreira, Pamilar
- (10) Figueroa Morales, Julio
- (11) Hussein, Hussien
- (12) James, Andrea
- (13) Jaramillo-Perez, Esteban
- (14) Jaramillo-Quiroz, Hector
- (15) Joseph, Desmond
- (16) Kita Tshimanga, Antoni
- (17) Mahadeo, Kavon
- (18) Maney Lal, Neved Bai
- (19) Maria De Oliveira, Robson
- (20) Medeiros Neves Junio, Julio
- (21) Miranda-Castillo, Luis
- (22) Montes-Santos, Pascual
- (23) Nikiforidis, Georgios
- (24) Peguero-Vasquez, Victor
- (25) Ramirez-Maldonado, Ranferi
- (26) Rojas-Ceballos, Juan
- (27) Sanchez Lopez, Victor
- (28) Smith, Donovan
- (29) Thomas, Joko
- (30) Thomas, Akeim
- (31) Urbina Rivas, Henry

(32) Velasquez-Hernandez, Oscar

2. Defendant: Steven Souza, in his official capacity;
3. U.S. Immigration and Customs Enforcement.

## **II. PURPOSE OF SETTLEMENT AGREEMENT**

The Parties acknowledge and agree that this Agreement shall constitute a full, fair, and complete settlement of *Savino v. Souza*, No. 20-cv-10617 (the “Action”).

## **III. DEFINITIONS**

1. “Agreement” shall have the meaning ascribed to it in Section I.
2. “Action” shall have the meaning ascribed to it in Section II.
3. “Appellate Proceedings” shall refer to First Circuit Case No. 20-1626.
4. “BCHOC” shall refer to the Bristol County House of Correction and C. Carlos Carreiro Immigration Detention Center in North Dartmouth, Massachusetts.
5. “Boston Area of Responsibility” shall refer to Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
6. “Class Members” shall have the meaning ascribed to it in Section I.
7. “Complaint” shall refer to the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. 2241 and Complaint for Declaratory and Injunctive Relief filed in this Action on March 27, 2020 (ECF No. 1).
8. “Court” means the United States District Court for the District of Massachusetts.
9. “Defendant” shall have the meaning ascribed to it in Section I.
10. “Fairness Hearing” means the hearing to be held by the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether the settlement set forth in this Agreement should be approved.



11. “Final Approval” shall refer to the Court’s entry of this Agreement as an Order of the Court following a hearing and finding that the Agreement is fair, reasonable, and adequate pursuant to Fed. R. Civ. P. 23(e).
12. “ICE” shall refer to United States Immigration and Customs Enforcement, inclusive of any employee or agent thereof.
13. “Parties” shall have the meaning ascribed to it in Section I.
14. “Party” shall mean any individual or entity specifically listed in Section I.
15. “Plaintiffs” shall have the meaning ascribed to it in Section I.
16. “Preliminary Approval Order” means the “Order Preliminarily Approving Class Action Settlement, Providing For Notice and Scheduling Order,” substantially in the form of Exhibit A attached hereto, which, among other things, preliminarily approves this Agreement and provides for notification to the Class Members and sets the schedule for the Fairness Hearing.
17. “§(1)(a) Class Members” shall refer to the individuals in subsection (1)(a) of Section I.
18. “§(1)(b) Class Members” shall refer to the individuals in subsection (1)(b) of Section I.
19. “§(1)(c) Class Members” shall refer to the individuals in subsection (1)(c) of Section I.
20. “Class Members With Appellate Proceedings” shall refer to the individuals marked with asterisks in Section I, above.

#### **IV. CATEGORIES OF CLASS MEMBER RELIEF**

##### **A. Class Members Currently Released On Bail By Judge Young**

Concurrently with the submission of this Agreement to the Court for approval, Plaintiffs and Defendant will jointly move the Court for alteration of §(1)(c) Class Members' conditions of release, such that they are not subject to (1) any curfew or home confinement restrictions, inclusive of the restrictions imposed by the Court's December 22, 2020 Order (ECF No. 354), or (2) any GPS electronic monitoring. Subject to the re-arrest and detention or modification provisions in Section V, §(1)(c) Class Members shall remain released following Final Approval, and the alteration of conditions of release shall become effective and permanent as of the date of Final Approval, to the extent that the alteration of conditions has not already been approved by the Court. Defendant shall promptly inform all ICE, BI Incorporated, Intensive Supervision Appearance Program (ISAP), or other compliance staff assigned to §(1)(c) Class Members when these changes in conditions of release are made.

##### **B. Class Members To Be Released Pursuant To This Agreement**

The releases of §(1)(a) Class Members will be effected as soon as practically possible following execution of the Agreement by the Parties but no later than seventy-two hours following execution of the Agreement. Prior to execution of this Agreement, Plaintiffs' counsel shall provide ICE with residential addresses to which each §(1)(a) Class Member will be released. Should any of these addresses not be approved by ICE, ICE shall so notify Plaintiffs' counsel within twenty-four (24) hours and the Parties shall confer on an alternative arrangement for the release of that individual. Class Members released pursuant to this Section IVB shall complete fourteen (14) days of quarantine immediately following their release from BCHOC. Following completion of the quarantine period, §(1)(a) Class Members shall not be subject to any curfew or home confinement restrictions as part of the conditions of their release. These

Class Members may be subject to electronic monitoring at the discretion of ICE. The foregoing timing notwithstanding, the continued release of §(1)(a) Class Members is contingent on obtaining Final Approval of this Agreement. Should the Agreement not receive Final Approval from the Court, ICE reserves the right to, and Plaintiffs shall not oppose, re-arrest and detention of §(1)(a) Class Members who were released in advance of Final Approval. This exception for re-arrest and detention in the event the Agreement does not receive Final Approval shall not be subject to the re-arrest provisions described in Section V.

**C. Class Members Provided Other Relief Pursuant to this Agreement**

The §(1)(b) Class Members shall be presented the option to transfer out of the BCHOC facility to another ICE facility within the Boston Area of Responsibility. Within fourteen (14) days of execution of the Agreement, ICE shall provide Plaintiffs' counsel with a list identifying alternative locations of detention for each of the §(1)(b) Class Members. Defendant shall provide Plaintiffs' counsel with phone access to these Class Members, so that Plaintiffs' counsel can relay this information to the §(1)(b) Class Members. These individuals will have five (5) days from the date Plaintiffs' counsel is provided phone access to §(1)(b) Class Members to decide whether to exercise their option to transfer, or to remain at BCHOC. Should they elect to exercise their transfer option, they will inform Plaintiffs' counsel. Plaintiffs' counsel shall relay the decision to ICE and Defendant, who will then effectuate the transfer.

ICE maintains discretion as permitted by law to release any Class Member not released through this Agreement. Nothing in this Agreement restricts the ability of ICE to voluntarily choose to release individuals on their own initiative or in response to new guidance or policy changes or an order of an administrative or federal court. The offering of a transfer option as part of a court-approved settlement, or the Class Member's election to not exercise that option,

may not be used in any subsequent proceeding (i) to the detriment of any Class Member or (ii) in support of any argument for relief against Defendant, BCHOC, ICE, or any of their respective employees. Nothing in this Agreement restricts the ability of ICE to transfer a Class Member to another facility for emergent operational or security needs, except that Class Members who exercise their option to be transferred from BCHOC to another facility shall not be subsequently transferred back to BCHOC for any reason, unless the Class Member consents to be returned to BCHOC.

**D. Individualized Relief**

In addition to the foregoing, the following relief shall be made available and continue thereafter as applicable, to Class Members Joao Fernandes and Janito De Carvalho, as follows:

Joao Fernandes: Upon submission of this Agreement to the Court for approval, ICE shall join in a motion to reopen by Mr. Fernandes before the Board of Immigration Appeals (BIA). A copy of the joint motion to be filed with the BIA is attached as Exhibit B. Upon approval of the BIA of the joint motion to reopen, Mr. Fernandes will file a motion under Fed. R. App. P. 42(b) to voluntarily dismiss his pending petition for review, docketed as *Lima Fernandes v. Wilkinson*, No. 20-2035 (1st Cir.). Further, Mr. Fernandes will file an unopposed motion to abate the proceedings in his petition for review for the purpose of excusing the respondent from the due date of March 29, 2021 to file the answering brief. Mr. Fernandes agrees not to file any habeas petition alleging unlawful prolonged detention unless his reopened removal proceedings before the immigration court and Board of Immigration Appeals extend beyond one year, at which time Mr. Fernandes will be able to file such a claim. The one-year period during which Mr. Fernandes agrees not to file a habeas petition will begin upon the granting of the joint motion to reopen. Nothing in this agreement should be construed as a concession by ICE that detention

lasting longer than one year is unreasonably prolonged or otherwise unlawful. Nothing in this Agreement requires ICE to stipulate or agree that Mr. Fernandes is eligible for a bond hearing before the immigration court or eligible for any form of immigration relief.

In the event that the BIA does not grant the joint motion to reopen described above, Mr. Fernandes will not withdraw his pending petition for review at the First Circuit. If the BIA grants the joint motion to reopen but the Court does not grant Final Approval of this Agreement, the Parties agree that Mr. Fernandes will nevertheless dismiss his pending petition for review.

Janito De Carvalho: Defendant or ICE hereby agrees to send the letter in Exhibit C (or its functional equivalent) to the Salem Probate Court as it relates to Mr. De Carvalho's motion to reopen his family law matter (Case No. ES19W1162WD), within two weeks of Final Approval, and to provide him with a copy. If and when that family law matter is reopened, ICE and Defendant hereby agree to make Mr. De Carvalho available for family court proceedings provided ICE or Defendant is given reasonable notice thereof and that his attendance at family court proceedings does not interfere with any future appearances before the immigration court or his removal from the United States. ICE and Defendant shall use best efforts to provide transport and/or video conference capabilities to Mr. De Carvalho for those proceedings.

## **V. RE-ARREST CONDITIONS**

ICE shall not arrest or re-detain any §§ (1)(a) or (c) Class Member but for Good Cause. For the purposes of this Agreement, Good Cause is limited to a material violation of the terms and conditions of a §§ (1)(a) or (c) Class Member's order of recognizance or supervision. Absent an emergency involving a risk of harm to others by a released §§ (1)(a) or (c) Class Member, any effort to re-detain a §§ (1)(a) or (c) Class Member for Good Cause will be subject to Field Office Director ("FOD") or Special Agent in Charge ("SAC") advance approval.

Notwithstanding the above paragraph, ICE may re-arrest and re-detain §§ (1)(a) or (c) Class Members to effectuate a final order of removal, but only after good faith consideration of the §§ (1)(a) or (c) Class Member's individual circumstances and only after ICE has determined whether the option of self-removal and/or prior notice (as opposed to re-arrest) is appropriate for that individual §§ (1)(a) or (c) Class Member. ICE will make this determination by applying the same standards of review and process that it employs in cases of final orders of removal for individuals on its non-detained dockets.

ICE may also alter the terms and conditions of release for §§ (1)(a) or (c) Class Members for Good Cause (as defined herein). In the case of any Class Member whom ICE could otherwise re-arrest and re-detain to effectuate a final order of removal under the standards set forth in the previous paragraph, ICE may, but is not required to, offer them electronic monitoring as an alternative to re-arrest and detention. These protections against re-arrest or modification of terms and conditions of release for released §§ (1)(a) or (c) Class Members will remain in place for a period of one year from the date of execution of this Agreement.

## **VI. DISMISSAL OF APPEAL**

When this Agreement has been executed by counsel for the Parties, they will file a joint motion to dismiss without prejudice Case No. 20-1626 currently pending on behalf of Class Members With Appellate Proceedings pursuant to Fed. R. App. P. 42(b). The dismissal will be without prejudice to reinstatement in the event that the Court does not enter Final Approval. Reinstatement shall be by notice filed by counsel for the Class Members With Appellate Proceedings within 14 days of the Court's order rejecting Final Approval. If no notice of reinstatement is filed within 14 days of the Court's order rejecting Final Approval, the dismissal shall be with prejudice. Each party shall bear its own costs.

## **VII. REPOPULATION OF BCHOC**

The Preliminary Injunction that the Court issued on May 7, 2020, ECF No. 168, modified on May 11, 2020, ECF No. 172, and on May 12, 2020, issued a written opinion supporting, ECF No. 175, in which it prohibited the admission of new detainees to BCHOC, shall remain in place until Final Approval of this Agreement is entered, at which point the Preliminary Injunction shall be dissolved. Prior to the expiration of the time period for exercising the transfer option under Section IV.C, Defendant and ICE will use good faith efforts to communicate and keep Plaintiffs' counsel apprised of placement of detainees at BCHOC so that Plaintiffs' counsel can share any information regarding the repopulation of BCHOC with §1(b) Class Members in order to counsel those individuals on whether or not to exercise the transfer option provided to them under Section IV.C. of this Agreement. Defendant and ICE's duty to keep Plaintiffs' counsel apprised of placement of detainees at BCHOC shall not continue past the date on which §1(b) Class Members decide whether or not they will exercise their transfer option.

## **VIII. RELEASE AND SETTLEMENT OF CLAIMS**

In consideration of the representations, promises, and agreements set forth herein, the sufficiency of which is hereby acknowledged, Plaintiffs hereby release and forever discharge Defendant and ICE, from the habeas and Rehabilitation Act claims expressly alleged in the Complaint.

Aside from the habeas and Rehabilitation Act claims expressly alleged in the Complaint, no Class Member waives, dismisses, or releases any claim arising out of their detention, including without limitation claims under the Massachusetts Tort Claims Act, the Federal Tort Claims Act, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and 42 USC § 1983. Class Members retain their right to file individual habeas claims seeking release

from detention on any grounds that are not expressly raised in the Complaint, except as set forth above regarding Mr. Fernandes.

Except as expressly stated herein, this Agreement shall not constitute an admission by ICE, Defendant, or any Class Member for the purpose of asserting any claim or defense in any other proceeding, including but not limited to Class Members' immigration or criminal proceedings. All claims and defenses in proceedings other than this Action and in the Appellate Proceedings are expressly preserved by all Parties to this Agreement.

#### **IX. FINAL APPROVAL**

This Agreement shall be subject to the Final Approval of the Court. The Parties shall cooperate in presenting this Agreement to the Court for Final Approval and/or at any hearing under Fed. R. Civ. P. 23(e). If the Court grants Final Approval, the Parties stipulate that this Agreement shall not be construed as a consent decree or its equivalent. If the Court does not grant Final Approval, this Agreement shall be null and void and of no force and effect, and nothing herein shall prejudice the position of any Party with respect to the Action or otherwise, and neither the existence of this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be admissible in evidence, referred to for any purpose in the Action or in any other litigation or proceeding, or construed as an admission, presumption, or concession by Defendant or ICE of any liability or the truth of any of the allegations of the Action.

If the Court grants Final Approval and following provision of the relief identified in Section IV and the dismissal of appeals outlined in Section VI, the Parties stipulate to jointly move the Court to dismiss the Action.



**X. DISPUTE RESOLUTION AND ENFORCEMENT**

If any of the Parties believe that another Party is not in substantial compliance, that is, is in substantial non-compliance, with any provision of this Agreement, that Party shall, through its counsel, provide the allegedly non-compliant Party, in writing, notice of the specific reasons why it believes that they are not in substantial compliance with such provision or provisions, referencing the specific provision or provisions.

Once notified, the Party so notified shall provide a written response to any claim of alleged substantial non-compliance.

Either Defendant, ICE, or Plaintiffs (through their counsel), may request a meeting to discuss and attempt to resolve any dispute. If they are not successful in their efforts to resolve the issue, they may jointly or independently seek relief from any court of competent jurisdiction to the fullest extent permissible by law.

**XI. NO ADMISSION OF LIABILITY**

Nothing in this Agreement, including but not limited to the transfer option, shall be construed in any way as an admission, presumption, or concession by Defendant or ICE of any liability or wrongdoing whatsoever. Defendant and ICE specifically disclaim any liability or wrongdoing whatsoever on the part of themselves, their agents, and their employees, but agree to settle this suit to avoid further protracted litigation.

**XII. ATTORNEYS' FEES AND COSTS**

Plaintiffs and Plaintiffs' counsel agree to waive any and all claim to the recovery of attorneys' fees and costs in connection with this Action if the following conditions are met: a) the Court grants Final Approval; b) the conditions of release for §(1)(c) Class Members are modified as set forth in Section IVA; c) the §(1)(a) Class Members are released as set forth in Section IVB;

d) the §(1)(b) Class Members are offered the transfer option as set forth in Section IVC and any of these Class Members who have exercised this option are transferred; e) the joint motion to reopen described in Section IVD is filed; and f) the letter for Mr. De Carvalho is sent and a copy provided as set forth in Section IVD. However, should the foregoing conditions not occur, Plaintiffs and Plaintiffs' counsel reserve all rights to continue to litigate on Class Members' behalf and to seek reasonable attorneys' fees and costs for all services rendered in this Action. The failure of Defendant and ICE to comply with the 72-hour timing requirement of § IV(B) for the release of §(1)(a) Class Members shall not be deemed to reinstate Plaintiffs' or Plaintiffs' counsel's right to fees and costs if Defendant and ICE have made a good faith effort to secure such release within that timeframe and the impediment to such release is either beyond the control of Defendant or ICE or could not have been reasonably foreseeable by them, and the Class Member is released as soon as practicable. Plaintiffs' counsel also reserves all rights to seek fees and costs incurred solely in connection with the successful enforcement of this Agreement, should the need to seek such enforcement arise following Final Approval. Defendant and ICE reserve all rights to oppose any such petitions for fees and costs.

### **XIII. NOTICE AND APPROVAL PROCEDURE**

#### **A. Preliminary Approval**

As soon as practicable after the execution of this Agreement, the Parties shall jointly move for a Preliminary Approval Order, substantially in the form of Exhibit A, preliminarily approving this Agreement and finding this settlement to be fair, just, reasonable, and adequate, approving the Class Notice to the Class members as described *infra* in Section XIII (C), and setting a Fairness Hearing to consider the Final Approval Order and any objections thereto.

#### **B. Effect of the Court's Denial of the Agreement**

This Agreement is subject to and contingent upon Court approval under Rule 23(e) of the Federal Rules of Civil Procedure. If the Court rejects this Agreement, in whole or in part, or otherwise finds that the Agreement is not fair, reasonable, and adequate, the Parties agree to meet and confer to work to resolve the concerns articulated by the Court and modify the Agreement accordingly. Except as otherwise provided herein, in the event the Agreement is terminated or modified in any material respect or fails to become effective for any reason, the Agreement shall be without prejudice and none of its terms shall be effective or enforceable; the Parties to this Agreement shall be deemed to have reverted to their respective status in the Action as of the date and time immediately prior to the execution of this Agreement; and except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered. In the event that the Agreement is terminated or modified in any material respect, the Parties shall be deemed not to have waived, not to have modified, or not be estopped from asserting any additional defenses or arguments available to them. In such event, neither this Agreement nor any draft thereof, nor any negotiation, documentation, or other part or aspect of the Parties' settlement discussions, nor any other document filed or created in connection with this settlement, shall have any effect or be admissible in evidence for any purpose in the litigation or in any other proceeding, except in a proceeding to enforce the Agreement, and all such documents or information shall be treated as strictly confidential and may not, absent a court order, be disclosed to any person other than the Parties' counsel, and in any event only for the purposes of litigating the Action.

### **C. Notice for Fairness Hearing**

The joint motion for Preliminary Approval Order shall request that the Court schedule the Fairness Hearing for no later than twenty-eight (28) days from the date the joint motion is filed;

and shall request that the Court order that not later than three (3) days after entry of the Preliminary Approval Order (unless otherwise modified by the Parties or by order of the Court), the Parties shall effectuate notice to Class Members. The Parties stipulate to the form of notice attached at Exhibit D. Defendant agrees to provide Plaintiffs' counsel with the last known address of each Class Member to confirm notice is being properly issued.

#### **D. Objections to Settlement**

The joint motion for Preliminary Approval Order shall request that the Court order the following procedure for objections: that on or before two (2) weeks after the Court issues a Preliminary Approval Order, any Class member who wishes to submit comments or object to the fairness, reasonableness, or adequacy of this Settlement Agreement or the settlement contemplated herein must file with the Clerk of Court and serve on the Parties a statement of objection setting forth the specific reason(s), if any, for the objection, including any legal support or evidence in support of the objection, grounds to support their status as a class member, and whether the class member intends to appear at the Fairness Hearing. The Parties will have five (5) days following the objection period in which to submit answers to any objections that are filed. Any notice submitted to the Clerk of the Court in accordance with this Section VIII(D) shall be sent to: Clerk of the Court, U.S. District Court of Massachusetts, One Courthouse Way, Suite 2300, Boston, MA 02210; copies shall also be served on all counsel to this Agreement.

#### **E. Fairness Hearing**

At the Fairness Hearing, as required for Final Approval of the settlement pursuant to Federal Rule of Civil Procedure 23(e)(2), the Parties will jointly request that the Court approve the settlement as final, fair, reasonable, adequate, and binding on Class Members.

#### **F. Opt-Outs**

The Parties agree that no Class Member may opt out of any of the provisions of this Agreement.

**G. Final Approval Order and Judgment**

At the Fairness Hearing, the Parties shall jointly move for entry of the Final Approval Order, substantially in the form of Exhibit E, granting final approval of this Agreement to be final, fair, reasonable, adequate, and binding on all Class Members, overruling any objections to the Agreement; ordering that the terms be effectuated as set forth in this Agreement; and giving effect to the releases as set forth in Section VIII.

**XIV. MISCELLANEOUS**

**A. Governing Law**

This Agreement shall be deemed to be made and entered into in the Commonwealth of Massachusetts and shall in all respects be interpreted, enforced, and governed under the laws of said Commonwealth and the laws of the United States.

**B. Confidentiality**

No part of this Agreement is or will be considered confidential by the Parties. This Agreement will be made available by request under the Massachusetts Public Records Law, Mass. Gen. Laws c. 66, § 10, or Freedom of Information Act, 5 U.S.C. § 552.

**C. Entire Agreement**

This Agreement constitutes the entire agreement of the Parties and, except for any Protective Order entered by the Court, supersedes all prior agreements, representations, negotiations, and undertakings in this litigation not set forth or incorporated herein.

Each Party represents and acknowledges that each Party is and has been represented by its own counsel. Each Party further represents and acknowledges that, in executing this Agreement, no Party relies or has relied upon any representations or statements made by any other Party or its

counsel other than the promises and representations set forth in this Agreement. No other statement, promise, or agreement, either written or oral, made by any Party or agents of any Party that is not contained in this written Agreement, or in the individual agreements referenced in Section IVD, will be enforceable.

This Agreement is the result of an arm's-length negotiation. Since all Parties contributed substantially, materially, and cooperatively in drafting this Agreement, it shall not be more strictly construed against one Party than as against any other.

**D. Execution**

This Agreement may be executed in counterpart originals, all of which, when so executed and taken together, shall be deemed an original and all of which shall constitute one and the same instrument. Each counterpart may be delivered by email (as a PDF attachment) or facsimile, and an email or facsimile signature shall have the same force and effect as an original signature.

**E. Non-Waiver**

Failure by Plaintiffs to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision will not be construed as a waiver to such enforcement with regard to other instances or provisions.

**F. Severability**

Should any part, term, or provision of this Agreement be declared or be determined by any court to be illegal, invalid, or otherwise unenforceable, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal, invalid, or other unenforceable part, term, or provision shall be deemed not to be part of this Agreement, unless the Court declines to approve this Agreement. However, if the severance of any illegal, invalid, or otherwise unenforceable part, term, or provision materially alters the rights or obligations of the Parties hereunder, the Parties will attempt, through reasonable, good faith negotiations, to agree upon such

other amendments to this Agreement as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.

**G. Amendments**

Except as otherwise stated, this Agreement shall only be amended, revoked, changed, or modified through a written agreement executed by all Parties and approved by the Court. No waiver of any provision of this Agreement will be valid unless it is in writing and signed by the Party against whom such waiver is charged and approved by the Court.

**XV. TERM**

This Agreement shall expire and the entirety of the obligations set forth within its terms shall become null and void four years from the date of the Court's Final Approval.

Signed:

NATHANIEL B. MENDELL  
Acting United States Attorney  
District of Massachusetts  
/s/ Thomas E. Kanwit  
THOMAS E. KANWIT  
Assistant U.S. Attorney  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
[Thomas.kanwit@usdoj.gov](mailto:Thomas.kanwit@usdoj.gov)  
(617) 748-3100

Counsel for Defendant Souza and for U.S. Immigration and Customs Enforcement

Date: April 6, 2021



Signed:

/s/ Oren M. Sellstrom

Plaintiffs' District Court Counsel  
LAWYERS FOR CIVIL RIGHTS

April 6, 2021

Date

/s/ Mike Brown

Plaintiffs' District Court Counsel  
WILMER CUTLER PICKERING HALE AND  
DORR LLP

April 6, 2021

Date

/s/ Michael Wishnie

Plaintiffs' District Court Counsel  
JEROME N. FRANK LEGAL SERVICES ORGANIZATION

April 6, 2021

Date

/s/ Sameer Ahmed

Appellate Counsel for Class Members With  
Appellate Proceedings  
HARVARD LAW SCHOOL CRIMMIGRATION CLINIC

April 6, 2021

Date

# **EXHIBIT 3**

1 Hello, I'm Bristol County Sheriff Tom Hodgson. Welcome to my podcast. Thanks for  
2 joining me. You know, I want to give you the backstory that I know all of you have probably -  
3 uh - not heard. But at this point, regarding the Attorney General's report on the incident that  
4 happened at our immigration detention facility, I think it's long overdue, even though we've been  
5 waiting over a year for that federal final report from the federal investigation.

6 Uh, I think it's time, enough time has passed that we just, we're just gonna go ahead and  
7 tell you what happened - um - and we're under the, we've been told recently that the, the federal  
8 report, which we expect is going to be very favorable and supportive to us - um - was in its final  
9 draft form, and that was over a week ago. But we've heard that we were going to get it last  
10 February as well, so we don't know where it is, don't know what's being done to it or with it, but  
11 it's time you heard what really happened so we don't have the activists out there who continue to  
12 sort of, you know, tell their own little story that supports their pro illegal agenda, and  
13 misrepresents the truth to you all, in a way that, you know, is hurtful both to my staff and - um -  
14 and to the, to the Bristol County Sheriff's Office.

15 So here it is, you know, back in, I think it was last January - uh - maybe, no, it was a little  
16 later than that maybe was in, in, say, April or March, something like that of last year, all around  
17 the time when the Covid really started to become a problem, we had a federal judge who agreed  
18 to hear a case that was filed by an activist group, and the activist group was saying that it was  
19 dangerous for these detainees to be in Bristol County's detention center - uh - that they could  
20 potentially get Covid, and that wasn't right and they should be released.

21 Now keep in mind we're talking murderers, rapists, one guy who had bombed the police  
22 station in Ireland. I mean these are, these are, these are bad guys. And so the judge agreed to hear  
23 the case. In fact, he agreed to hear every one of those individuals' cases on the request to be

24 released. So you can imagine this went on and on and on. But importantly, I have to point out,  
25 that at the time the judge began this case and the time that these people followed it, we had no  
26 Covid cases. We had none. We had none. And so even during the hearings the judge said that the  
27 Bristol County Sheriff's office followed every CDC and every DPH guideline. However, I don't  
28 know how you come to this conclusion, but he basically said, but you know, I find them to be  
29 deliberate and indifferent.

30 Now, how you could follow every single guideline of CDC and DPH and be considered  
31 to be - um - deliberately indifferent, would suggest that every single agency in, in America that  
32 followed CDC and DPH guidelines was deliberately indifferent to the people that they were  
33 serving or supporting or housing or whatever they were doing. It was a ridiculous notion, but  
34 that's what the judge was ruling. And I think even in his, one of his statements during the  
35 hearing, what really kind of came out was his opinion, that he thought some of these people  
36 really probably shouldn't be held in there based on what they had done. Okay, well, that's not my  
37 problem. Okay. If you don't agree with, with, the law and why they were being held, that's,  
38 that's, entirely up to the judge to feel that way, but it's not up to the judge to make the  
39 determination that even though the law's on the books that certain people don't have to follow.

40 But having said that, that was the reality of what we were dealing with. So you could  
41 imagine the activists were constantly on the phone with our detainees here and they were stirring  
42 things up and stirring things up, trying to, you know, encourage them to try to complain that  
43 things weren't right. And so, of course, if you're in jail, first thing you're gonna do is you're  
44 gonna look for every opportunity to see if you can come up with a reason why you should be  
45 considered to get out as well. And, and, even if that means just lying, make it up and just keep

46 repeating it, and that's what was going on. And they were being encouraged by the activists.  
47 We've heard phone calls, we know what was happening.

48         So, at any rate, this would proceed on now, the judge would have certain hearings. He'd  
49 let some people would be released, believe it or not, and then there were others who went for the  
50 hearing and the judge wouldn't release. Well of course the ones that didn't get released, they had  
51 to figure out another way to try to make their case - uh - to be a bigger hardship to get out. This  
52 is all part of, it was all part of the plan. And so what happened was - uh - there was a situation  
53 where the detainees - uh - didn't like the fact in one of our dorm units - so let me just describe for  
54 you the unit I'm talking about. It has about 26 or 28 beds in there and it's like a typical open  
55 dorm setting - uh - bathrooms are off to the left and it's a pretty basic sort of, you know, holding  
56 dorm facility, there's no cells. And essentially - um - you know I've got, I've got the TV in there,  
57 one or two TVs, they've got, you know, they've got phones, they've got other things in there as  
58 well but - and they have a rec yard off of that outside - but at any rate, so these detainees - uh -  
59 decided that they were going to do what they call a work stoppage. They don't have to work,  
60 they, if they want to work cleaning in the unit or doing laundry in the unit, because we had  
61 washer and dryer in a separate room in there, they could do that, and it kept them busy and it was  
62 something to do but they decided no, we're gonna, we're gonna just not do anything. Well, that  
63 can happen in a prison and my staff automatically just pick up the details and do it. That's what  
64 we do, it's part of our jobs.

65         But on this one day when they decided not to do it, they were all trying to congregate  
66 together and create this, you know, sort of idea that they weren't happy and things weren't right  
67 there, and all of this. One of the detainees had asked the officer if he could wash his clothes for  
68 him, so the officer took the clothes, washed them, folded them, gave them back to him, when he

69 gave them back, the others didn't like the fact that that particular inmate asked an officer to do it.  
70 So one of the detainees, who was part of the bigger group, decides to assault the individual, and  
71 assaulted him pretty good.

72 The staff got the victim out of the unit and when they did - um - they waited until the next  
73 day to go back in to make sure that things were calm and - um - and it was sort of unnoticed.  
74 They were going to be coming in to get the perpetrator, right? So the next day they went to go in,  
75 and when they did, the officer went in - they formed - the officer just went in to get them - and  
76 they formed a human - they went all the way down to the other end of the unit and stood behind  
77 tables as though they were going to, they were going to confront - uh - confront the officers.  
78 They wouldn't allow, by the way, the officer to get to the individual, they formed this, this sort of  
79 human line. And - um - so the officer backed out of the unit, realized that, that's policy, that there  
80 could be a problem. He called for the Special Operations Unit.

81 I happened to be in my office, they called me, told me it was going on. This is in the  
82 morning, early afternoon, I think the morning, and - um - I said, well I'm gonna come right up. I  
83 went up and, you know, being from a big family, and I've done this before in our facilities, also  
84 in the main facility where we have no detainees but regular inmates - um - I've talked to inmates  
85 before where they were, you know, not cooperating or whatever, and I got them to just get back  
86 to normal. So needless to say that was a natural, you know, progression for me. I went up, I said  
87 look, I'm gonna go in with you guys - um - and before anything, you know, any kind of a  
88 situation happens, let me, let me see if I can talk these guys down.

89 I went in with the unit, I started talking to the guys, the guys. If you have grievances or  
90 issues you need to talk, you know the rules here, you know how to go about it. This is not the  
91 way to do it. So my recommendation is go back to normal, you know, operations and - um - I'm

92 gonna come up here at one o'clock this afternoon, I'm gonna sit and talk with you guys and find  
93 out if there's issues you have or whatever. I want, I want to hear from you.

94 And of course they were saying no, we don't have soap, which was all a bunch of  
95 baloney, but it was trying to raise the level of concern to say that they don't really belong in here  
96 and try to get the judge to let them out. Anyway, long and short of it is, I - uh - I actually came  
97 back. They agreed to go back to normal, so there was no need for the Special Operations Team to  
98 engage them and - um - and they went back to normal operations. I came up at 1:00, spent about  
99 an hour and a half with them talking, hearing what they had to say, and when I was finished  
100 talking with them they gave me a standing ovation, they gave me a standing ovation, and - uh - it  
101 was interesting because - uh - I had come up another time after that and talked with them. We,  
102 we entered around with them and they were all, you know, very happy and - uh - didn't seem to  
103 have any real concerns at that point, until about a month later.

104 And there was still some obviously couldn't get out. And they were going to see if they  
105 could raise the level again and try to create some situation. So, I was on my way home. I got a  
106 call from my staff. They said, they said, we have a problem. What's the problem? Well, in that  
107 one unit, out of the 24 people in the unit, 10 of them have identified - the nurses interviewed  
108 them today - all around the same time, coincidentally, that same day they all said they didn't feel  
109 well. So the nurses went up and they interviewed each one of the 24, 10 of them indicated that  
110 they had - uh - well, they indicated at least two symptoms consistent with Covid. So the nurse  
111 said, okay, well, we have to have, the officers will come up and they'll take the 10 of you down  
112 to the medical unit down at our lower building and get screened.

113 Well, so they, they came, the officers came up, and that's when I got the call, and they  
114 told me they won't, they refused to go down. I said I'll be right there. I knew the guys. I didn't

115 expect any issues. I got there. They say, hey guys gather around. Listen, here's the deal. I can't let  
116 you, 10 of you identified with Covid, you've been trying to say all along that Covid's a problem  
117 here, and you didn't want to be here, now, you have 10 guys that have identified symptoms that  
118 are consistent. So the 10 of you that have it, you have to go down below. We can't keep you in  
119 here and infect the officers or potentially infect these other detainees. I, I owe it to them as well  
120 as I do to you for care and custody. They, I said so I'm gonna call the 10 names, you come  
121 forward. Well, when they called the 10 names, no, we're not going. I said, okay. I said call the 10  
122 names again. Come forward. Well, as they were calling the 10 names, one of the guys walked  
123 away that was one of the 10, I didn't realize it, and the next thing I knew he was down by the  
124 phones. He got on the phone. So I went down to him and I said, Marco, you need to hang up the  
125 phone. Your number's been called. He just looked at me and wouldn't cooperate. So I said,  
126 Marco, you can't - your name's been called - you got to go hang up the phone. Nope. He  
127 wouldn't.

128         So as I was facing him, I took my hand and grabbed a hold of the receiver. He pulled the  
129 receiver away from me - uh - pulled it over to his left shoulder and just started yelling into it, and  
130 we find out later it was his attorney, going, don't you hit me, get your hands off me, don't you  
131 hurt me. Wasn't even touching him, wasn't even touching him. But what he did at that point, by  
132 yelling that, it's like yelling fire in a theater. You say that inside a unit, don't you hurt me? Get  
133 your hands off me, everybody's coming running. And that's exactly what these detainees did.  
134 They all came at once and they surrounded me and the other officer. They hit me with a chair,  
135 they assaulted a lieutenant, a female lieutenant with a chair and - um - we had to back out of that  
136 unit.



137           Ultimately - uh - they at that point, once we got out of the unit, they began trashing the  
138 entire unit, they threw the washers, dryers up against the door, they started throwing tables  
139 against the doors, barricading the doors, and then they barricaded the door that went out to the  
140 rec yard. They threw coffee up on the camera to, to avoid being recorded. And, and they just  
141 basically trashed the entire unit. They broke the handicap pull off the wall in the bathroom,  
142 started smashing all the sinks, there were shards of, of porcelain, shards of glass, they broke the  
143 glass that separated the bathroom from the main unit - um - they smashed the officer station - uh  
144 - they smashed the television that was in there, they just went, went about into the prayer room  
145 and smashed holes in the walls, wrote all kinds of things about ICE on the wall and they just  
146 completely trashed the entire unit.

147           So, obviously we had to call in our, our team - uh - some of them were on duty some  
148 were not, so by the time they got there and the time they did their briefing, all of which is  
149 recorded, they, they then began their - um - procedure to enter the building. Um, it was probably  
150 about 45 minutes from the time the incident started initially to the time they got there, got  
151 uniformed up and ready to go. So once they were ready - uh - they go in in what we call a V.  
152 There were two, I think there were three canines in the center of the V, all muzzled - uh - two  
153 officers in front with shields to prevent any projectiles from hitting any of the team. And, and  
154 they - through - they entered the rec door which was barricaded. The detainees were standing all  
155 right around that door as they saw the, the team coming in getting ready to come in - uh - they  
156 didn't pull any barriers away from the door, they didn't give any indications or sit on their bunks  
157 and like, hey listen, we're not going to confront you guys, we're not gonna hurt you guys - um  
158 they did, they didn't do any of that. Uh, they'd already shown the predisposition to do what they  
159 were going to do or have done. At that point, we breached the door, we threw what we call a

160 flash bang against the wall to the right where they weren't. It makes, it's a startling - uh -  
161 explosion. They all ran to the other end of the unit within 90 seconds. I want you to really think  
162 about that, 90 seconds. Every one of those 24 detainees that were in that unit, were in flex cuffs.  
163 We had the unit under control, and the last detainee was let out. The last one out of there was  
164 within five minutes, all lined up outside in the rec yard facing the wall.

165         So, by every measure, every measure using the least lethal force that we needed to use,  
166 we had a phenomenal operation, no detainee hurt in that extraction, no officer hurt. We had three  
167 detainees once they were out in the yard, one had a panic attack which he had a history of. The  
168 other one had a problem with his knees. And the third one actually had - um - had an aortic  
169 procedure or something a year or two earlier and he was just stressing. But there was no  
170 immediate emergency. One guy, the guy with the panic attacks, he collapsed. He like fainted, but  
171 he was perfectly fine after the officers and the, and the nurse - uh - you know, calmed him down,  
172 got him up and he walked, he was able to walk. But then I think it was probably a minute, minute  
173 and a half - uh- maybe, maybe two minutes, I'm not really sure but close to that.

174         The long and short of all of this is, that was used immediately by politicians, the Attorney  
175 General jumped on this thing. Never one question, how are your officers doing? They saw that as  
176 a chance to say we can shut down ICE detention because we are pro illegals. We don't believe  
177 they should be locked up. And, so here's what we're gonna do, we're going to exploit this for  
178 everything we can politically. And here we go. The Attorney General does this report, which is a,  
179 which is a trash report based on politics. She used no subject matter experts to analyze anything  
180 we did and she had no clue how to run an investigation. She didn't even interview me and I was  
181 there from the very beginning to the very end and I'm the one that was assaulted. Anybody that  
182 knows the basics of conducting an investigation knows, in a situation like that, I'd be the first

183 person you'd want interviewed. But you know why she didn't? She knew I knew the truth. She  
184 knew I knew our history and policies and how well we've done over the years. And she knew I  
185 knew the truth about all this, how all this evolved. But she already had her narrative all figured  
186 out, what she wanted the conclusion to be before she even did the investigation with her assistant  
187 attorney generals, her civil rights division. How dare they accuse my people of violating these  
188 civil rights? They didn't violate any civil rights.

189         And anybody in this business will tell you, by every measure that was exactly what we  
190 should have done. And for her to say, well, the inmates hadn't done any - detainees, hadn't done  
191 anything for almost 45 minutes. Well, guess what? You think I'm sending my people in there  
192 with, without the proper procedures that we have to use when, I don't know, and they don't know  
193 where those shards from the porcelain that they smashed in the bathrooms, which bed, which  
194 sheet is it under? Which sheet is that, is that handicapped pool hidden under or the other pieces of  
195 metal that they had? Where were they, which bunk? My people are just gonna walk in there as  
196 though nothing is a threat to them, doesn't, doesn't work that way. When you come to, if you're in  
197 prison, you follow rules and we also have to maintain control of our units and when, if it gets out  
198 of control, which it did, it's our responsibility and obligation to maintain and bring back control  
199 as quickly as we can, using least lethal force and my, my staff by every measure, did a  
200 phenomenal job, and shame on our congressional delegation, shame on the Attorney General,  
201 shame on the Biden administration for exploiting this for their political purposes and putting the  
202 reputation of my people, in a situation where people would even begin to question whether or not  
203 they're right. Although I don't think most of you do because, you know, I've been doing this for  
204 25 years, I've been running this operation, all of a sudden we got bad or our standards got worse?

205 That, that's outrageous. Nobody believes that. But there are people that will try to make you  
206 believe it because they want, they have a different agenda.

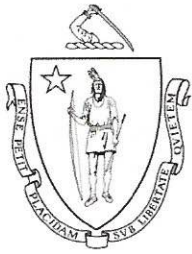
207 It's not about the truth. It's about what they want, what they want for their political left  
208 wing agendas, and it ultimately not only exposes my people to danger, it exposes the inmates and  
209 detainees in our custody to danger, and it exposes you, all of you out there who have an  
210 expectation that we will always do everything we can to protect you, and while we have people  
211 in our custody, protect them and their rights, and that's exactly what we've done, and shame,  
212 shame on these people. These elected officials who violate their trust and try to exploit things for  
213 their own political purposes, and everybody knows the Attorney General's attempt to want to get  
214 elected as governor. Well, let me tell you something, we've seen this before. This is the second  
215 time she's tried to exploit our operation and use it to try to get a quick political hit. Well, it's not  
216 gonna work. It's not gonna work because I know that you the people recognize our record of  
217 achievement, and that all these people that are accusing us of these things have never been in the  
218 jail. They've never talked to our medical people, never talk to our operations people. They have  
219 no clue. They just keep repeating the same thing over and over again, which are blatant lies.

220 They've been doing it for 25 years since I've been sheriff because they don't like my  
221 policies and they don't like me to hold people accountable that are in our facility to, to stick  
222 within the rules. Because you know what? These people don't think rules matter anymore. Well  
223 they do and they will, as long as I'm the sheriff of this county and as long as I have made a  
224 promise to you, I'm gonna keep it and I'm not gonna, I'm not gonna cower to these people who  
225 try to intimidate and make up lies and these, these stories to try to advance your agenda. And I'm  
226 gonna expose it every single time I see it.

227           So here we are. And I know my, this is a little longer podcast than I usually do, but I want  
228   you to know something - uh - this is a very important story because it's not just about us in  
229   Bristol County, this is happening to sheriffs all over the United States, these, these people trying  
230   to undermine our ability to collaborate with our partners and to do our jobs - um - within the  
231   confines of what we've been expected to do by you and by the people who hold us accountable to  
232   the highest standards

233           Well, that'll do it for this podcast. Uh, you can reach me by email at [info@bcso-ma.org](mailto:info@bcso-ma.org)  
234   please reach out to me, ask me any questions, you know, I really want to, I would love to answer  
235   your questions. Um, and, and - um - clarify anything that you're wondering about or have issues  
236   with. Uh, you can get me by regular mail, care of Sheriff Hodgson, 400 Faunce Corner Road,  
237   Dartmouth, Mass, 02747. To learn more about the Bristol County Sheriff's office, you can visit  
238   our website at [bcso-ma.us](http://bcso-ma.us). Thanks again for joining.

# **EXHIBIT 4**



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY  
ATTORNEY GENERAL

(617) 727-2200  
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[www.mass.gov/ago](http://www.mass.gov/ago)

December 15, 2020

**VIA U.S. PRIORITY MAIL**

The Honorable Sharon E. Donatelle  
Justice of the Superior Court  
Suffolk County Superior Court  
3 Pemberton Square  
Boston, MA 02108

Re: American Civil Liberties Union of Massachusetts, Inc. v.  
Bristol County Sheriff's Office, Civil Action No. 20-CV-1035-G

Dear Judge Donatelle:

In connection with the above-referenced matter, I write to inform the Court that the Office of the Attorney General (the "AGO") has concluded its investigation into the events of May 1 on Unit B of the C. Carlos Carreiro Immigration Detention Center at the Bristol County House of Correction. I have enclosed a copy of the AGO's report, publicly released on today's date, which summarizes our findings and conclusions resulting from the investigation.

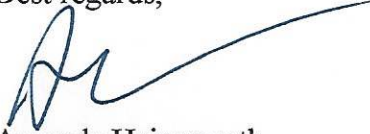
The Bristol County Sheriff's Office (the "BCSO") has claimed that records at issue in this litigation are exempt from public disclosure under the investigatory exemption (among other exemptions) to the Massachusetts Public Records Law based in part on the pendency of the AGO's investigation into the May 1 incident. Since our investigation has now concluded, we see no reason to withhold this information on the basis of that investigation. The release of the records sought in this litigation would not reveal any of our investigatory techniques or otherwise prejudice future law enforcement activities by our office such that disclosure would not be in the public interest. See G. L. c. 4, § 7(26)(f); cf. Bougas v. Chief of Police of Lexington, 371 Mass 59, 62 (1976) (noting that the investigatory exemption may be invoked after the conclusion of an investigation if disclosure of the information would hinder future law enforcement efforts).

On the contrary, the AGO believes that public disclosure of the records sought in this litigation would serve the public interest by increasing the BCSO's public accountability, openness, and transparency. Indeed, as the Court knows, there has been a great deal of public interest in the May 1 incident and the AGO believes that the public has a right to know what happened that day. The AGO would therefore welcome and support the public disclosure of these records.

Letter to the Honorable Sharon E. Donatelle  
December 15, 2020

Thank you for your consideration. Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in blue ink, appearing to be 'Amanda', with a long, sweeping horizontal line extending to the right.

Amanda Hainsworth  
Assistant Attorney General  
Civil Rights Division  
Massachusetts Attorney General's Office  
phone: 617-963-2618  
email: amanda.hainsworth@mass.gov

Encl.

cc: Lorraine Rousseau, Esq. (by electronic mail)  
Robert C. Heroux, Esq. (by electronic mail)  
Christopher Escobedo Hart, Esq. (by electronic mail)  
Nicholas Anastasi, Esq. (by electronic mail)  
Matthew Segal, Esq. (by electronic mail)  
Daniel L. McFadden, Esq. (by electronic mail)  
Kristin M. Mulvey, Esq. (by electronic mail)  
Robert Novack, Esq. (by electronic mail)  
Abigail Taylor, Chief, Civil Rights Division



# **EXHIBIT 5**

**SENATE.....No. 2980**

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**The Commonwealth of Massachusetts**

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**Report**

**of the**

**SENATE COMMITTEE ON  
POST AUDIT AND OVERSIGHT**

**entitled**

**REPORT OF THE SENATE COMMITTEE ON POST AUDIT AND  
OVERSIGHT CONCERNING A VISIT TO THE BRISTOL COUNTY  
HOUSE OF CORRECTIONS BY A MEMBER OF THE MASSACHUSETTS  
STATE SENATE ON MAY 2, 2020**

(under the provisions of Section 63 of Chapter 3  
of the General Laws, as most recently amended by  
Chapter 557 of the Acts of 1986)

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**December 18, 2020**

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# The Commonwealth of Massachusetts

## MASSACHUSETTS SENATE

**SENATOR JOHN F. KEENAN**

*Norfolk and Plymouth District*

STATE HOUSE, ROOM 413F

BOSTON, MA 02133-1053

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*Chairman*

SENATE COMMITTEE ON POST AUDIT  
AND OVERSIGHT

*Vice Chairman*

JOINT COMMITTEE ON MENTAL HEALTH, SUBSTANCE  
USE AND RECOVERY

December 18, 2020

Mr. Michael D. Hurley, Clerk of the Senate  
State House, Room 335  
Boston, MA 02133

Dear Clerk Hurley:

Pursuant to M.G.L. Chapter 3, Section 63, the Senate Committee on Post Audit and Oversight respectfully submits to the full Senate the following report: **Report of the Senate Committee on Post Audit and Oversight Concerning A Visit to the Bristol County House of Corrections By a Member of the Massachusetts State Senate on May 2, 2020.**

This report is based on an investigation and research by the Senate Committee on Post Audit and Oversight.

The report presents an Executive Summary, the Committee's findings and conclusion, as well as a recommendation for the Bristol County Sheriff's Office and other correctional institutions, jails, and houses of correction to ensure compliance with the provisions of Section 36 of Chapter 127 of the General Laws. Also included is an adverse statement submitted by two members of the Committee, Senator Ryan C. Fattman and Senator Dean A. Tran.

Respectfully filed by the Senate Committee on Post Audit and Oversight,

A handwritten signature in blue ink that reads "John F. Keenan".

Senator John F. Keenan, Chair  
Senator Paul R. Feeney, Vice Chair  
Senator Anne M. Gobi  
Senator James B. Eldridge  
Senator Joanne M. Comerford  
Senator Michael O. Moore

## **Members of the Massachusetts State Senate Committee on Post Audit and Oversight**

Senator John F. Keenan, Chair

Senator Paul R. Feeney, Vice Chair

Senator Anne M. Gobi

Senator James B. Eldridge

Senator Joanne M. Comerford

Senator Michael O. Moore

Senator Ryan C. Fattman

Senator Dean A. Tran

## **Staff to the Committee**

Abigail Kim, Legislative Director

Andrea Pessolano, Chief of Staff

Doreen Bargoot, Constituent Services Director

Morgan Simko, Communications Director

# **REPORT OF THE SENATE COMMITTEE ON POST AUDIT AND OVERSIGHT CONCERNING A VISIT TO THE BRISTOL COUNTY HOUSE OF CORRECTIONS BY A MEMBER OF THE MASSACHUSETTS STATE SENATE ON MAY 2, 2020**

## **I. EXECUTIVE SUMMARY**

On May 1, 2020, an incident occurred at the C. Carlos Carreiro Immigration Detention Center (Detention Center), housed within the Bristol County House of Correction and Jail (BCHC), between federal immigration detainees, Sheriff Thomas M. Hodgson, and other staff of the Bristol County Sheriff's Office (BCSO). On May 2, 2020, State Senator Sonia Chang-Díaz attempted entry into BCHC to observe conditions of the facility and the detainees. Under Section 36 of Chapter 127 of the General Laws, a Senator may enter an institution, jail or house of correction without receiving prior approval. She was denied entry. On May 8, 2020, the Senate Committee on Post Audit and Oversight (Committee) initiated their investigation into the events of May 1, 2020 and the subsequent denial of Senator Chang-Díaz's entry to BCHC on May 2, 2020.

As of the date of this report, the BCSO has not complied with a Document Request regarding the May 1 incident or responded to interrogatory questions requested by the Committee, limiting the Committee's knowledge of the events that took place on May 1, 2020, as well as the actions taken by the BCSO in the aftermath of the incident. Both the Office of Massachusetts Attorney General Maura Healey and the Department of Homeland Security's Office of the Inspector General initiated inquiries into the events of May 1, 2020. Attorney General Healey and her office reported on their findings and recommendations regarding that incident on December 15, 2020. This report focuses on the events of May 2, 2020, and whether the denial of entry to Senator Chang-Díaz was lawful.

After thorough review, the Committee found that **the BCSO violated applicable state law and their own policies and procedures when they denied Senator Chang-Díaz entry to BCHC.** Section 36 of Chapter 127 grants an absolute right to those officials listed in the statute to visit correctional institutions, jails and houses of correction without permission. Furthermore, the policies and procedures set out by the BCSO reinforce the rights afforded in statute.

**The reasons given by the BCSO for denying entry to Senator Chang-Díaz were not based in established policies or procedures.** Over the course of the investigation, BCSO employees gave several reasons for the denial of entry, none of which were found to change the Committee's finding that the actions of the BCSO in denying the request of Senator Chang-Díaz to visit BCHC were in violation of Section 36 of Chapter 127 of the General Laws.

The Committee's findings underscore the significance of Section 36 of Chapter 127. The ability to visit correctional facilities unannounced, and without limitation, is an important tool for

conducting oversight of Commonwealth correctional institutions, jails and houses of correction. This power has been of value since the statute's adoption in 1854 and remains crucial today, particularly as unprecedented operational adjustments are being implemented within correctional facilities to respond to the COVID-19 pandemic. The refusal of access to Senator Chang-Díaz denied the use of this critical tool to both the Senator and the Commonwealth, improperly limiting oversight of conduct, conditions and operations of the BCHC.

Compliance with BCSO's own policies and procedures would have prevented their violation of Section 36 of Chapter 127, and the Committee urges that appropriate action be taken to ensure such compliance in the future. Adherence to these policies and all applicable law is essential to proper operations and oversight.

## II. INTRODUCTION

The Bristol County Sheriff's Office (BCSO), led by Sheriff Thomas M. Hodgson, oversees the Bristol County House of Correction and Jail (BCHC), the Bristol County Sheriff's Office Women's Center, the Ash Street Jail and Regional Lock-Up and the Civil Process Division. Since 2000, the BCSO has entered into a contract to hold detainees who are in deportation proceedings with the United States Immigrations and Customs Enforcement Agency (ICE) at the BCHC in North Dartmouth, Massachusetts. The facility housing federal detainees is referred to as the C. Carlos Carreiro Immigration Detention Center (Detention Center). The housing of federal detainees at a Bristol County Correctional Facility is governed by an Intergovernmental Service Agreement (IGSA) between ICE and the Bristol County Sheriff's Office and a Memorandum of Agreement (MOA).

On May 1, 2020, an incident occurred at the Detention Center involving federal immigration detainees, Sheriff Thomas M. Hodgson and other staff of the BCSO. The disturbance was caused after approximately 10 detainees housed in the Detention Center reported multiple symptoms of COVID-19. An altercation ensued when Sheriff Hodgson and corrections officers sought to remove the detainees to a separate medical wing for testing.<sup>1 2</sup> On May 2, 2020, State Senator Sonia Chang-Díaz attempted entry into the BCHC to observe conditions of the facility and the detainees.<sup>3</sup> She was denied entry.

It is the understanding of the Senate Committee on Post Audit and Oversight (Committee) that the Department of Homeland Security's Office of the Inspector General initiated an inquiry into the events of May 1, 2020. The Office of Massachusetts Attorney General Maura Healey additionally initiated an investigation into the events of May 1, 2020, and reported on her office's findings on December 15, 2020.<sup>4</sup>

The Committee has been asked to investigate whether the May 2, 2020 denial of entry to State Senator Sonia Chang-Díaz was lawful.

## III. COMMITTEE JURISDICTION

The Committee is a specially constituted body whose powers, including the authority to undertake special investigations, to summon witnesses, take testimony and compel the

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<sup>1</sup> Quincy Walters, Ally Jarmanning. "After brawl at Bristol County Jail Involving Sheriff, Advocates for Immigrant Detainees Call for Investigation," *WBUR* (May 2, 2020).

<sup>2</sup> Vernal Coleman. "'We are all scared.' Audio recording sheds light on Bristol County Jail Melee," *Boston Globe* (May 6, 2020).

<sup>3</sup> "Should Lawmakers Get to Visit Jails During the Coronavirus Pandemic? Bristol County Sheriff, Lawmakers at Odds over Visitation Restrictions," *MassLive* (May 4, 2020).

<sup>4</sup> Office of the Massachusetts Attorney General Civil Rights Division. INVESTIGATION INTO THE EVENTS OF MAY 1, 2020 AT THE C. CARLOS CARREIRO IMMIGRATION DETENTION CENTER, UNIT B, BRISTOL COUNTY SHERIFF'S OFFICE. (December 15, 2020).

production of books, papers, documents and other evidence of agencies of the Commonwealth, are set forth in Sections 63 and 64 of Chapter 3 of the General Laws.

#### **IV. THE INVESTIGATION<sup>5</sup>**

The Committee's investigation included preliminary telephone conversations with Sheriff Hodgson and Senator Chang-Díaz. On May 8, 2020 the Committee forwarded a Notice of Investigation to Sheriff Thomas M. Hodgson informing the BCSO that the Committee was initiating an investigation into the facts and circumstances of the May 1, 2020 and May 2, 2020 incidents.<sup>6</sup>

By letter dated May 15, 2020, Sheriff Hodgson acknowledged receipt of the Notice of Investigation.<sup>7 8</sup>

The Committee sent a First Request for Documents to Sheriff Hodgson on May 18, 2020, to which the BCSO filed a response on June 19, 2020.<sup>9 10</sup> This was followed by the Committee sending a First Set of Interrogatories to Senator Chang-Díaz on June 22, 2020, and a subsequent review of her responses,<sup>11</sup> and to Sheriff Hodgson, who declined to respond.<sup>12</sup> The Committee also reviewed press accounts of the incident of May 1, 2020, a press conference held on May 2,

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<sup>5</sup> Appendix of referenced documents are available from the Office of the Clerk of the Senate, by request.

<sup>6</sup> Notice of Investigation (May 8, 2020). Appendix A.

<sup>7</sup> Letter from Sheriff Thomas Hodgson to John F. Keenan (May 15, 2020). Appendix B.

<sup>8</sup> Letter from Sheriff Thomas Hodgson to John F. Keenan (May 26, 2020). Sheriff Hodgson further communicated to the Committee on May 26, 2020. The Sheriff requested that the Committee investigate Senator Chang-Díaz for arriving at and seeking access to the facilities of the BCSO on May 2, 2020. Regardless of the Sheriff's request, the Committee focused on the issue it was tasked with reviewing, on what was deemed appropriate and within the Committee's statutory scope – whether the actions taken by the BCSO when denying admission to Senator Chang-Díaz were lawful. The Committee finds no relevance to ascribing alleged motives to a statutorily-permitted visitor. Appendix C.

<sup>9</sup> First Request for Documents (May 18, 2020). Appendix D.

<sup>10</sup> Response of BCSO to First Request for Documents (June 19, 2020). Appendix E.

<sup>11</sup> Senator Chang-Díaz, Answers to Interrogatories (June 22, 2020). Appendix F.

<sup>12</sup> First Set of Interrogatories to Bristol County Sheriff (June 5, 2020). Sheriff Hodgson did not respond in a timely manner to the First Set of Interrogatories, i.e. by June 15, 2020. By letter dated June 15, 2020, Sheriff Hodgson was asked to advise when a response would be provided. To date, no response to the First Set of Interrogatories has been provided. Appendix G.



2020 at the BCSO, the visitation policies of the BCSO and other sheriff's departments in Massachusetts, as well as the IGSA and MOA between the BCSO and ICE.<sup>13 14 15 16 17</sup>

## V. THE INCIDENT

On May 2, 2020, Senator Chang-Díaz appeared at BCHC by motor vehicle and was met at the entrance gate by a uniformed member of the BCSO. Senator Chang-Díaz identified herself as a member of the Massachusetts legislature and requested to enter the premises. The uniformed member of the BCSO informed Senator Chang-Díaz that he would communicate with BCSO staff members about her request, and asked her to pull her vehicle into the BCSO parking lot just past the gate and wait for someone to arrive and speak with her.

A short time later, a BCSO vehicle approached Senator Chang-Díaz's vehicle. The driver of the BCSO vehicle identified himself as Captain Douglas. Captain Douglas asked Senator Chang-Díaz what she needed assistance with, to which she responded that she was a member of the Massachusetts legislature and wished to visit the jail. Captain Douglas asked Senator Chang-Díaz for identification documents and Senator Chang-Díaz presented a valid Massachusetts driver's license to Captain Douglas.<sup>18</sup> Captain Douglas confirmed Senator Chang-Díaz's identity by way of a license check through the BCSO's communications office.<sup>19</sup> Senator Chang-Díaz was informed that she would not be permitted to enter the premises.<sup>20</sup> She asserted again that she had the right to enter the facility as a member of the legislature. Captain Douglas then asked her to exit the property and park nearby, and stated that he would check with proper departmental personnel about her request.

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<sup>13</sup> Quincy Walters, Ally Jarmanning. "After brawl at Bristol County Jail Involving Sheriff, Advocates for Immigrant Detainees Call for Investigation," *WBUR* (May 2, 2020).

<sup>14</sup> Vernal Coleman. "'We are all scared.' Audio recording sheds light on Bristol County Jail Melee," *Boston Globe* (May 6, 2020).

<sup>15</sup> "Should Lawmakers Get to Visit Jails During the Coronavirus Pandemic? Bristol County Sheriff, Lawmakers at Odds over Visitation Restrictions," *MassLive* (May 4, 2020).

<sup>16</sup> Media Advisory: Bristol County ICE Detainees Refuse COVID Testing, Trash Housing Unit. Press Release, Bristol County Sheriff's Office (May 1, 2020).

<sup>17</sup> Intergovernmental Service Agreement between the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement Office of Detention and Removal and Bristol County Sheriff's Office (September 27, 2007), and Memorandum of Agreement (February 8, 2017) and Addendum to Extend Memorandum of Agreement (May 16, 2019). Appendix H.

<sup>18</sup> Note, the Incident Report states that Captain Douglas asked for, "an ID or any credentials showing that she worked for the General Court Legislature," and that Senator Chang-Díaz produced a Massachusetts Driver's License. Captain Douglas reports that he asked again whether Senator Chang-Díaz "had any credentials on her in regards to being a General Courts Legislature [sic]," and reports that she responded, "NO SHE DIDN'T HAVE ANYTHING (sic)." Senator Chang-Díaz states in her Answers to Interrogatories, response to interrogatory 3.b. that Captain Douglas asked her, "simply, if I had any identification." In response, Senator Chang-Díaz produced a Massachusetts driver's license. Appendix E.

<sup>19</sup> It appears only that Senator Chang-Díaz's identity was confirmed, not whether she was a member of the Massachusetts' legislature.

<sup>20</sup> It is uncontroverted that at this time Senator Chang-Díaz was denied entry, although there are differing reasons as to why she was denied entry. The reasons are discussed below.

Senator Chang-Díaz left the premises, drove across the street, and parked.

After approximately ten minutes, Senator Chang-Díaz returned in her vehicle to the entrance gate at the BCSO facility and was directed to an area to park. Captain Douglas again pulled up to Senator Chang-Díaz's vehicle, exited his vehicle, and stood outside Senator Chang-Díaz's driver-side door. Captain Douglas informed her that she would not be permitted on the grounds of the BCSO and asked her to leave. Senator Chang-Díaz left the premises as requested.<sup>21</sup>

The Committee finds that the uncontroverted facts are that Senator Chang-Díaz appeared at the BCSO, identified herself and had her identity confirmed as Sonia Chang-Díaz, sought entry to the premises and facilities as a member of the legislature and stated that she had the right to enter any facility as a member of the legislature under Chapter 127 at any time.

## **VI. THE BCSO VIOLATED APPLICABLE STATE LAW AND ITS OWN POLICIES AND PROCEDURES WHEN THEY DENIED SENATOR CHANG-DÍAZ ENTRY TO BCHC**

### **A. Section 36 of Chapter 127 of the General Laws Governs Visitation of Correctional Facilities in Massachusetts**

Visitation of correctional institutions in the Commonwealth, including jails and houses of corrections, is governed by Section 36 of Chapter 127 of the General Laws, which provides as follows:

No person except the governor, a member of the governor's council, a member of the general court, a justice of the supreme judicial, superior or district court, the attorney general, a district attorney, the commissioner, a deputy commissioner of correction, a member of the parole board, or a parole or probation officer may visit any of the correctional institutions of the commonwealth or any jail or house of correction in the commonwealth without the permission of the commissioner or of the superintendent of such institution of the keeper if such jail or house of correction. Every visitor who is required to obtain such permission shall also make and subscribe a statement under the penalties of perjury stating his true name and residence, whether or not he has been convicted of a felony, and, if visiting an inmate of such institution, his relationship by blood or marriage, if any, to such inmate, and if not so related, the purpose of the visit.

A plain reading of Section 36 of Chapter 127 itself leads to the conclusion that the legislature intended that certain officials, including members of the legislature, did not need special

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<sup>21</sup> Note, in the Incident Report, the Summary of Event section was described by Captain Douglas as, "Assist with Unruly female visitor". The Committee finds that nothing in that report, on video, or in the responses of Senator Chang-Díaz indicates or suggests that Senator Chang-Díaz was in any way "unruly." Appendix E.

permission or to go through any process to obtain a permit or otherwise enter a correctional institution, jail, or house of correction within the Commonwealth.<sup>22</sup>

The policies and procedures of the BCSO that govern visitation at the BCHC are consistent with Section 36. The policy entitled Bristol County Sheriff's Office Inmate Visits 20.01.06 VISITOR IDENTIFICATION AND SCREENING PROCESS (B), read as follows:

The following officials shall be exempt from these procedures: The Governor, a member of the Governor's Council, a member of the General Court, a Justice of the Supreme Judicial, Superior or District Court, the Attorney General, a District Attorney, the Commissioner of Correction, a Deputy or Associate Commissioner of Correction, a Sheriff, a County Commissioner, a member of the Parole Board or a Parole or Probation Officer. Any such official shall be required to sign their name, business address and the office which bring them to the facility within the exemption from normal sign-in requirements. The Sheriff or his designee may also authorize other persons to be exempt from these visitor identification and screening procedures.

This policy is similar to those in place at Houses of Correction across the Commonwealth.<sup>23 24</sup>

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<sup>22</sup> "[A] statute must be interpreted according to the intent of the legislature ascertained from all its words construed by the ordinary and approved usage of the language" Commonwealth v. Stirlacci, 483 Mass.775 (2020), citing Seideman v. Newton, 452 Mass. 472, 477 (2008).

<sup>23</sup> Policies and procedures governing the operation of sheriff's offices may vary, due to the unique structure of the Commonwealth's correctional system. While Department of Corrections (DOC) facilities are overseen by the Executive Branch of the Commonwealth, Houses of Corrections (HOCs) are instead overseen by democratically-elected county sheriffs, whose powers and duties are outlined in Chapter 37 of the Massachusetts General Laws. Sheriff's offices are thus granted broad autonomy in their operations.

<sup>24</sup> The policies and procedures of the BCSO relative to visits by officials included in the exemption provision of Section 36 are similar to those in place at Houses of Correction across the Commonwealth. See,

Barnstable County Sheriff's Office 520.01 The following persons generally may not be asked to provide the statement generally required by 103 CMR 950.03(2): the Governor, a member of the Governor's Council, a member of the General Court, a Justice of the Supreme Judicial, Superior or District Court, the Attorney General, a District Attorney, the Commissioner, a Deputy or Associate Commissioner of Correction, Sheriff, County Commissioners, a member of the Parole Board, a Parole or Probation Officer, or others as designated by the Sheriff/facility administrator. Any such officer shall be required to sign his name, business address and the office which brings him within the exemption from the normal sign-in requirement.

Dukes County Sheriff's Office 950.03 Identification and Sign-In Requirement 2(g) The following persons will not be asked to provide the statement generally required above: the Governor, a member of the Governor's Council, a member of the General Court, a Justice of the Supreme Judicial, Superior or District Courts, the Attorney General, a District Attorney, the Commissioner of Correction, a Deputy or Associate Commissioner of Correction, a Sheriff, a member of the Dukes County Commissioners, a member of the Massachusetts Parole Board, or a Parole or Probation Officer, or others as designated by the Sheriff, Superintendent, or Assistant Superintendent. Any such officer will be required to sign his/her name, business address, and the office (title) which brings him/her within the exemption from the normal sign-in procedures.

Section 36 first appears in the General Laws in 1854.<sup>25</sup> At that time, the language was as follows:

No person *other than* the executive government of the Commonwealth, members of the legislature, or officers of justice, or other persons having business at the State Prison,

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Hampden County Sheriff's Office 5.2.3 Visitation (b) The following persons generally may not be asked to provide the statement generally required by 103 CMR 950.03(2): the Governor, a member of the Governor's Council, a member of the General Court, a Justice of the Supreme Judicial, Superior or District Court, the Attorney General, a District Attorney, the Commissioner, a Deputy or Associate Commissioner of Correction, Sheriff, County Commissioners, a member of the Parole Board, a Parole or Probation Officer, or others as designated by the Sheriff/facility administrator. Any such officer shall be required to sign their name, business address and the office which brings them within the exemption from the normal sign in requirement.

Middlesex County Sheriff's Office 483.07 Visitor's Entry into the Facility.

10. Visiting Form – *Request to Visit Inmate* forms shall be available in the visitor registration area and must be filled out legibly and submitted to the officer prior to the visit. As a condition of entry, every visitor except the officials listed in 483.07.11 below shall be required to subscribe to a statement under penalties of perjury stating their true name and residence, whether or not he or she has been convicted of a felony and his or her relationship to the inmate.

11. The following persons shall not be required to subscribe to the statement above: the Governor, a member of the Governor's Council, a member of the General Court, a Justice of the Supreme Judicial, Superior or District Court, the Attorney General, a District Attorney, the Commissioner, a Deputy or Associate Commissioner of Correction, the Sheriff, a member of the Parole Board, a Parole or Probation Officer. Such persons shall be required to sign his or her name, business address and the office which qualifies him for this exemption on the *Official Visitor Sign-In Sheet*. In the event that such a visit occurs, the Shift Commander shall be immediately notified.

Norfolk County Sheriff's Office CSD 483 Visiting Policy and Procedure, Sheriff's Office Facility Visitation

1. The following persons generally may not be asked to make and subscribe under penalties of perjury stating their true name and residence, or whether they have been convicted of a felony prior to a facility visit:

- a) The Governor;
- b) a member of the Governor's Council;
- c) a member of the General Court.

2. Those listed shall be required to sign their name, state business address, and the office which brings them within the exemption from the normal admission requirements.

<sup>25</sup> Sect 1. No person other than the executive government of the Commonwealth, members of the legislature, or officers of justice, or other persons having business at the State Prison, shall be allowed to visit the same without a special permit from one of the inspectors or the warden of said prison.

Sect. 2. The warden shall cause a register to be kept of the names and residences of all persons so visiting, and of the authority by which they visit; and said register shall, at all times, be open to the inspectors.

Sect. 3. The warden may refuse admission to any person having a permit, when it may appear that such visit would be injurious to the best interests of the prison; but he shall report such refusal to the inspectors, at their monthly meeting next after such refusal.

Sect. 4. All acts and parts of acts inconsistent with this act, are hereby repealed.  
(Approved by the Governor, April 13, 1854).

shall be allowed to visit the same without a special permit from one of the inspectors or the warden of said prison.(emphasis added)

Successive amendments in 1860, 1883, 1902, 1916, 1919, 1921, 1941, 1955, 1957 and 1962 reflect changes to terminology and additions to the list of government officials exempted from the requirement of entering the listed facilities with permission.

The first found reference to unannounced visits to a correctional facility is in 1875, when the Committee on Prisons reported on the prisons of the Commonwealth. It is several times explicitly stated that institutions were “visited by the Committee, unannounced” or “without any previous notice” in order to observe the conditions of the prisons and jails.<sup>26</sup> Section 36 permits this important oversight activity of unannounced visitation of correctional institutions, jails and houses of corrections by members of the legislature to continue.

It is clear that Section 36 of Chapter 127 and the policies and procedures of the BCSO allows certain officials, including members of the legislature, to enter a house of correction within the Commonwealth without special permission and without having to go through any process to obtain a permit or otherwise enter.<sup>27</sup>

#### B. BCSO’s Asserted Reasons for Denying Senator Chang-Díaz’s Visitation Request

While it is clear Senator Chang-Díaz had a right as a member of the General Court to appear and visit the BCHC without permission, the BCSO offers several reasons for denying her that right. Each is reviewed below.

##### 1. Senator Chang-Díaz’s identity could not be confirmed

In a letter dated May 15, 2020, Sheriff Hodgson asserted that Senator Chang-Díaz lacked “proper identification”, and in his letter dated May 26, 2020, asserted that she arrived, “unannounced and without proper identification...”<sup>28</sup> <sup>29</sup> Captain Douglas also stated that he was advised by the BCSO attorney that, “unless Ms. Chang-Díaz has proper credentials than [sic] she is not allowed inside the Dartmouth House of Corrections.”<sup>30</sup>

There is a factual inconsistency as to what occurred relative to the identification of Senator Chang-Díaz. The Incident Report states that she was asked whether she had “credentials on her in regards to being a General Courts Legislature [sic],” and that she said, “NO SHE DIDN’T

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<sup>26</sup> Report on the Prisons of the Commonwealth. Senate No. 205. 1875.

<sup>27</sup> “[A] statute must be interpreted according to the intent of the legislature ascertained from all its words construed by the ordinary and approved usage of the language” Commonwealth v. Stirlacci, 483 Mass.775 (2020), citing Seideman v. Newton, 452 Mass. 472, 477 (2008).

<sup>28</sup> Letter from Sheriff Thomas Hodgson to John F. Keenan (May 15,2020). Appendix B.

<sup>29</sup> Letter from Sheriff Thomas Hodgson to John F. Keenan (May 26, 2020). Appendix C.

<sup>30</sup> Incident Report 2020-000568. Appendix E.

HAVE ANYTHING.”<sup>31</sup> As previously stated, Captain Douglas states that he was advised by the BCSO attorney that, “unless Ms. Chang-Díaz has proper credentials than [sic] she is not allowed inside the Dartmouth House of Corrections.” Senator Chang-Díaz states that she was only asked generally for identification, not for any specific form, so she produced her Massachusetts driver’s license. She had in her possession at the time her State House building pass, as well as business cards. She states that after she produced and the BCSO checked her license, she was not asked for any additional identification.

While there appears to be a dispute as to the facts relating to the identity of Senator Chang-Díaz, it is not material. Neither Section 36 of Chapter 127 nor the BCSO’s policies and procedures relative to visitation require an official, in this case a member of the General Court, to produce any particular form of identification. The latter only require that the official sign their name, and provide, in writing, the official’s business address and the office which brings the official to the facility, in this case the Massachusetts Senate.

When Senator Chang-Díaz appeared at the BCSO seeking to visit, she verbally met the requirements of the policy. Her identity was confirmed, and she stated she was a member of the legislature. Senator Chang-Díaz was not, however, afforded the opportunity to meet the requirements of the visitation policies, i.e. to sign her name, provide her business address, and put in writing that she was a Senator, a member of the General Court.<sup>32</sup> Had she been afforded this opportunity, she would have been capable of meeting, and would have been willing to meet, the sole requirements of the BCSO’s visitation policies.

Even if it were agreed that something more than signing her name, business address, and listing her official office was required, and if Senator Chang-Díaz did not have her State House pass or Senate business cards with her, the BCSO could have easily confirmed that she was a State Senator and member of the General Court. The BCSO was able to check Senator Chang-Díaz’s Massachusetts driver’s license. It is likely that the BCSO could have confirmed her status as a member of the General Court just as easily through the internet.

## 2. Senator Chang-Díaz was not an attorney

In the Incident Report, Captain Douglas wrote that their initial reason for denial was because, “unless she was an attorney she wouldn’t be able to enter.” Senator Chang-Díaz was not seeking visitation as an attorney, but rather as a member of the General Court. Whether she was an attorney is not material, and not a requirement under Section 36.

## 3. Visitation is limited due to COVID-19

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<sup>31</sup> *ibid.*

<sup>32</sup> Neither the Incident Report nor Senator Chang-Díaz indicate that she was asked to sign her name, business address and her office.

Captain Douglas also wrote in the Incident Report that “visits have been canceled for several weeks since the Covid-19 pandemic.” Further, by correspondence dated May 15, 2020, Sheriff Hodgson wrote that:

“[O]ur facility, and all other correctional facilities in Massachusetts are operating under strict COVID-19 protocols which require all non-essential visitation to be restricted so as to insure the safety of both inmates and staff. This authority is contained at G.L. c. 127, § 37, which give the superintendent authority to restrict any visitations that are injurious to the best interests of the institution.”<sup>33</sup>

The Committee recognizes the importance of establishing new standards for visitation during an unprecedented health concern such as COVID-19, and acknowledges that BCSO began their implementation of visitation changes on March 13, 2020. On May 2, 2020 the BCSO was continuing to operate under “Temporary Procedural Changes”, which suspended in-person inmate visitation and required all staff, attorneys, clergy and approved vendors to enter the facility after completing a “Pre-Screening” to check for COVID-19 symptoms.<sup>34 35 36</sup> The ability to implement these restrictions are consistent with powers granted to superintendents under Chapter 127.

Section 37 of Chapter 127 does give the superintendent of a correctional facility the power to refuse admission to a person “having a permit” to enter a facility, if in the superintendent’s opinion, such admission would be injurious to the best interests of the institution.<sup>37</sup> Other limitations on visitation are explicitly permitted in statute. For instance, visitation of an inmate by an attorney can be limited to such times and circumstances as may be established under rules

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<sup>33</sup> Letter from Sheriff Thomas Hodgson to John F. Keenan (May 15, 2020). Appendix B.

<sup>34</sup> Souza, Steven J. RE: Coronavirus Pre-screening at Security Reception. March 13, 2020. “In Accordance with the Sheriff’s Memo regarding Attorney and Clergy Visits being allowed. The following Pre-Screening will be done prior to allowing them to visit.

All Attorney and Clergy will be asked the following:

- Have you traveled abroad or been in contact with someone who has in the last fourteen (14) Days?
- Are you feeling sick with Fever or Flu like symptoms (cough and/or sore throat)
- Have you had a fever greater than 100.4?
- Do you have a cough or shortness of breath?
- Have you had any contact with anyone with known Coronavirus?”

Provided by the Massachusetts Sheriffs Association, in collaboration with Bristol County Sheriff’s Office. Appendix H.

<sup>35</sup> Hodgson, Thomas M. RE: Temporary Procedural Changes – Extended. April 27, 2020. “Unfortunately, our target date of April 30, 2020 to reinstate visits for our inmates, prisoners, and detainees is extended to May 15, 2020, due to the serious impacts of COVID-19 in Massachusetts. Appendix H.

<sup>36</sup> Souza, Steven J. RE: Updated Staff Coronavirus Pre-screening at Security Reception. March 27, 2020. “Effective today March 24, 2020 **ALL STAFF** (BCSO, CPS, ADCARE) in addition to any Attorney, Clergy or approved vendors will now be required to have a Pre-Screening done at Security Reception prior to being allowed into the facility.” Appendix H.

<sup>37</sup> G.L. c. 127, §37. “The superintendent of each correctional institution shall cause a record to be kept of the names and residences of all visitors, which record shall always be open to the commissioner, and may refuse admission to a person having a permit if in his opinion such admission would be injurious to the best interests of the institution, but such superintendent shall forthwith report such refusal to the commissioner.”

promulgated by the commissioner.<sup>38</sup> Similarly, members of the clergy seeking to visit an inmate must follow established rules.<sup>39</sup> Visitation of these individuals was duly limited by BCSO through the COVID-19 protocols in place on May 2, 2020. In addition, Section 36C of Chapter 127 permits reasonable limitation of in-person visits with inmates, defines an unreasonable limit, permits video communication within the facility between an inmate and a visitor, and, importantly for this analysis, permits the temporary suspension of visitation privileges.<sup>40</sup>

While Sections 36A, 36B, 36C and 37 of Chapter 127 make it clear that in some instances, setting limitations on or denying visitation is within the power of the superintendent of a correctional facility, this general authority simply does not grant the superintendent authority to dispense with the statutory power of a member of the legislature under Section 36. Section 36 grants members of the Massachusetts legislature an absolute privilege to enter the premises of a correctional institution, jail, or house of correction.

Had the legislature intended in any way to limit the ability of the officials listed in Section 36 of Chapter 127 to visit a facility, or to grant a superintendent, sheriff or other person responsible for the operation of the facility the ability to limit visitation by such officials in any way, it would have explicitly provided so in statute. It did not. The granting of authority to a superintendent, sheriff, or other person cannot be implied when viewed in the context of the broader statutory framework and similar enactments relating to visitation of correctional facilities.<sup>41</sup> The discretion granted to the superintendent in Section 37 must yield to the express statutory scheme in Section 36, as the general authority of the superintendent to limit entry of those “having a permit” cannot

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<sup>38</sup>G.L. c. 127, §36A. “The superintendent shall not abridge the right of an inmate of any correctional or penal institution in the commonwealth to confer with any attorney at law engaged or designated by him, and such attorney may visit such inmate at such times as may be established under rules promulgated by the commissioner.”

<sup>39</sup> G.L. c. 127, §36B. “The superintendent shall not abridge the right of an inmate of any correctional or penal institution in the commonwealth to confer with any accredited member of the clergy of said inmate’s choice. Said clergy may visit inmates at such times and under such conditions as may be established under rules promulgated by the commissioner.”

<sup>40</sup>G.L. c. 127, §36C. “A correctional institution, jail or house of correction shall not: (i) prohibit, eliminate or unreasonably limit in-person visitation of inmates; or (ii) coerce, compel or otherwise pressure an inmate to forego or limit in-person visitation. For the purposes of this section, to unreasonably limit in-person visitation of inmates shall include, but not be limited to, providing an eligible inmate fewer than 2 opportunities for in-person visitation during any 7-day period.

A correctional institution, jail or house of correction may use video or other types of electronic devices for inmate communication with visitors; provided, that such communications shall be in addition to and shall not replace in-person visitation, as prescribed in this section.

Nothing in this section shall prohibit the temporary suspension of visitation privileges for good cause including, but not limited to, misbehavior or during a bonafide emergency.

<sup>41</sup> See, Bellalta v. Zoning Bd. of Appeals of Brookline, 481 Mass. 372, 378 (2019). “We also consider a statute within the context of the broader statutory framework, including prior versions of the same statute and similar enactments.” See also, Souza v. Registrar of Motor Vehicles, 462 Mass. 227, 229–230 (2012), Commonwealth v. Galvin, 388 Mass. 326, 330 (1983), quoting Beeler v. Downey, 387 Mass. 609, 616 (1982), “[W]here the legislature has employed specific language in one paragraph, but not in another, the language should not be implied where it is not present.”



be read to limit the broad authority of legislators to enter the premises without permit or other approval.

The plain language of Section 36 does not provide for any limitation on entry by legislators. There is no ambiguity in the language of Section 36 to suggest that there may be a situation in which a limit on legislator's authority to enter the facility without prior approval may be appropriate. Thus, under Section 36, neither a superintendent, sheriff, nor any employee of BCSO had the ability or authority to deny Senator Chang-Díaz's request to visit BCHC on the basis that they were operating under strict COVID-19 protocols and that allowing her to visit would put inmates and staff at risk, or otherwise be injurious to the institution.

Beyond lacking the statutory authority to deny the visit of Senator Chang-Díaz, it is clear that the BCSO could have made accommodations to admit her and still ensure the safety of inmates and staff. They could have afforded her the opportunity to comply with the COVID-19 pre-screening protocols, but they did not. Had she been afforded the opportunity, and complied with the protocols, then she would have posed no greater risk than an attorney or clergy who complied with the protocols. Further, on the same morning, at approximately the time as Senator Chang-Díaz appeared seeking to visit the BCHC, the BCSO was admitting members of the press for a press conference relating to the incident of May 1, 2020.<sup>42 43</sup> Press admittance is similarly not addressed in the "Temporary Procedural Changes". If several members of the press could visit presumably without threatening the safety of inmates and staff, then so too could Senator Chang-Díaz have been safely admitted.<sup>44</sup>

#### 4. Section 36 of Chapter 127 does not apply to ICE facilities

In his May 15, 2020 letter, Sheriff Hodgson claims that Section 36 of Chapter 127 does not apply to, "ICE detention facilities which are under the control of the federal government", using this assertion as a reason for denying admission to Senator Chang-Díaz.<sup>45</sup> However, nothing in the agreements between the BCSO and ICE supports this position. Nothing in the existing practices of oversight into correctional facilities cedes control to ICE when a Detention Center is located

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<sup>42</sup> Email from Jonathan Darling, May 1, 2020 9:55PM. "Sheriff Hodgson will take questions at a press conference Saturday morning, May 2, at 11 a.m. at the ICE facility at the Bristol County Sheriff's Office correctional complex in Dartmouth (400 Faunce Corner Road, Dartmouth, MA 02747) where the incident occurred. The media will be allowed inside the facility to photograph and report on the damage caused. Credentialed media are welcome to attend. Contact me with any questions". Appendix E.

<sup>43</sup> Media Advisory: Bristol County ICE Detainees Refuse COVID Testing, Trash Housing Unit. Press Release, Bristol County Sheriff's Office (May 1, 2020).

<sup>44</sup> In his May 26, 2020 letter, Sheriff Hodgson questions the intent of Senator Chang-Díaz for visiting the BCHC, asserting that her action was a "premeditated and staged political stunt," and that she sought to visit "to advance her well-known anti-ICE agenda." It is important to note that Senator Chang-Díaz did not show up with press, but arrived by herself, unannounced. The Committee finds no relevance to ascribing alleged motives to a statutorily-permitted visitor. Appendix C.

<sup>45</sup> Letter from Sheriff Thomas Hodgson to John F. Keenan (May 15, 2020). Appendix B.

within a House of Correction, and the BCSO's own visitation policy explicitly provides that it governs visits to the Detention Center.

The MOA between the BCSO and ICE authorizes the BCSO to perform immigration functions, and is authorized under Section 287(g) of the Immigration and Nationality Act.<sup>46</sup> <sup>47</sup> The IGSA between BCSO and ICE enables the BCSO to house federal detainees for immigration purposes for a reimbursable fee.<sup>48</sup>

The MOA sets forth the terms and conditions pursuant to which BCSO personnel are nominated, trained, and approved by ICE to perform certain functions of an immigration officer within the BCSO's facilities. These functions include the power and authority to interrogate detainees, serve arrest warrants, administer oaths, prepare charging documents, transport detainees and process immigration violations for those who have been arrested for violating a Federal, State or local offense. BCSO personnel are treated as Federal employees only for the purposes of Federal Tort Claims and worker's compensation claims and only when performing a function on behalf of ICE as authorized by the MOA. The MOA additionally states that:

For purposes of this MOA, ICE officers will provide supervision of participating LEA (Law Enforcement Agency) Personnel only to immigration enforcement functions as authorized in this MOA. The LEA retains supervision of all other aspects of employment of and performance of duties by participating LEA personnel.<sup>49</sup> (clarification added)

The IGSA between ICE and BCSO outlines the services to be provided by, and reimbursed to, BCSO for the care of federal ICE detainees.

Article XV of the IGSA dictates what circumstances the federal government is held harmless:

The Service Provider shall save and hold harmless and indemnify federal government agencies to the extent allowed by law against any and all liability claims, and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of the occupancy, use, service, operation or performance of work under the tenets of this Agreement, resulting from the negligent acts or omissions of the Service Provider, or any employee, or agent of the Service Provider. In so agreeing, the Service Provider does

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<sup>46</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added Section 287(g) to the Immigration and Nationality Act. Section 287(g) enables ICE to enter into agreements with state and local law enforcement agencies. The model employed by BCSO is the "Jail Enforcement Model", which authorizes local law enforcement agencies to perform immigration functions set forth by a Memorandum

<sup>47</sup> <https://www.ice.gov/287g>

<sup>48</sup> Intergovernmental Service Agreement between the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement Office of Detention and Removal and Bristol County Sheriff's Office (September 27, 2007), and Memorandum of Agreement (February 8, 2017) and Addendum to Extend Memorandum of Agreement (May 16, 2019)

<sup>49</sup> [https://www.ice.gov/doclib/287gMOA/287gJEM\\_BristolCoMA\\_06-08-2020.pdf](https://www.ice.gov/doclib/287gMOA/287gJEM_BristolCoMA_06-08-2020.pdf)

not waive any defenses, immunities or limits of liability available to it under state or federal law.

It is clear that MOA and the IGSA between the BCSO and ICE addresses the hiring and training of the BCSO officers who perform certain immigration functions, but specifically leaves to the BCSO the supervision, and all other aspects of employment and performance of those BCSO employees. Further, the IGSA requires the BCSO to hold ICE harmless for any actions arising out the terms of the IGSA. At the time of the incident, the Detention Center was under the control of the BCSO. While the Detention Center is owned and operated by the BCSO and is subject to the MOA and an IGSA, nothing in the agreements cedes oversight and control of visitation to ICE.

Further, it is established by practice, and demonstrated by recent reports, that the Massachusetts Department of Public Health has certain oversight jurisdiction, and the Office of the State Auditor has certain audit jurisdiction, of the Detention Center.<sup>50 51</sup> It is clear that state oversight responsibilities are not ceded to ICE.

Finally, while the Sheriff asserts that Section 36 does not apply to ICE facilities, BCSO's own "Inmate Visits" policy explicitly states it applies to the Detention Center.<sup>52</sup> The policy provides that the purpose of the document is to "establish general procedures regarding the facilitation of inmate visits and the expected behavior and actions of inmates and their visitors throughout the visitation process." In this document, an inmate is defined as "any person who is incarcerated, ***detained***, or held within a Bristol County correctional facility, ***including the ICE Detention Center*** [emphasis added]." <sup>53</sup> By the terms of the policy, it governs visitation of those detained in the Detention Center. Further, the policy sets forth what is required of those visiting inmates, including ICE detainees. For instance, adult visitors must complete an application and verify their identity by providing at least one current and valid government issued photo ID card, such as a driver's license; however, in Section 20.01.06 B. and as previously stated, the policy specifically provides that a member of the General Court is exempt from these procedures. The language of this policy essentially mirrors that of Section 36.

Nothing in the MOA, the IGSA, Section (287(g)) of the Immigration and Nationality Act or in the state practice of oversight of the BCSO facilities suggests any limitations to state laws

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<sup>50</sup> The Massachusetts Department of Public Health (DPH) recently investigated sanitation and infection control at Bristol County House of Correction and considered the C. Carlos Carreiro Detention Center within the purview of its investigation. Its jurisdiction was not challenged. <https://www.mass.gov/doc/bristol-county-jail-and-house-of-correction-north-dartmouth-june-25-2020/download>

<sup>51</sup> The Massachusetts Office of the State Auditor conducted a performance audit of BCSO in accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, including their service agreement with ICE. Its jurisdiction was not challenged. <https://www.mass.gov/audit/audit-of-the-bristol-county-sheriffs-office>

<sup>52</sup> Bristol County Sheriff's Office 20.01.00 Inmate Visits, Purpose section, "The purpose of this document is to establish general procedures regarding the facilitation of inmate visits and the expected behavior and actions of inmates and their visitors throughout the visitation process." Appendix E.

<sup>53</sup> Ibid.

regarding visitation to the facilities of the BCSO, including the Detention Center. To the contrary, the BCSO's visitation policy explicitly provides that it applies to such visits. Sheriff Hodgson's assertion that Senator Chang-Díaz could not visit the Detention Center under authority of Section 36 is without merit.

## **VII. FINDINGS**

### **A. The Committee makes the following findings:**

1. Senator Chang-Díaz appeared at the BCSO, identified herself, had her personal identity confirmed, sought entry to the premises and facilities as a member of the legislature, and asserted that she had the right to enter the BCHC as a State Senator, a member of the General Court, under the Massachusetts General Laws.
2. The plain language of Section 36 of Chapter 127 demonstrates the clear and unambiguous intent of the legislature to grant the right of those officials listed in the statute to visit correctional institutions, jails and houses of correction, without permission and without limitation. The right is absolute.
3. The spontaneity of visits for oversight of correctional institutions, jails and houses of correction is an important use of Section 36.
4. The visitation policy of the BCSO is consistent with Section 36.
5. The BCSO's visitation policy provides that a person exempt under Section 36 is exempt from the BCSO's visitation policies and procedures, and that such persons do not require permission to enter the BCSO, and need only sign the person's name and provide, in writing, the person's business address and the office which brings the person to the facility in order to enter.
6. Senator Chang-Díaz was capable of, but not afforded the opportunity to, comply with the requirement of the BCSO's visitation policy, i.e. sign her name, and provide in writing her business address and the office she held.
7. There was no basis for the BCSO to deny Senator Chang-Díaz the opportunity to comply with the requirement of the BCSO's visitation policy.
8. The BCSO could have confirmed the office held by Senator Chang-Díaz, as well as her business address, but did not.
9. There was no basis for the BCSO to deny Senator Chang-Díaz's visitation request on the grounds that they could not confirm her identity.
10. There was no basis for the BCSO to deny Senator Chang-Díaz's visitation request on the basis that she was not an attorney.
11. As with attorneys and clergy, and with the press, accommodations could have been made to admit Senator Chang-Díaz and still ensure the safety of inmates and staff.
12. The assertion of the BCSO that they were operating under strict COVID-19 protocols and that allowing Senator Chang-Díaz to visit would put inmates and staff at risk, or

otherwise be injurious to the institution, is without merit, given members of the press were granted admission shortly after the Senator's denial.

13. Section 37 of Chapter 127 of the General Laws does not give the BCSO the authority to deny Senator Chang-Díaz's visitation request.
14. Nothing in the MOA, the IGSA, Section (287(g)) of the Immigration and Nationality Act or in the state practice of oversight of the BCSO facilities suggests any limitations on state laws regarding visitation to the facilities of the BCSO, including the Detention Center.
15. The BCSO's visitation policy explicitly provides that it applies to visits to the Detention Center where ICE detainees were housed.

## **VIII. RECOMMENDATION**

The BCSO was in violation of both established Massachusetts General Law and its own visitation policies and procedures when they denied admission of Senator Chang-Díaz. The Committee urges the BCSO to ensure proper adherence to and interpretation of their own policies, procedures and all relevant general laws governing their operations and oversight.

The Committee recognizes that the desire of a correctional facility to request additional confirmation of the identity of a person seeking to visit under the exemption provisions of Section 36 is reasonable, i.e. requiring something other than the signature, business address, and the visitor's office, especially when unannounced and during a time of heightened security risk. The Committee believes, however, that requiring additional obligations of an official would be contrary to Section 36 of Chapter 127 and may prevent an official from carrying out their statutory right to oversight of correctional facilities.

### **A. The Committee makes the following recommendation:**

1. In cases where the facility has any doubt as to the identity of a person seeking to visit a correctional facility under the exemption provisions of Section 36, it shall be the affirmative obligation of the facility to confirm the identity of the person in a timely manner by conducting a common internet search. The failure to confirm the identity of the person in such manner shall not result in denying the visitation, but rather prompt additional security during the time of the visitation to ensure the safety of the inmates and staff of the facility, as well as that of the person requesting visitation.

## **IX. CONCLUSION**

Section 36 of Chapter 127 grants an absolute right to those officials listed in the statute to visit correctional institutions, jails and houses of correction without permission. The Committee found that the BCSO had no reasonable basis for the denial of entry to Senator Chang-Díaz. The Committee finds that the actions of the BCSO in denying the request of Senator Sonia-Chang

Díaz to visit the BCHC and Detention Center were in clear violation of both Section 36 of Chapter 127 of the General Laws and the policies and procedures established by the BCSO.

The ability to visit correctional facilities unannounced, and without limitation, allows officials to conduct oversight of correctional institutions, jails and houses of correction. This oversight is especially critical when unprecedented operational adjustments are being made within a facility, as they are currently to respond to the threat of COVID-19.

The improper denial of Senator Chang-Díaz refused both the Senator and the Commonwealth of the opportunity to perform oversight into the conduct, conditions and operations of the BCSO after a significant disturbance occurred within the BCHC, as detailed in the report released by Attorney General Healey. While no immediate avenues of recourse were available to Senator Chang-Díaz in the moments following her denial of entry, and while the Committee cannot know what she may have learned if her admission had been granted, the Committee believes it is imperative to prevent such violations of established laws and policies in the future.

The BCSO needs only to follow their own policies and procedures to prevent and respond to violations of Section 36 of Chapter 127. Because Section 36 does not prescribe penalties for its violation, and given the Commonwealth's unique correctional system, with state correctional facilities overseen by the Executive Office of Public Safety and Security and county correctional facilities under the supervision of elected sheriffs, the Committee is limited in its ability to recommend formal next steps or take formal action. The autonomy of county sheriffs under this system underscores the importance of the adherence by a sheriff's office to clearly defined statutes like Section 36, that outline the existing limitations of a sheriff's power and the absolute right to the oversight of facilities by those officials listed in Section 36. The Committee urges the BCSO to ensure proper compliance of their own policies and procedures and to the laws governing their operations and oversight.

**Respectfully submitted,**

Senator John F. Keenan, Chair

Senator Paul R. Feeney, Vice Chair

Senator Anne M. Gobi

Senator James B. Eldridge

Senator Joanne M. Comerford

Senator Michael O. Moore



## *The Commonwealth of Massachusetts*

*State Senate*

*State House, Boston, MA 02133-1054*

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December 18, 2020

Honorable John F. Keenan, Chair  
Senate Committee on Post Audit and Oversight  
State House, Room 413-F  
Boston, MA 02133

Chairman Keenan, Vice Chair Feeney, and Distinguished Members of the Committee:

We are respectfully submitting the following statement in accompaniment to our no votes on the **Report of the Senate Committee on Post Audit and Oversight Concerning a Visit to the Bristol County House of Corrections by a Member of the Massachusetts State Senate on May 2, 2020:**

*“After a thorough review of the Committee’s report regarding the May 2, 2020 incident at the Bristol County House of Corrections, we agree with the report’s findings that Senator Sonia Chang-Diaz should have been allowed entry to the Bristol County House of Corrections, with a caveat:*

*An initial reading of Section 36 of Chapter 127 of the General Laws provides that, at any time, a member of the Massachusetts Legislature may enter a correctional facility. This law does not necessitate reason or purpose of said visit. However, we believe the circumstances of the Covid-19 pandemic engenders more nuanced considerations.*

*In light of this, a sense of reasoned respect and prudence of all elected officials involved, rising above the fray during this pandemic could have saved time and resources for this Committee.*

*This unfortunate situation is one filled with problematic, complex details that impact the*



*judgment at hand where a reasonable person can find blame all around. Under normal circumstances, a member of the legislature should have been allowed inside the facility by the rights given to the Legislature through Section 36 of Chapter 127 of the General Laws. But we also believe that judgment regarding the current global health crisis should have prevented this situation from the start. Given that the “Stay at Home Advisory” was in effect on May 2, a quick recall points out that this is 16 days prior to phase one of the reopening plan, all residents of the Commonwealth—elected or not—should have been out only for essential reasons. Perhaps this visit was essential, perhaps it was not. Perhaps there were political considerations all around. Irrespective, we feel strongly that ultimately this committee is designed to evaluate decisions, actions, and situations that impact the Commonwealth, and we believe there are a great number of issues worth investigating that would better serve the Commonwealth and the time and ability of this Committee and its members.”*

Thank you for your work and the work of your staff on this report. Please don't hesitate to contact either of our offices should you have any questions or require any additional information.

Sincerely,



Senator Ryan C. Fattman  
Worcester & Norfolk



Senator Dean A. Tran  
Worcester & Middlesex

# **EXHIBIT 6**

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
C.A. NO. 2084CV01035**

**AMERICAN CIVIL LIBERTIES UNION  
OF MASSACHUSETTS,  
Plaintiff,**

**v.**

**BRISTOL COUNTY SHERIFF'S OFFICE,  
Defendant**

**DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF**

**A. INTRODUCTION**

The Defendant, Bristol County Sheriff's Office ("BCSO"), hereby opposes Plaintiff American Civil Liberties Union of Massachusetts' ("ACULM") request for injunctive relief ordering the immediate disclosure of records under the Massachusetts Public Records Law, G.L. c. 66, § 10, relating to an incident that occurred in the BCSO's Immigration and Customs Enforcement ("ICE") Detention Center on May 1, 2020 that resulted in property damage exceed \$25,000 and injuries to staff and ICE Detainees.

**B. FACTUAL BACKGROUND**

Immigration and Customs Enforcement ("ICE") detainees are federal ICE detainees held by the BCSO in the BCSO's C. Carlos Carreiro Detention Center ("CCCDC") pending deportation proceedings in federal court. On May 1, 2020, ICE detainees in the CCCDC complaining about COVID-19 (a new strain of coronavirus disease) symptoms refused to be tested for COVID-19 and staged a violent disorder in the CCCDC challenging conditions of confinement that resulted in significant property damage totaling approximately \$25,000 or more

and injury to BCSO staff and detainees (hereinafter referred to as the “Incident”). On May 7, 2020, the BCSO received a public records request from the Plaintiff through its attorneys requesting records “concerning the incident”, including all audio and visual recordings, still photographs, reports describing the incident, records collected or prepared during any investigation of the incident, findings or results of investigations, communications between BCSO employees and any federal agency, Department of Homeland Security (“DHS”) and ICE, and records provided to the DHS or ICE. On May 14, 2020, the BCSO responded to ACLUM’s request for public records informing it that the requested records were exempt from disclosure under G.L. c. 4, § 7(26)(f) and (n) of the Massachusetts Public Records Law.

G.L. c. 4, § 7(26)(f) (“investigatory exemption”) exempts from disclosure:

*“investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest”.*

G.L. c. 4, § 7(26)(n) (“public safety exemption”) exempts from disclosure:

*“records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security.”*

On May 18, 2020, Plaintiff filed the complaint against the BCSO requesting declaratory judgment and injunctive relief. The gravamen of the complaint is Plaintiff’s claims that the BCSO’s refusal to disclose any of the requested records as exempt from disclosure under G.L. c. 4, § 7(26)(f) and (n) is unlawful and that the public statements and disclosures made by the BCSO about and immediately following the May 1, 2020 Incident do not justify the “wholesale withholding of every record concerning the Incident”. (Comp. ¶ 33).

Following the Incident, the BCSO was notified by two outside law enforcement agencies/entities that they would be conducting independent investigations regarding the Incident, the Inspector General (“IG”) in the United States Department of Justice (“DOJ”) and the Massachusetts Attorney General’s Office (“AG”).<sup>1</sup> At the request of these agencies, the BCSO has provided copies of all records relating to the Incident, as listed in the attached Exhibits marked A and B, to the IG and AG. The disclosure of the records to law enforcement agencies for governmental investigative, prosecutorial and oversight purposes was required. The records were not disclosed to the IG and AG for public interest purposes; but rather, for investigative purposes as to whether civil and criminal actions are appropriate.

While these independent investigations are conducted, the BCSO does not have any control over, *inter alia*, the duration, scope, investigatory procedures, evidence relied upon and findings made by these outside agencies. Further, providing copies of the requested records to the IG and AG for law enforcement purposes does not entitle the Plaintiff to disclosure of the requested records as the Plaintiff, ACLUM<sup>2</sup>, is not a federal and state agency/entity conducting an independent investigation. Rather, the Plaintiff states that it is a non-profit corporation that pursues government transparency and accountability and seeks information that is “[i]mportant for the public to understand”. (Comp. ¶¶ 8, 34). There can be little doubt that the disclosure of the requested records to the Plaintiff at the present time will result in the immediate release of the

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<sup>1</sup> Further, the BCSO has been notified by the Massachusetts Senate Committee on Post Audit and Oversight that it will be conducting a review of the Incident.

<sup>2</sup> The American Civil Liberties Union of Massachusetts (“ACLUM”), an affiliate of the American Civil Liberties Union (“ACLU”), is a nonprofit organization that was founded to “to defend and preserve the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States”. The ACLU works through litigation and lobbying and provides legal assistance in cases when it considers civil liberties to be at risk. Legal support from the ACLU can take the form of direct legal representation or preparation of *amicus curiae* briefs expressing legal arguments when another law firm is already providing representation. <https://www.aclum.org/en/about/about-us>; [https://en.wikipedia.org/wiki/ACLU\\_of\\_Massachusetts](https://en.wikipedia.org/wiki/ACLU_of_Massachusetts); [https://en.wikipedia.org/wiki/American\\_Civil\\_Liberties\\_Union](https://en.wikipedia.org/wiki/American_Civil_Liberties_Union).

records to the public by the Plaintiff. Such action will compromise effective law enforcement that such disclosure would not be in the public interest. See G.L. c. 4, § 7(26)(f). Further, the immediate release of the records will interfere these outside investigations, criminal prosecutions, and likely make it more difficult for prosecutors to empanel an impartial jury at trial.

Clearly, releasing the records prior to the conclusion of law enforcement investigations would seriously hamper these federal and state agencies/entities' ability to conduct this and future investigations because it would have a chilling effect on the willingness of victims and witnesses to come forward and cooperate in investigations. See Globe Newspaper Company, et al. v. Police Commissioner of Boston, 419 Mass. 852, 866-867 (1995) (interest in keeping identities of homicide hotline callers confidential and fostering an atmosphere where citizens can feel free to cooperate with police officers did not diminish where identities had not been previously disclosed).

### **C. ARGUMENT**

#### **1. The Plaintiff has Failed to Carry its Burden of Demonstrating Likelihood of Success on the Merits and that it will Suffer Irreparable Harm if a Preliminary Injunction is not Granted in their Favor**

A plain reading of the complaint shows that Plaintiff has not met its burden for showing that it is entitled to the extraordinary remedy of injunctive relief, which is "never awarded as a matter of right." Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24 (2008). Preliminary injunctions are "drastic" devices which should be used sparingly and with caution. See Knapik v. McGuire, 1999 Mass. Super LEXIS 209, \* 4 (Hillman, J. 1999), citing Charles Wright & Arthur Miller, 11 Federal Practice and Procedure, 2948, at pp. 129-30 (1995).

To succeed in an action for a preliminary injunction, a plaintiff must ordinarily show (1) a likelihood of success on the merits, (2) that irreparable harm will result from denial of the

injunction, and (3) that, in light of the plaintiff's likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction. Tri-Nel Mgmt, Inc. v. Bd. of Health of Barnstable, 433 Mass. 217, 219 (2001); citing Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980); see also Modern Cont'l Const. Co. v. City of Lowell, 391 Mass. 829, 837 (1984) (applying Packaging Industries in a case where contractor sought an injunction against a public bidding process). Further, "[w]hen, as here, a party seeks to enjoin governmental action, the court also considers whether the relief sought will adversely affect the public." Tri-Nel Management, Inc. v. Bd. of Health of Barnstable, 433 Mass. 217, 219 (2001).

Packaging Industries established the standard of review as follows:

...when asked to grant a preliminary injunction, the judge initially evaluates in combination the moving party's claim of injury and chance of success on the merits. If the judge is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the judge must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue. [fns. 11 and 12 omitted] See generally Leubsdorf, [The Standard for Preliminary Injunctions, 91 Harv. L. Rev. 525, 541 (1978)] at 540-544; Note, Probability of Ultimate Success Held Unnecessary for Grant of Interlocutory Injunction, 71 Colum. L. Rev. 165 (1971); 11 C.A. Wright & A.R. Miller, Federal Practice and Procedure, § 2948, at 453-454 (1973).  
Packaging Indus. Group, Inc., 380 Mass. at 617.

A preliminary injunction is a "significant remedy" that "should not be granted unless the [moving party] [makes] a clear showing of entitlement thereto." Student No. 9 v. Board of Education, 440 Mass. 752, 762 (2004). Likelihood of success on the merits is the "most important" factor in deciding whether a plaintiff is entitled to a preliminary injunction. E.g., Pompei v. Fincham, No. 07-4743-BLS2, 2007 WL 4626915, at \*1 (Mass. Super. Ct. Nov. 16, 2007) (Fabricant, J.). In fact, courts in Massachusetts have found it unnecessary even to consider

irreparable harm where the moving party has failed to demonstrate a likelihood of success on the merits. Wilson v. Commissioner of Transitional Assistance, 441 Mass. 846, 858-59 (2004); Student No. 9, 440 Mass. at 767 (2004). And even when courts consider irreparable harm, “[w]hat matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party’s chance of success on the merits.” Packaging Indus. Group, Inc., 380 Mass. at 617. Here, Plaintiff does not show, let alone assert, that it is likely to succeed on the merits. Clearly, on the ongoing federal and state independent investigations being conducted regarding the Incident, the Plaintiff cannot show that it is likely to succeed on the merits of its claim that the BCSO unlawfully refused to disclose records relating to the Incident as exempt from disclosure under the investigatory and public safety exemptions. G.L. c. 4, §§ 7(26)(f),(n).

Thus, the analysis turns to the balance of harms. Here, the Plaintiff has not demonstrated, other than by broad conclusory averments, that its inability to obtain the requested records will cause it or the public irreparable harm. At best, Plaintiff ACLUM makes tenuous assertions suggesting that “escalating tension” between ICE Detainees and the BCSO and that statements made by the BCSO are of public interest because they show animus toward some ICE Detainees. Further, Plaintiff suggests statements made by the BCSO immediately following the Incident constitutes a waiver of the exemptions cited.

First, while the Plaintiff suggests that “escalating tensions” between ICE detainees and the BCSO was a contributing factor leading up to the violent disorder, it should be noted that the BCSO has housed federal ICE detainees for over approximately 15 years and no prior incident of this nature has ever occurred. Clearly, the fears and uncertainly presently being experienced by ICE detainees with respect to the recent and ongoing COVID-19 pandemic, and that threatens the health and wellbeing of all persons, including ICE detainees and their families, is a unique



and extraordinary global event that did not impact ICE detainees until recently. Further, the fear and stress to ICE detainees brought on by this extraordinary global pandemic is a new element never experienced in the approximate 15 years the BCSO has housed ICE detainees, from which a reasonable person could conclude was a significant contributing factor in staging the Incident on May 1, 2020.

Further, in late March 2020, in Savino v. Souza, C.A. No. 20-10617-WGY (D. Mass.) (“Savino”), a federal habeas class action case pending in the United States District Court for the District of Massachusetts, ICE detainees sought release based on the COVID-19 pandemic. While some ICE detainees have been granted release and others have not, this has also frustrated ICE detainees who have been denied release and may be another contributing factor to the staging of the violent disorder. The fear and stress brought on by the COVID-19 pandemic and the denial of their requests for release, as contributing factors in staging the Incident, are issues to be considered in the investigations of the Incident.

Second, since the May 1, 2020 Incident, there have been no other demonstrations or riots by ICE Detainees or in BCSO ICE detention units. Third, prior publicity and public statements made by the BCSO immediately following the Incident do not necessarily destroy the investigatory exemption claimed. Globe Newspaper Company, et al., 419 Mass. at 862-863. The public statements by the BCSO immediately after the Incident essentially summarize the events that transpired during the Incident did not disclose or make public the documents sought and do not constitute a waiver of the reports, statements, video and audio records, and other evidence covered by the investigatory exemption. Id. at 863.

Here, Plaintiff requests the immediate release of the information that would doubtless cause the BCSO and the outside federal and state agencies conducting independent investigations irreparable harm, and once freed, the genie cannot be returned to the bottle. Thus, the Court

must first determine that the Plaintiff has made a clear showing that the balancing of harms justifies the entry of an injunction. The purpose of a preliminary injunction is to preserve rights “that cannot be vindicated should [the moving party] prevail after a full hearing on the merits.” Packaging Industries, 380 Mass. at 616. Judges should be mindful, however, that entering an injunction could cause “the enjoined party [to] suffer precisely the same type of irreparable harm.” Id. Thus, because an “assessment of the parties’ lawful rights at the preliminary stage of the proceedings may not correspond to the final judgment, the judge should seek to minimize the harm that final relief cannot redress, by creating or preserving, in so far as possible, a state of affairs *such that after the full trial, a meaningful decision may be rendered for either party.*” Id. (emphasis added; quotations omitted); see also Weston, 461 Mass. at 164. Ordinarily, a preliminary injunction is issued to preserve the status quo pending the outcome of litigation. Id.

The reason for the investigatory exemption is to prevent impairment to “the possibility of effective law enforcement that such disclosure would not be in the public interest.” Globe Newspaper Company, 419 Mass. at 858. The investigatory exemption also serves to prevent “the disclosure of confidential investigative techniques, procedures or sources of information, the encouragement of individual citizens to come forward and speak freely with police concerning matters under investigation, and the creation of initiative that police officers might be completely candid in recording their observations, hypotheses and interim conclusions.” Bougas v. Police Chief of Lexington, 371 Mass. 59, 62 (1976). “ ‘The encouragement of individual citizens to come forward and speak freely with police concerning matters under investigation’ is a principal objective of the investigatory exemption.” Globe Newspaper Company, et al., 419 Mass. at 862, quoting Bougas, 371 Mass. at 62.

Here, the injunctive relief sought by Plaintiff will change the status quo and will grant it the ultimate relief Plaintiff seeks in its complaint. Were the Court to grant Plaintiff’s request for

them and their families.

Moreover, as some ICE detainees are gang members with histories of committing violent crimes, such as MS-13<sup>3</sup> (a violent international criminal organization), they are incarcerated pending prosecution and/or pending deportation. Correctional officials are keenly aware that the imminent prospect of deportation provides ICE detainees with motivation to create disturbances in the hope of effectuating an escape or of delaying their deportation proceedings in order to remain in the United States. Knowledge of unit and prison layouts, security protocols and response measures, if disclosed to the public, would likely jeopardize public safety as well as staff and inmates. G.L. c. 4, § (7)(26)(n).

Accordingly, the Plaintiff has failed to meet its burden of showing its likelihood of success on the merits and that it will suffer irreparable harm if a preliminary injunction is not granted in their favor. Clearly, the balance of harms weighs in favor of the Defendant BCSO and maintaining the status quo exempting the disclosure of the records until law enforcement and governmental oversight investigations are concluded. At such time as investigations have concluded, including the possible prosecution of offenders, a subsequent review of the propriety of disclosing the records may be conducted. Clearly, the Plaintiff has not shown that the matter is of urgent public interest. ACLU v. Dept. of Justice, 321 F.Supp.2d 24, 32 n. 11 (D.D.C. 2004); EPIC v. Dept. of Justice, 322 F. Supp. 2d 1, 5 (D.D.C. 2003) (the appearance of 31 newspaper articles does not make a story a matter of ‘current exigency’). Plaintiff cites 7 articles (Comp., fns. 6-12) published immediately following and concerning the Incident and makes reference to 2 articles and 4 pleadings or ruling in Savino v. Souza, C.A. No. 20-10617-WGY (D. Mass.) (“Savino”) (Comp., fns. 1-5, 13). Clearly, 13 references to articles and pleadings related to

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<sup>3</sup> <https://en.wikipedia.org/wiki/MS-13>.

Savino does not make the disclosure of the records at issue in the instant action a matter of ‘urgent’ public interest. Id.

While the records are exempt from disclosure under the investigatory and public safety exemptions, the identification and depiction of ICE detainees and responding officers in reports and video recordings are exempt from disclosure as material relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy (“privacy exemption”). G.L. c. 4, § 7(26)(c). Brogan v. Sch. Comm. of Westport, 401 Mass. 306, 308 (1987); Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 438 (1983). The records contain information and depictions of ICE detainees of a highly personal nature, such as their involvement and un-involvement in the disturbance, that the privacy exemption would protect. See Rural Hous. Alliance v. United States Dep’t of Agric., 498 F.2d 73, 77 (D.C.Cir.1974).

For example, ICE detainees observed in video recordings or reports as being involved in the Incident could now become targets of gangs that seek to recruit him into their gang or strong-arming him into joining their gang by means of threat against the ICE detainee or his family. ICE detainees observed in video recordings or reports as not being involved in the Incident could now become targets of gangs or other ICE detainees involved in the Incident based on their suspicion or belief that the uninvolved ICE detainee is a “snitch” and reporting information about other ICE detainees to the BCSO or other law enforcement agencies. The BCSO, as the custodian of records, must make determinations regarding requests to disclose records that could endanger persons named in reports or observed in video records that constitute an unwarranted invasion of personal privacy or that would likely jeopardize public safety as well as staff and inmates. G.L. c. 4, § (7)(26)(c),(n).

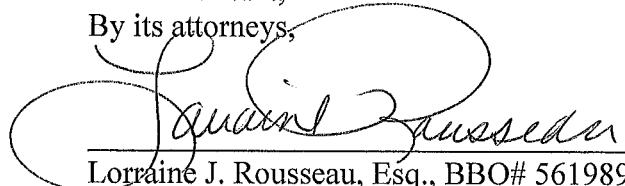
“The revelation by a citizen witness that another person is a drug addict, for example, is

precisely the type of “intimate” and “highly personal” information that the privacy exemption would protect.” See Rural Hous. Alliance v. United States Dep’t of Agric., 498 F.2d 73, 77 (D.C.Cir.1974) (comparable Federal exemption protects information concerning “marital status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcoholic consumption, family fights [and] reputation”). Furthermore, disclosure of these facts does not enhance to any significant degree the public insight into the propriety of police conduct during the criminal investigation.” Id.

WHEREFORE, the Defendant respectfully request that the Court deny Plaintiff’s request for a preliminary injunction be denied and for such other relief as the Court deems just and proper.

Date: June 5, 2020

Respectfully submitted,  
The Defendant,  
By its attorneys,



Lorraine J. Rousseau, Esq., BBO# 561989

Robert C. Heroux, Esq., BBO# 553904

Special Assistant Attorneys General

Bristol County Sheriff’s Office

400 Faunce Corner Road

North Dartmouth, MA 02747

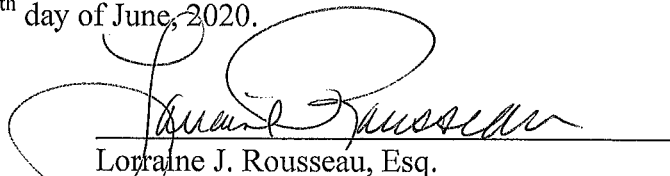
Tel. (508) 995-1311; Fax (508) 995-7835

LorraineRousseau@bcso-ma.org

RobertHeroux@bcso-ma.org

#### CERTIFICATE OF SERVICE

I, Lorraine J. Rousseau, Esq., hereby certify that I have caused a copy of this opposition to be served by email transmission to Christopher Hart, Esq., Foley Hoag, LLP, Seaport West, 155 Seaport Boulevard, Boston, MA 02210-2600 at CHart@foleyhoag.com, and to Nicholas Anastasi, Esq., Foley Hoag, LLP, Seaport West, 155 Seaport Boulevard, Boston, MA 02210-2600 at NAnastasi@foleyhoag.com on this 5<sup>th</sup> day of June, 2020.



Lorraine J. Rousseau, Esq.



THOMAS M. HODGSON  
SHERIFF

THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE  
BRISTOL COUNTY SHERIFF

INVESTIGATIONS

400 Faunce Corner Road  
North Dartmouth, MA 02747  
TEL: (508) 995-6400  
FAX: (508) 995-3507

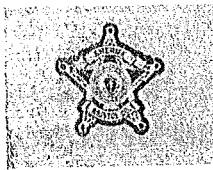
Ex.A

*Special Investigations Unit*

ICE B DISTURBANCE  
05/01/2020

FOLDER CONTENTS

- Watch Commander and Correctional Officer Incident Reports
- Sheriff's Response Team Incident Reports
- Detainee Restrictive Housing Transfer Order Reports
- Detainee Strip Search Reports
- Medical Incident Reports
- Notice of Placement into Administrative Segregation Order Status Forms
- K-9 Division Reports
- Watch Commander Incident E-mail
- Sheriff Thomas Hodgson Injury Photos
- ICE B Bunk Set Up Form
- Officer Tracey Perez Notes
- Officer Jonathan Baroody Notes
- ICE B Unit Log Book 05/01/2020 (1500-2300)
- ICE Control Log Book 05/01/2020 (1500-2300)
- Schedule/Shift Reports
- Photo Lineup
- Thirty (30) DVD-R Disks
- One (1) DVD-R containing ICE B Phone Calls 04/30/2020 - 05/01/2020



Ex. B

**DOCUMENTS REQUESTED BY THE MASSACHUSETTS OFFICE OF THE ATTORNEY  
GENERAL BY LETTER DATED MAY 5, 2020  
RELATIVE TO THE ICE-B DISTURBANCE OF MAY 1, 2020**

1. All video or audio recordings of the interior or exterior spaces of Unit B of the Detention Center between the hours of 12:00 p.m. and 11:59 p.m. on May 2, 2020. This request includes any recordings captured by surveillance cameras or by any recording device, including camcorders or cell phone footage, in the possession, custody, or control of any Bristol County Sheriff's Office ("BCSO") officer or employee.

**Response: Video Footage (CD) ICE-B – May 1, 2020; (12:00 p.m. – 11:59 p.m.)**

2. Recordings of all telephone calls by any detainee housed in Unit B of the Detention Center between 12:00 p.m. on May 2, 202 and 11:59 p.m. on May 3, 2020.

**Response: Recordings of Detainee Telephone Calls from ICE-B ---  
Beginning: 12:00 p.m. May 1, 2020 to 11:59 p.m. May 3, 2020**

3. The name and title for each BCSO staff member or employee who was on duty in Unit B on May 2, 2020 or who responded to, participated in, provided support or consultation for, or was present for any part of the Incident.

**Response: ICE-B Disturbance Employee Roster**

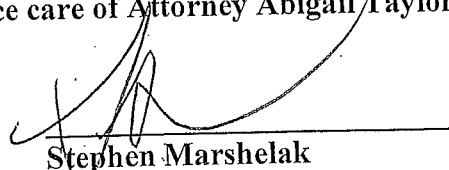
4. The names of all detainees or other individuals who were present in the Detention Center on May 2, 2020, and specification as to which of those individuals were present in Unit B on that day.

**Response: Flash Drive: Incident Reports & Video Recordings**

5. All incident reports or other documentation pertaining to the Incident.

**Response: The incident reports are contained in the flash drive at number 4 above. Additionally, as the investigation is still ongoing, the documents provided are current to date. Further, the Inspector General of Homeland Security may be in possession of other materials generated by it that we are not privy to.**

I certify that I have received the above documents and materials from the Bristol County Sheriff's Office response to the Attorney General's request dated May 5, 2020 and agree to transport these documents directly to her office care of Attorney Abigail Taylor.

  
Stephen Marshelak  
Assistant Attorney General

Dated: 6-2-2020

# **EXHIBIT 7**



**Bristol County Sheriff's Office**  
**Custodial Index of Records**  
**ACLUM v. BCSO, C.A. No. 2084CV01035**  
**August 4, 2020**

Record No.	General Description	Date	Exemptions	
			Exemption	Explanation
1-8	Bristol County Sheriff's Office ("BCSO") Special Investigations Unit ("SIU") listing ICE Detainees and transcripts of telephone recordings involved in or under investigation related to a riot by ICE Detainees on May 1, 2020 in the BCSO immigration center ("incident").	05/01/20 through 05/09/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	This document is exempt from disclosure in its entirety as it contains: (a) the names, photographs and identification numbers of ICE Detainees under investigation by the BCSO and state and federal external law enforcement agencies related to the Incident and that may result in criminal charges, including, but not limited to, assault and property damage, as exempt from disclosure under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; and (b) information relating to specifically named individuals under investigation by the BCSO and state and federal external law enforcement agencies that may result in criminal charges, and thus, constitute an unwarranted invasion of personal privacy under G.L. c. 4, § 7(26)(c), the "privacy exemption".
9-16	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/09/20.	05/09/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	This document is exempt from disclosure in its entirety as it contains: (a) the name and identification number of an ICE Detainee and the telephone number called by the ICE Detainee who is under investigation by the BCSO and state and federal external law enforcement agencies related to the Incident and that may result in criminal charges, including, but not limited to, assault and property damage, as exempt from disclosure under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; and (b) information relates to a specifically named individual under investigation by the BCSO and state and federal external law enforcement agencies that may result in criminal charges and, thus, constitutes an unwarranted invasion of personal
17-22	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	See response to Record Nos. 9-16.
23-24	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	See response to Record Nos. 9-16.

**Bristol County Sheriff's Office**  
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9-16	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/09/20.	05/09/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	This document is exempt from disclosure in its entirety as it contains: (a) the name and identification number of an ICE Detainee and the telephone number called by the ICE Detainee who is under investigation by the BCSO and state and federal external law enforcement agencies related to the Incident and that may result in criminal charges, including, but not limited to, assault and property damage, as exempt from disclosure under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; and (b) information relates to a specifically named individual under investigation by the BCSO and state and federal external law enforcement agencies that may result in criminal charges and, thus, constitutes an unwarranted invasion of personal privacy under G.L. c. 4, § 7(26)(c), the "privacy exemption".
17-22	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	See response to Record Nos. 9-16.
23-24	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	See response to Record Nos. 9-16.

25-42	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
43-45	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20 @ 15:14:57.	05/01/22	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
46-48	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20 @ 17:04:28.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
49-50	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20 @ 18:02:47.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
51-55	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20 @ 18:33:13.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
56-63	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.

64-68	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20 @ 15:06:54.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
69-73	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20 @ 16:15:47.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
74-83	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20 @ 17:20:14.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
84-86	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
87-88	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
89-92	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.

93-96	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
97-102	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20 @ 14:58:24.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
103-112	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20 @ 15:19:32.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
113-114	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20 @ 18:16:26.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
115-118	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20 @ 18:55:33.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.
119-120	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record Nos. 9-16.

121-123	Transcript of telephone call recording of ICE Detainee [REDACTED] on 05/01/20.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> "; (b) G.L. c. 4, § 7(26)(c), second clause, the " <i>privacy exemption</i> ".	See response to Record Nos. 9-16.
124	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	This document is exempt from disclosure in its entirety as it consists of a photographic image of the housing unit where the Incident occurred that shows, <i>inter alia</i> , overturned or damaged property that is under investigation by the BCSO and state and federal external law enforcement agencies that may be evidence related to criminal charges that may be filed against an ICE Detainee(s), including, but not limited to, property damage and item(s) used to assault another ICE Detainee or BCSO personnel; and thus, is exempt from disclosure under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.
125	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
126	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
127	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
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129	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
130	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
131	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
132	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.

133	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
134	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
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154	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
155	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
156	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
157	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
158	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.



159	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
160	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
161	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
162	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
163	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
164	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
165	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
166	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
167	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
168	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
169	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.

170	ICE Unit Photo	05/01/20	(a) & (b) G.L. c. 4, § 7(26)(f), the <i>"investigatory exemption"</i> ; (c) G.L. c. 4, § 7(26)(c), second clause, the <i>"privacy exemption"</i> .	This document is exempt from disclosure in its entirety as it consists of a photographic image of the housing unit where the Incident occurred that: (a) shows, inter alia, overturned or damaged property that is under investigation by the BCSO and state and federal external law enforcement agencies that may be evidence related to criminal charges that may be filed against an ICE Detainee(s), including, but not limited to, property damage and item(s) used to assault another ICE Detainee or BCSO personnel; and thus, is exempt from disclosure under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; (b) contains the images of BCSO personnel present in the housing unit immediately following the Incident, the release of which would possibly endanger their safety and interfere with their ability to perform their duties in the future, including during investigations of similar incidents; and thus, are exempt from disclosure under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; and (c) contains the images of BCSO personnel present in the housing unit immediately following the Incident, the release of which would constitute an unwarranted invasion of personal privacy under G.L. c. 4, § 7(26)(c), the "privacy exemption".
171	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the <i>"investigatory exemption"</i> .	See response to Record No. 124.
172	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the <i>"investigatory exemption"</i> .	See response to Record No. 124.
173	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the <i>"investigatory exemption"</i> .	See response to Record No. 124.
174	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the <i>"investigatory exemption"</i> .	See response to Record No. 124.
175	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the <i>"investigatory exemption"</i> .	See response to Record No. 124.
176	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the <i>"investigatory exemption"</i> .	See response to Record No. 124.

177	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
178	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 170.
179	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
180	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
181	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
182	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
183	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
184	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
185	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
186	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
187	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
188	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
189	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.

190	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
191	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
192	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
193	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
194	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
195	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
196	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
197	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
198	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
199	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
200	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
201	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
202	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.

203	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
204	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
205	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
206	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
207	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
208	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
209	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
210	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
211	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
212	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
213	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
214	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
215	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.

216	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
217	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
218	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
219	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
220	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
221	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
222	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
223	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
224	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
225	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
226	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
227	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
228	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.

229	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
230	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
231	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
232	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
233	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
234	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
235	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
236	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
237	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
238	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
239	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
240	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
241	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.

242	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
243	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
244	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
245	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
246	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
247	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
248	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
249	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
250	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
251	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
252	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
253	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
254	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.



255	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
256	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
257	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
258	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
259	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
260	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
261	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
262	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
263	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
264	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
265	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
266	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
267	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.

268	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
269	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
270	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
271	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
272	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
273	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
274	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
275	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
276	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
277	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
278	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
279	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
280	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.

281	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
282	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
283	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
284	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
285	ICE Unit Photo	05/01/20	(a) & (b) G.L. c. 4, § 7(26)(f), the "investigatory exemption" ; (c) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	This document is exempt from disclosure in its entirety as it consists of a photographic image of the recreation area outside housing unit where the Incident occurred that: (a) shows, inter alia, overturned or damaged property that is under investigation by the BCSO and state and federal external law enforcement agencies that may be evidence related to criminal charges that may be filed against an ICE Detainee(s), including, but not limited to, property damage and item(s) used to assault another ICE Detainee or BCSO personnel; and thus, is exempt from disclosure under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; (b) contains the images of BCSO personnel and medical personnel present in the housing unit recreation area immediately following the Incident, the release of which would possibly endanger their safety and interfere with their ability to perform their duties in the future, including during investigations of similar incidents and providing emergency medical treatment; and thus, are exempt from disclosure under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; and (c) contains the images of BCSO personnel, medical personnel and ICE Detainees immediately following the Incident, the release of which would constitute an unwarranted invasion of personal privacy under G.L. c. 4, § 7(26)(c), the "privacy exemption" .
286	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
287	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.

288	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
289	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the " <i>privacy exemption</i> "; (b) G.L. c. 4, § 7(26)(a).	This document is exempt from disclosure in its entirety as it consists of a photographic image of the recreation area outside housing unit where the Incident occurred that contains: (a) the images of ICE Detainees immediately following the Incident, the release of which would constitute an unwarranted invasion of personal privacy under G.L. c. 4, § 7(26)(c), the "privacy exemption"; (b) the images of ICE Detainees that constitutes Criminal Offender Record Information ("CORI"), M.G.L. c. 6, §§ 167 et seq. and M.G.L. c. 66, § 10, that are exempt from disclosure as a public record under G.L. c. 4, § 7(26)(a).
290	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the " <i>privacy exemption</i> "; (b) G.L. c. 4, § 7(26)(a).	See response to Record No. 289.
291	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the " <i>privacy exemption</i> "; (b) G.L. c. 4, § 7(26)(a).	See response to Record No. 289.
292	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the " <i>privacy exemption</i> "; (b) G.L. c. 4, § 7(26)(a).	See response to Record No. 289.
293	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the " <i>privacy exemption</i> "; (b) G.L. c. 4, § 7(26)(a).	See response to Record No. 289.
294	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the " <i>privacy exemption</i> "; (b) G.L. c. 4, § 7(26)(a).	See response to Record No. 289.

295	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (b) G.L. c. 4, § 7(26)(a).	See response to Record No. 289.
296	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (b) G.L. c. 4, § 7(26)(a).	See response to Record No. 289.
297	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (b) G.L. c. 4, § 7(26)(a).	See response to Record No. 289.
298	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (b) G.L. c. 4, § 7(26)(a); (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	See response to Record No. 289. Further, (c) to the extent that the images of BCSO security personnel and person standing on the left in the background is either BCSO security personnel or medical personnel, see response to Record No. 285.
299	ICE Unit Photo	05/01/20	(a) & (b) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (c) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	See response to Record No. 170.
300	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption".	See response to Record No. 124.
301	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption".	See response to Record No. 124.

302	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
303	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
304	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
305	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
306	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
307	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
308	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
309	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
310	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
311	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
312	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
313	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
314	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.

315	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
316	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
317	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
318	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
319	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
320	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
321	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
322	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
323	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
324	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
325	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
326	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
327	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.

328	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
329	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
330	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
331	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
332	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
333	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
334	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
335	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
336	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
337	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
338	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
339	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
340	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.



341	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
342	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
343	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
344	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
345	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
346	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
347	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
348	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
349	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
350	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
351	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
352	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
353	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.

354	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
355	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
356	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
357	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
358	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
359	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
360	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
361	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
362	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
363	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
364	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
365	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
366	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.

367	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
368	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
369	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
370	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
371	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
372	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
373	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
374	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
375	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
376	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
377	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
378	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
379	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.

380	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
381	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (b) G.L. c. 4, § 7(26)(a); (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	See response to Record No. 298.
382	ICE Unit Photo	05/01/20	(a) & (b) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (c) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record No. 170.
383	ICE Unit Photo	05/01/20	(a) & (b) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (c) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption" .	See response to Record No. 170.
384	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (b) G.L. c. 4, § 7(26)(a); (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	This document is exempt from disclosure in its entirety as it consists of a photographic image of the housing unit where the Incident occurred that contains: (a) the images of ICE Detainees immediately following the Incident, the release of which would constitute an unwarranted invasion of personal privacy under G.L. c. 4, § 7(26)(c), the "privacy exemption"; (b) the images of ICE Detainees that constitutes Criminal Offender Record Information ("CORI"), M.G.L. c. 6, §§ 167 et seq. and M.G.L. c. 66, § 10, that are exempt from disclosure as a public record under G.L. c. 4, § 7(26)(a). Further, (c) to the extent that the images of BCSO security personnel and person standing on the left in the background is either BCSO security personnel or medical personnel, see response to Record No. 285.

385	ICE Unit Photo	05/01/20	(a) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (b) G.L. c. 4, § 7(26)(a); (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption".	See response to Record No. 384.
386	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
387	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
388	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
389	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
390	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
391	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
392	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
393	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
394	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.

395	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
396	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
397	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
398	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
399	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
400	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
401	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
402	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
403	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
404	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
405	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
406	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
407	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.

408	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
409	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
410	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
411	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
412	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
413	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
414	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
415	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
416	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
417	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
418	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
419	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.
420	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the " <i>investigatory exemption</i> ".	See response to Record No. 124.

421	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
422	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
423	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
424	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
425	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	This document is exempt from disclosure in its entirety as it consists of a photographic image of the housing unit logbook that contains handwritten entries documenting the times and names of entering the unit, the purpose for their admission and security procedures related to the Incident, which is under investigation by the BCSO and state and federal external law enforcement agencies; and thus, is exempt from disclosure under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.
426	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
427	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 124.
428	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 425.
429	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 425.
430	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 425.
430A	ICE Unit Photo	05/01/20	G.L. c. 4, § 7(26)(f), the "investigatory exemption" .	See response to Record No. 425.



431	ICE Detainees Photo Lineup	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	This document is exempt from disclosure in its entirety as it consists of a document created as a result of the Incident, that contains the photographs, names and identification numbers of ICE Detainees under investigation by the BCSO and state and federal external law enforcement agencies, the disclosure of which will likely reveal confidential investigative techniques or procedures, will discourage ICE Detainees to speak freely about matters under investigation, will prevent security personnel from being including their candid observations, hypotheses and interim conclusions as to persons involved in incidents, and will interfere with investigations being conducted by outside law enforcement agencies with respect to determinations of witness credibility, evidentiary weight given to each item, inferences drawn from witness statements, reports and other evidence, the prejudice resulting from the disclosure of material prior to the conclusion of the external investigations, and the chilling effect to witnesses. This document is exempt from disclosure under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; under G.L. c. 4, § 7(26)(c), the "privacy exemption", the release of which would constitute an unwarranted invasion of personal privacy; under G.L. c. 4, § 7(26)(a), as Criminal Offender Record Information ("CORI"), M.G.L. c. 6, §§ 167 et seq. and M.G.L. c. 66, § 10.
432	ICE Detainee [REDACTED] Booking Sheet	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 431.

433-434	SIU ICE B Disturbance Video Contents	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a); (d) 45 CFR 164.512(e), the "Health Insurance Portability and Accountability Act".	This document is exempt from disclosure in its entirety as it consists of a document created as a result of the Incident, that contains information, inter alia, the names and identification numbers of ICE Detainees; names of BCSO security personnel, medical personnel and other BCSO staff; information related to or describing the Incident, such as actions, statements, assaults and property damage by ICE Detainees; information that reveals confidential investigative techniques or procedures by BCSO personnel; medical evaluations of ICE Detainees; information describing BCSO security personnel response procedures, equipment, restraints and preparations made or utilized in responding to the Incident. This document(s) is exempt from disclosure (a) under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; (b) under G.L. c. 4, § 7(26)(c), the "privacy exemption", the release of which would constitute an unwarranted invasion of personal privacy; (c) under G.L. c. 4, § 7(26)(a), as Criminal Offender Record Information ("CORI"), M.G.L. c. 6, §§ 167 et seq. and M.G.L. c. 66, § 10. (d) Further, under G.L. c. 4, § 7(26)(a), to the extent that the record(s) contain protected health information of a named ICE Detainee, such information is exempt from disclosure under 45 CFR 164.512(e), the "Health Insurance Portability and Accountability Act".
435	SIU ICE B Disturbance Folder Contents	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a); (d) 45 CFR 164.512(e), the "Health Insurance Portability and Accountability Act".	See response to Record No. 433-434.
436-438	Incident Report Sheriff Thomas M. Hodgson	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a); (d) 45 CFR 164.512(e), the "Health Insurance Portability and Accountability Act".	See response to Record No. 433-434.

439-441	Watch Commander Cover Sheet by Captain Joshua Dube to Major Michael Pires	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a); (d) 45 CFR 164.512(e), the "Health Insurance Portability and Accountability Act".	See response to Record No. 433-434.
442-443	Email message from Joshua Dube to Robert Perry	05/07/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
444-445	Incident Report of Officer Ross Sylvia	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
446-447	Incident Report of Officer Gregory Nesse	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

448-453	Incident Report of Lieutenant Jennifer Arsenault	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
454-462	Incident Report of Officer Jonathan Baroody	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
463-465	Census Count Form ICE Unit B	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
466	Handwritten list of names	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
467	Incident Report of Officer Andrew Sousa	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

468-469	Incident Report of Officer Garrett Correia	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
470	Incident Report of Officer Joseph Teixeira	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
471-472	Incident Report of Officer Kyle Powers	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
473	Incident Report of Officer Zachary Egan	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
474-478	Incident Report of Officer Tracey Perez	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

479	Incident Report of Officer Adam Gibeau	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
480-481	Incident Report of Sergeant Jon Hunter	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
482-483	Incident Report of Lieutenant Jeremy Carlton	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
484	Incident Report of Lieutenant Brian Pratt	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
485-486	Incident Report of Judy Borges, ADS of Medical Services	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

487-488	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/07/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
489-490	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
491-492	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
493-494	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
495-496	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

497-498	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
499-500	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
501-502	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
503-504	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
505-506	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.



507-508	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
509-510	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
511-512	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
513-514	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
515-516	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

517-518	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
519-520	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
521-522	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
523-524	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
525-526	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

527-528	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
529-530	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
531-532	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
533-534	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
535-536	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

537-538	Notice of Placement into Awaiting Action or Administrative Segregation Order Status re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
539	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
540	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
541	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
542	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

543	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
544	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
545	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
546	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
547	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

548	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
549	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
550	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
551	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
552	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

553	Restrictive Housing Transfer Order re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
554	Restrictive Housing Transfer Order re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
555	Restrictive Housing Transfer Order re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
556	Restrictive Housing Transfer Order re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
557	Restrictive Housing Transfer Order re [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

558	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
559	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
560	Restrictive Housing Transfer Order re [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
561-562	Team Leader Cover Letter from Lieutenant Barry Ferreira to Captain Joshua Dube	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
563	Incident Report of Officer Joshua Sylvia	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.



564-565	Incident Report of Lieutenant Douglas Mongeon	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
566-567	Incident Report of Officer Matthew Boyer	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
568-569	Incident Report of Officer Randall Webb	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
570	Incident Report of Officer Michael Goncalves	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
571-572	Incident Report of Lieutenant Nelson Cabral	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

573-574	Incident Report of Officer Garrett Soucy	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
575-576	Incident Report of Officer Brandon Moniz	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
577-578	Incident Report of Officer Tyrone Williams	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
579	Incident Report of Officer Timothy Melo	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
580	Incident Report of Lieutenant Mark Amaral	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

581-582	Incident Report of Officer Joshua M. Araujo	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
583-584	Incident Report of Sergeant Moses Isidoro	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
585-586	Incident Report of Lieutenant Christopher Goncalves	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
587	Incident Report of Officer Stephen Aranda	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
588-589	Incident Report of Officer Michael Kochanck	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

590-593	Incident Report of Sergeant Jonathan Allard	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
594-598	Incident Report of K-9 Unit Captain Paul M. Douglas	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
599-603	Incident Report of K-9 Unit Officer Kenneth R. Almeida	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
604-605	Incident Report of K-9 Unit Officer Filipe A. DaSilva	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
606-609	Incident Report of K-9 Unit Officer William Dillingham	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

610	Incident Report of K-9 Unit Officer Michael Bettencourt	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
611	Incident Report of K-9 Unit Officer Scott Robbins	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
612	Incident Report of K-9 Unit Officer Ryan Isherwood	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
613	Incident Report of K-9 Unit Officer Brennan Bulgar	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
614	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

615	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
616	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
617	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
618	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
619	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

620	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
621	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
622	Placement on Mental Health Watch Form re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
623	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
624	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

625	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	DUPLICATE RECORD OF RECORD NO. 621. See response to Record No. 433-434.
626	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	DUPLICATE RECORD OF RECORD NO. 620. See response to Record No. 433-434.
627	Incident Report of Heidi Phipps-Oliveira, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
628	Incident Report of Heidi Phipps-Oliveira, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
629	Incident Report of Heidi Phipps-Oliveira, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.



630	Incident Report of Heidi Phipps-Oliveira, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
631	Incident Report of Nelly Floriano, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
632	Incident Report of Nelly Floriano, LPN re ICE Detainee [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
633	Incident Report of Nelly Floriano, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
634	Incident Report of Nelly Floriano, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

635	Incident Report of Nelly Floriano, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
636	Incident Report of Nelly Floriano, LPN re ICE Detainee [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
637	Incident Report of Abbie Soares, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
638	Incident Report of Abbie Soares, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
639	Incident Report of Abbie Soares, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

640	Incident Report of Abbie Soares, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
641	Incident Report of Abbie Soares, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
642	Incident Report of Barbara Bell, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
643	Incident Report of Barbara Bell, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
644	Incident Report of Barbara Bell, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

645	Incident Report of Barbara Bell, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
646	Incident Report of Susan Lambert, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
647	Incident Report of Susan Lambert, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
648	Incident Report of Kayla Bonanca, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
649	Incident Report of Kayla Bonanca, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

650	Incident Report of Kayla Bonanca, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
651	Incident Report of Kayla Bonanca, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
652	Incident Report of Kayla Bonanca, LPN re ICE Detainee [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
653	Incident Report of Kayla Bonanca, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
654	Incident Report of Kayla Bonanca, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

655	Incident Report of Kayla Bonanca, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
656	Incident Report of Kayla Bonanca, LPN re ICE Detainee [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
657	Incident Report of Kayla Bonanca, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
658	Incident Report of Debbie Semedo, LPN	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
659	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

660	Incident Report of Debbie Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
661	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
662	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
663	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
664	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

665	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
666	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
667	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
668	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
669	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.



670	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
671	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
671A	Incident Report of Deborah Semedo, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
672	Incident Report of Lieutenant Kyle Ross re ICE Detainee [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
673	Incident Report of Lieutenant Kyle Ross re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

674	Incident Report of Lieutenant Kyle Ross re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
675	Incident Report of Lieutenant Adam Butler re ICE Detainee [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
676	Incident Report of Lieutenant Adam Butler re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
677	Incident Report of Lieutenant Andrew Butler re ICE Detainee [REDACTED] [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
678	Incident Report of Officer Michael St. John	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

679-680	Incident Report of Officer Philippe Proulx re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
681-682	Incident Report of Officer Philippe Proulx re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
683-684	Incident Report of Lieutenant Kyle Ross re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
685	Incident Report of Officer Gregory Salvatore re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
686-687	Incident Report of Officer Cory Sikora re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

688	Incident Report of Sherry Rivers, LPN re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
689-690	Mental Health Watch Form re ICE Detainee [REDACTED]	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
691	Mental Health Watch Form re ICE Detainee [REDACTED]	05/03/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
692	Mental Health Watch Form re ICE Detainee [REDACTED]	05/03/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
693-696	ICE Control Unit Logbook	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

697-698	ICE EB Unit Logbook	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
699-701	Duty Roster / Roll Call 1500-2300 shift	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
702-703	Daily Shift Report 1500-2300 Shift D.H.O.C.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
704-705	Daily Shift Report 2300-0700 Shift D.H.O.C.	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
706	Daily Shift Report 0700-1500 Shift D.H.O.C.	05/02/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

707	Daily Shift Report 1500-2300 Shift D.H.O.C.	05/02/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
708	Daily Shift Report 2300-0700 Shift D.H.O.C.	05/02/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
709	Daily Shift Report 0700-1500 Shift D.H.O.C.	05/03/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
710	Daily Shift Report 1500-2300 Shift D.H.O.C.	05/03/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
711-712	Daily Shift Report 2300-0700 Shift D.H.O.C.	05/03/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

713	Daily Shift Report 0700-1500 Shift D.H.O.C.	05/04/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
714-715	SRT Report by Lieutenant Battrry Ferreira	05/21/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
716	SRT Chain of Command	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.
717-719	SIU ICE B Disturbance Employee Roster	05/01/20	(a) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (c) G.L. c. 4, § 7(26)(a).	See response to Record No. 433-434.

720	Video Recording - Flash Drive #1 - ICE B Surveillance Video - "ICEB0000"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	This record, a video recording of the Incident that is under investigation by BCSO and federal and state law enforcement agencies and (a) may result in criminal charges, including, but not limited to, assault and property damage; and thus, is exempt from disclosure in its entirety under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; (b) shows ICE Detainees, BCSO employees and medical personnel; and thus, is exempt from disclosure in their entirety under G.L. c. 4, § 7(26)(c), the "privacy exemption", the release of which would constitute an unwarranted invasion of personal privacy; (c) will reveal confidential investigative techniques or procedures, will discourage ICE Detainees to speak freely about matters under investigation, will prevent security personnel from being including their candid observations, hypotheses and interim conclusions as to persons involved in incidents, and will interfere with investigations being conducted by outside law enforcement agencies with respect to determinations of witness credibility, evidentiary weight given to each item, inferences drawn from witness statements, reports and other evidence, the prejudice resulting from the disclosure of material prior to the conclusion of the external investigations, and the chilling effect to witnesses; and thus, is exempt from disclosure in its entirety under G.L. c. 4, § 7(26)(f), the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; and (d) is incapable of being redacted or blurred by the BCSO in any manner; and thus, is exempt from disclosure in its entirety under G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a) as protected CORI under G.L. c. 6, §§ 167 et seq. and G.L. c. 66, § 10.
721	Video Recording - Flash Drive #1 - Videos - "IMG_1968"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.



722	Video Recording - Flash Drive #1 - Videos - "IMG_1969"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
723	Video Recording - Flash Drive #1 - Videos - "MVI_0056"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
724	Video Recording - Flash Drive #1 - Videos - "MVI_0057"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
725	Video Recording - Flash Drive #1 - Videos - "MVI_0060"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.

726	Video Recording - Flash Drive #1 - Videos - "MVI_0061"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
727	Video Recording - Flash Drive #1 - Videos - "MVI_0062"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
728	Video Recording - Flash Drive #1 - Videos - "MVI_0063"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
729	Video Recording - Flash Drive #2 - Videos - "00002"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.

730	Video Recording - Flash Drive #2 - Videos - "00003"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
731	Video Recording - Flash Drive #2 - Videos - "00004"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
732	Video Recording - Flash Drive #2 - Videos - "00005"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
733	Video Recording - Flash Drive #2 - Videos - "00006"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.

734	Video Recording - Flash Drive #2 - Videos - "00007"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
735	Video Recording - Flash Drive #2 - Videos - "00008"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
736	Video Recording - Flash Drive #2 - Videos - "00009"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
737	Video Recording - Flash Drive #3 - Videos - "00010"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.

738	Video Recording - Flash Drive #3 - Videos - "00011"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
739	Video Recording - Flash Drive #3 - Videos - "09763"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
740	Video Recording - Flash Drive #3 - Videos - "9787"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
741	Video Recording - Flash Drive #3 - Videos - "32423"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.

742	Video Recording - Flash Drive #3 - Videos - "34566"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
743	Video Recording - Flash Drive #3 - Videos - "86786"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
744	Video Recording - Flash Drive #3 - Videos - "322423"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
745	Video Recording - Flash Drive #4 - Videos - "42355"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.

746	Video Recording - Flash Drive #4 - Videos - "565425"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
747	Video Recording - Flash Drive #4 - Videos - "0654678"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
748	Video Recording - Flash Drive #4 - Videos - "768768"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
749	Video Recording - Flash Drive #4 - Videos - "856654"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.

750	Video Recording - Flash Drive #4 - Videos - "25489000"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
751	Video Recording - Flash Drive #5 - Videos - "99002345"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
752	Video Recording - Flash Drive #5 - Videos - "345345354"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.
753	Video Recording - Flash Drive #5 - Videos - "677643465"	05/01/20	(a) & (c) G.L. c. 4, § 7(26)(f), the "investigatory exemption"; (b) G.L. c. 4, § 7(26)(c), second clause, the "privacy exemption"; (d) G.L. c. 4, § 7(26)(f), G.L. c. 4, § 7(26)(c), G.L. c. 4, § 7(26)(a).	See response to Record No. 720.



# **EXHIBIT 8**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. 2084CV01035

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AMERICAN CIVIL LIBERTIES UNION OF	)
MASSACHUSETTS, INC.,	)
	)
	)
Plaintiff,	)
v.	)
	)
BRISTOL COUNTY SHERIFF'S OFFICE,	)
	)
Defendant.	)

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**PLAINTIFF'S REQUEST FOR STATUS CONFERENCE**

Plaintiff ACLUM respectfully requests that the Court schedule an immediate status conference in this matter at the earliest date convenient for the Court.

The purpose of the proposed status conference is to discuss whether the continued withholding of any records in this matter is appropriate in light of the completion of the Attorney General's investigation, as well as the BCSO's noncompliance with the Court's October 27, 2020 Second Order On Plaintiff's Request For Injunctive Relief (the "Order"). That Order had required BCSO to "provide this court with the status of the three investigations it references in asserting the investigatory exemption." It has not provided any such information. There is thus no basis in the record to conclude that any investigations are still active or, if active, would be prejudiced in any way by the release of the requested records concerning the May 1 incident.

Recent developments make clear that release of the records is warranted. On December 15, 2020, the Attorney General's Office filed a letter with this Court stating that it had concluded its investigation into the May 1 incident ("AGO Letter"). Appended to the Letter was a

painstakingly detailed, fact-intensive, and thorough 58-page report containing the Attorney General's findings and recommendations (the "AGO Report"). Among other things, the AGO Report found that, during the May 1 incident, the BCSO committed violent and egregious violations of the detainees' civil rights, including by using "excessive and disproportionate force" and by acting with "deliberate indifference to a substantial risk of serious harm to the health of the detainees." AGO Report at 1. There are also many other highly concerning findings, including that staff may have been coached to modify written reports concerning the incident, and that Sheriff Hodgson (who was observed personally filming portions of the incident) failed to turn over records of the incident contained on his cell phone. *See* AGO Report at 4, 44.

In its Letter, the Attorney General's Office makes clear that, not only is its investigation complete, but also that there are no investigatory impediments preventing BCSO from producing any documents responsive to ACLUM's request. Quite the contrary: the Attorney General affirmatively supports disclosure of these records because "public disclosure of the records sought in this litigation would serve the public interest by increasing the BCSO's public accountability, openness, and transparency." *See* AGO Letter. In light of the AGO Letter and Report, revisiting the scope of the Court's current Order may be appropriate under these changed circumstances.

BCSO has not provided the Court with any information to the contrary, despite this Court's Order requiring BCSO to provide an update regarding the status of the three investigations it relies upon in asserting the investigatory exemption. *See* Order at 3-4. Undersigned counsel has diligently sought updates from BCSO regarding its compliance with this Court's Order. On November 13, 2020, ACLUM's counsel reached out to counsel at BCSO, who stated that they

were “working on . . . the status of the investigations.” Exhibit A. On November 23, 2020, ACLUM’s counsel again reached out to BCSO, but did not receive a reply. Exhibit B. On December 10, 2020, almost a month after its first email, ACLUM’s counsel reached out to BCSO for a third time for a status update. Exhibit B. As of the filing of this request, almost two months after the Court’s Order, ACLUM still has not heard back from BCSO as to the status of the investigations, nor has the BCSO reported this information to the Court. BCSO’s lack of response to the Court’s Order leaves BCSO with no basis to claim that any investigation is active or would be prejudiced by the release of these records.

A status conference would also be useful to discuss the BCSO’s continued apparent failure to conduct an adequate search for records responsive to ACLUM’s request. For one thing, BCSO has ignored this Court’s Order to provide a written response and affidavit attesting to the existence or non-existence of any materials responsive to ACLUM requests #6, 8, and 10. *See* Order at 3. Additionally, the AGO Report raises serious questions about whether other responsive records have been omitted from the BCSO’s index, including responsive emails,<sup>1</sup> as well as the records made on Sheriff Hodgson’s cell phone.

BCSO’s refusal to release these records, as well as its noncompliance with this Court’s Order, has allowed the BCSO to continue to make public statements characterizing the incident without the fear of contradiction that would exist if the underlying records were available. Despite the AGO’s 58-page report, replete with detailed references to written correspondence and video evidence, Sheriff Thomas Hodgson has continued to make contrary public characterizations about

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<sup>1</sup> The AGO Report notes that its findings relied in part on a collection of BCSO email communications. AGO Report at 3. The Index produced to the Court denotes a single email communication. Custodial Index of Records at 34. This would suggest that there are additional relevant email communications that have not been produced to the Court or indexed.

the May 1 incident. On December 16, he held a press conference in which he again made detailed assertions about the incident, called the Attorney General a “political hack,” and stated that he was placing the Attorney General’s recommendations for reform “halfway down the sewer pipe.”<sup>2</sup> Later that day, he gave an approximately 40-minute radio interview in which he again purported to detail the incident, claimed the BCSO “did everything picture perfect by any standard,” claimed the Attorney General has gone to “incredible lengths to dismiss and discount the truth about what really happened,” and bizarrely claimed the Attorney General is “a pro-illegal person.”<sup>3</sup> Every moment that the BCSO is allowed keep these records secret and ignore this Court’s Order allows it further room to make wild assertions to the press without threat of contradiction by the underlying records.

For all the foregoing reasons, ACLUM believes that a status conference is immediately warranted, and requests that the Court schedule one at its earliest convenience.

December 17, 2020

Respectfully submitted,

/s/ Christopher E. Hart

Christopher E. Hart (BBO #625031)  
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155 Seaport Blvd  
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American Civil Liberties Union

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<sup>2</sup> See “Hodgson Puts Healy Report ‘Down the Sewer Pipe,’” *Commonwealth Magazine*, Dec. 17, 2020, available at <https://commonwealthmagazine.org/immigration/hodgson-puts-healey-report-down-the-sewer-pipe/>

<sup>3</sup> <https://www.iheart.com/podcast/1002-nightside-with-dan-28654279/episode/sheriff-hodgson-would-like-a-word-75266536/>

Foundation of Massachusetts, Inc.  
211 Congress Street  
Boston, MA 02110  
(617) 482-3170

*Attorneys for Plaintiff*

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of December, 2020, the foregoing document was filed with the Suffolk Superior Court and will be served via email on counsel for Defendant at:

Lorraine J. Rousseau, Esq.  
Bristol County Sheriff's Office  
400 Faunce Corner Road  
North Dartmouth, MA 02747  
lorrainerousseau@bcso-ma.org

/s/ Nicholas L. Anastasi  
Nicholas L. Anastasi

# Exhibit A



## Anastasi, Nicholas

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**From:** Anastasi, Nicholas  
**Sent:** Wednesday, November 18, 2020 12:31 PM  
**To:** 'Lorraine Rousseau'  
**Cc:** Robert Heroux; Robert Novack; Gregory O'Neill; Rachel McCarthy  
**Subject:** RE: Executed Protective Order

Thank you Lorraine. Yes, we will copy you on the filing.

---

**From:** Lorraine Rousseau [mailto:LORRAINEROUSSEAU@bcso-ma.org]  
**Sent:** Wednesday, November 18, 2020 10:06 AM  
**To:** Anastasi, Nicholas <nanastasi@foleyhoag.com>  
**Cc:** Robert Heroux <ROBERTHEROUX@bcso-ma.org>; Robert Novack <robertnovack@bcso-ma.org>; Gregory O'Neill <GREGORYONEILL@bcso-ma.org>; Rachel McCarthy <RachelMcCarthy@bcso-ma.org>  
**Subject:** RE: Executed Protective Order

**\*\*EXTERNAL\*\***

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Hi Nick,

All is well. Thank you for asking. Hope you are also doing well.

I've attached a copy of our executed Protective Order. Could you please copy us on its filing. Also, I am working on the search for responsive emails and the status of the investigations.

Thank you,  
Lorraine

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**From:** Anastasi, Nicholas [mailto:nanastasi@foleyhoag.com]  
**Sent:** Friday, November 13, 2020 12:20 PM  
**To:** Lorraine Rousseau  
**Cc:** Robert Heroux; Robert Novack; Gregory O'Neill; Rachel McCarthy  
**Subject:** Executed Protective Order

Lorraine,

I hope that you are well. Attached please find an executed version of the protective order issued by the Court on October 27. If you could please sign and return via email, we will coordinate filing with the court.

Thank you,  
Nick

Nicholas Anastasi | Associate

FOLEY

# HOAG LLP

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For more information about Foley Hoag LLP, please visit us at [www.foleyhoag.com](http://www.foleyhoag.com).

# Exhibit B

## Anastasi, Nicholas

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**From:** Anastasi, Nicholas  
**Sent:** Thursday, December 10, 2020 12:54 PM  
**To:** 'Lorraine Rousseau'; 'Robert Heroux'; 'Rachel McCarthy'; 'Gregory O'Neill'  
**Subject:** RE: ACLUM v. BCSO, C.A. No. 2084CV01035

Hi Lorraine,

I hope that you are well. I am writing to follow up on the below, and to see if you have an update on the status of the investigations.

Thanks very much,  
Nick

---

**From:** Anastasi, Nicholas  
**Sent:** Monday, November 23, 2020 9:48 AM  
**To:** Lorraine Rousseau <LORRAINEROUSSEAU@bcso-ma.org>; Robert Heroux <ROBERTHEROUX@bcso-ma.org>; Rachel McCarthy <RachelMcCarthy@bcso-ma.org>; Gregory O'Neill <GREGORYONEILL@bcso-ma.org>  
**Subject:** ACLUM v. BCSO, C.A. No. 2084CV01035

Hi Lorraine,

I am writing in response to your email from this past Wednesday regarding the October 27 Protective Order. In that email, you noted that the BCSO is in the process of searching for responsive emails (which we understand to include emails responsive to requests 6, 8, and 10 ). Can you provide us with a general timeframe for completing that project? Also, can you confirm that you will be searching for all materials, including but not limited to text messages, responsive to requests 6, 8, and 10, as required by the Court's order?

Additionally, we intend to begin our in-person review of the records subject to the protective order this week. We feel that the most efficient approach to the review, for both parties and the Court, is to work through the records in phases. As such, we would like to start by reviewing all of the relevant video footage, and briefing the court on just that footage, before moving on to the photos and written documents. Please let us know if you agree to this approach – if so, we will propose it to the Court.

Best,  
Nick

Nicholas Anastasi | Associate

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**HOAG** LLP

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# **EXHIBIT 9**

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
C.A. NO. 2084CV01035**

**AMERICAN CIVIL LIBERTIES UNION  
OF MASSACHUSETTS,  
Plaintiff,**

**v.**

**BRISTOL COUNTY SHERIFF'S OFFICE,  
Defendant**

**DEFENDANT'S RESPONSE TO PLAINTIFF'S  
REQUEST FOR STATUS CONFERENCE**

The Defendant, Bristol County Sheriff's Office ("BCSO"), respectfully responds to Plaintiff American Civil Liberties Union of Massachusetts' ("ACLUM") Request for Status Conference ("Request") to discuss the continued withholding of any public records in this matter in light of the completion of the investigation by the Office of the Attorney General ("AGO") and its Report,<sup>1</sup> dated December 15, 2020, regarding the violent disturbance on May 1, 2020 in the BCSO ICE Building by Immigration and Customs Enforcement ("ICE") Detainees that resulted in injuries to staff and ICE Detainees and significant property damage ("Incident"). The ACLUM's premise is that the AGO's Report makes clear that disclosure of the records is warranted.

However, the ACLUM's Request is actually a vilification of Sheriff Thomas Hodgson and the BCSO using the AGO's Report disguised as a request for a status conference. The ACLUM could not send the Report directly to Judge Sharon E. Donatelle, who is presiding in this action, which the AGO appears to have done it on ACLUM's behalf, so the ACLUM

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<sup>1</sup> AGO Report titled "Investigation Into The Events Of May 1, 2020 At The C. Carlos Carreiro Immigration Detention Center, Unit B, Bristol County Sheriff's Office".

disguised the Report as a request for status conference. In fact, the Report has nothing to do with the public records issue in this matter and is being used to mislead and prejudice the Court by making it think that the investigation of the Incident is over while every reason the Court had for delaying release of the records is still relevant. This contention is borne out by the ACLUM's reliance on the AGO's improper assertion that there are no investigatory impediments preventing the BCSO from producing any documents responsive to ACLUM's request and the ACLUM's assertion that the AGO affirmatively supports the disclosure of the records in the public interest. (See ACLUM's Request, p. 2, ¶ 1). While that may be true for the partial, biased Report by the AGO, there are two other investigations by outside agencies that have not yet concluded, thus, investigatory impediments still exist that prevent the BCSO from producing any documents responsive to ACLUM's request for public records.

Further, the AGO, while not a party to this action, clearly appears to be acting as an advocate for the ACLUM, which raises questions regarding whether the ACLUM and the AGO are coordinating with each other in the course of these proceedings. The findings made by the AGO in its Report constitute the AGO's opinion regarding the Incident and leave little doubt that the AGO's opinion of the BCSO is less than favorable and politically motivated, particularly given its intervention in a civil action related to a public records request in which it has no direct interest. In support of the ACLUM's Request, the ACLUM cites certain findings made by the AGO in its Report and grounds for the immediate disclosure of the records. However, the AGO's findings are not relevant to the issue of whether the records should or should not be disclosed while investigations by outside agencies are being conducted and whether such disclosure would prejudice ongoing investigations.

Moreover, both the ACLUM and the AGO ignore the fact that two other investigations

are currently ongoing, by the Massachusetts Senate Committee on Post Audit and Oversight (“Senate”) and the Office of the Inspector General (“OIG”) for U.S. Department of Homeland Security (“DHS”), that the immediate release of the records would likely prejudice. Presently, the Senate and OIG’s investigations are ongoing and neither has issued a report or findings regarding their investigation. Further, here, as with most law enforcement investigations, witnesses and subjects of such investigations are not normally kept apprised of the status of such investigations. Further, the BCSO believes and expects that, unlike the AGO’s investigation and Report, the OIG is conducting an unbiased, impartial investigation of the Incident, which should be permitted to conclude prior to the disclosure of the records requested by the ACLUM. The issuance of the AGO’s Report while two other investigations are still ongoing evidences the AGO’s improper political motivation and questionable findings and effectively prejudices the BCSO and the Senate and OIG’s investigation by disclosing information regarding the Incident and its opinion of the information it considered.

With respect to the AGO’s Report, the BCSO disagrees with the AGO’s findings and will be issuing a response to it. The BCSO is aware that the AGO has mailed a copy of its Report to the Court and requests that the Court deny the ACLUM’s request to order the BCSO to disclose the records to the ACLUM immediately based on the AGO’s findings. While the BCSO contends that AGO’s actions in filing its Report in this action are inappropriate and prejudicial to the BCSO and the other two ongoing investigations, particularly since the BCSO has not yet issued a formal written response to the AGO’s Opinion, the records sought by the ACLUM should not be disclosed prior to the conclusion of the investigations by the Senate and the OIG. Further, the BCSO requests that the Court not enter the AGO’s Report into the record of this action and to deny the ACLUM’s request for the immediate disclosure of the records to ACLUM



until the conclusion of the Senate and OIG investigations. Moreover, as the AGO sent a copy of its Report directly to the Judge presiding in this action, thus intervening in this action, and was provided a copy of the records at issue in this matter as part of its investigation, the AGO should also be subject to the Protective Order for the Review of Records Submitted Under Seal issued by the Court on October 27, 2020 in order to, *inter alia*, prevent the AGO from directly or indirectly disclosing, disseminating or otherwise making available to any person or entity any of the materials, any portion thereof, or any of the contents of the records at issue herein.

With respect to the ACLUM claim that the BCSO has not complied with the Court's October 27, 2020 Second Order on Plaintiff's Request for Injunctive Relief ("Second Order"); the BCSO denies that it did not comply with the Second Order. The Second Order requires the BCSO to provide a written response and affidavit attesting to the existence or non-existence of email communications requested under Plaintiff's requests # 6, 8 and 10, and the status of the three pending investigations. Filed herewith is the BCSO's Response to the Second Order on Plaintiff's Request for Injunctive Relief and the Affidavit of Lorraine J. Rousseau regarding the records requested under # 6, 8 and 10 of the ACLUM's public records request. Further, as stated above, the status of the three investigations being conducted by outside agencies are that: (1) the AGO has concluded his investigation and issued a Report regarding such on December 15, 2020; (2) the Senate investigation is ongoing and no information is available regarding the status of the investigation; and (3) the OIG's investigation is ongoing and no information is available regarding the status of the investigation.

With respect to any delay in responding to the Court's Second Order, the BCSO states that any delay in responding is largely due to significant constraints being experienced by the BCSO's legal staff at this time, which consists of two full-time attorneys, two part-time attorneys and one part-time law clerk. The two full-time attorneys assigned to handle this matter are also

responsible for handling all civil actions filed by inmates against the BCSO, which currently includes 10 civil actions pending in Bristol and Suffolk Superior Court and five appeals pending in the Massachusetts Appeals Court and the U.S. Court of Appeals for the First Circuit. The five appeals have been particularly constraining as the briefs in four appeals were drafted and filed between July 17, 2020 and November 23, 2020 while the brief in the fifth appeal is due on February 1, 2021 pending a ruling on the BCSO's motion to dismiss appeal. The two-part time attorneys work on other legal actions and administrative legal issues. The part-time law clerk does not handle civil litigation. Further, the BCSO legal staff has been constrained by Covid-19 related employee and administrative matters and protocols.

With respect to the electronic communications requested in the ACLUM's public records request, the ACLUM requests under # 6, 8 and 10 of its public records request:

6. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and any federal department or agency (including the Department of Homeland Security and U.S. Immigration and Customs Enforcement), on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.
8. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Office of the Inspector General for the Department of Homeland Security, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.
10. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Executive Office of the President, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.

The BCSO contends that these requests are overly burdensome and broad with respect to electronic communications ("emails"). Essentially, these requests seek email communications during the period of May 1, 2020 to the present between the BCSO, including Sheriff Thomas

Hodgson and *“BCSO employees”*, and *“any federal department or agency”*, including DHS and ICE, the Office of the Inspector General (“OIG”) for DHS, and the Executive Office of the President, relating to the Incident. A search of the BCSO email system requires the use of search terms and other parameters to find records that may be responsive to the records request.

First, the period time for the search is pretty straightforward, May 1, 2020 to the present. Second, the search requires using search terms to find emails that may contain words related to the Incident. As the ACLUM did not include search terms in its records request, the BCSO is using “May 1, 2020”, “May 1”, “riot”, “disturbance”, “covid” and “detainee” as terms to search for emails. However, these search terms will return numerous emails that may or may not be responsive to the records request. Third, searching for emails to and/or from Sheriff Hodgson and “BCSO employees”, which means *“all”* BCSO employees (approximately 600+ employees), means that the search will return numerous emails that may or may not be responsive to the records request. Fourth, searching for emails to and/or from *“any federal department or agency”*, DHS, ICE, the OIG, and the Executive Office of the President requires using the domain part of email addresses for such agencies, which is the part of an email address that follows the ampersand (“@”) in the email address. Finding emails for “any federal department or agency” requires using “.gov” as a search terms; however, this will return numerous emails that are not responsive to the records requested. Other search terms would include using “dhs”, “oig”, “@ice”, “.ice”, “@who” or “who” (White House Office), and “@eop” or “.eop” (Executive Office of the President).

Presently, a preliminary search for emails using the above search terms and parameters identified over 40,000 emails that may or may not be responsive to the records requested under # 6, 8 and 10. These records undoubtedly include numerous emails that are not responsive to the

records requested and include numerous emails that are duplicates of emails that are responsive and not responsive to the records requested. Regardless of the number of emails found based on the search terms used, each email must be read to determine if it is responsive to the records requested. The work involved in processing the ACLUM's public records request for email communications will be time-consuming and labor intensive and is subject to costs associated with the production of the requested records, as provided under 950 C.M.R. 32.07. The BCSO will not waive fees associated with this extensive production of email communications. If the ACLUM chooses to proceed based on the approximately 40,000 emails identified as described herein, the BCSO will provide the ACLUM with an estimate of the cost to review these emails in order to determine whether each record is responsive to the ACLUM's request.

However, given the vast number of email communications that have been identified as containing terms related to the ACLUM's records request, the BCSO recommends that the ACLUM narrow its records request or provide specific terms to be used to search for the requested emails. If the ACLUM chooses to narrow its search or provide terms to be used to perform a more narrowed search, the BCSO will provide the ACLUM with an estimate of the cost to review these emails in order to determine whether each record is responsive to the ACLUM's request.

With respect to written communications requested under # 6, 8 and 10 that are not emails, very few such records exist. Contemporaneous with the filing of this response, the BCSO has also filed a Response to the Second Order on Plaintiff's Request for Injunctive Relief and Affidavit of Lorraine J. Rousseau, as ordered by the Court, attesting to the existence or non-existence of any materials responsive to these requests. Further, a Second Custodial Index, dated December 23, 2020, listing two records that are being disclosed to the ACLUM as Record Nos.

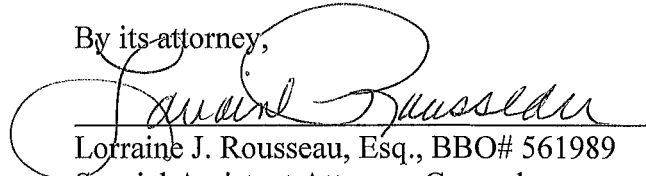
754 and 755, and copies of these two records are served on the ACLUM. The BCSO is continuing to search for any such other written communications (not emails) and will provide a further response on or before January 15, 2021 regarding whether any other such written communications exist.

Date: December 23, 2020

Respectfully submitted,

The Defendant,

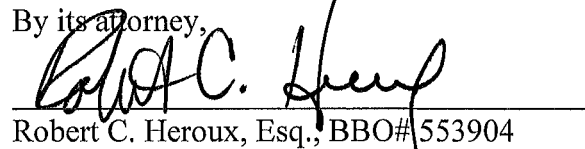
By its attorney,



Lorraine J. Rousseau, Esq., BBO# 561989  
Special Assistant Attorney General  
Bristol County Sheriff's Office  
400 Faunce Corner Road  
North Dartmouth, MA 02747  
Tel. (508) 995-1311; Fax (508) 995-7835  
LorraineRousseau@bcso-ma.org

The Defendant,

By its attorney,

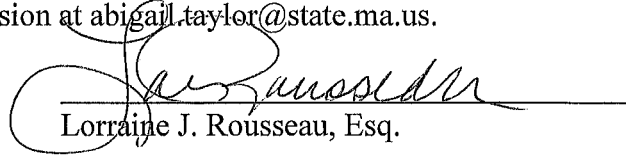


Robert C. Heroux, Esq., BBO# 553904  
Special Assistant Attorney General  
Bristol County Sheriff's Office  
400 Faunce Corner Road  
North Dartmouth, MA 02747  
Tel. (508) 995-1311; Fax (508) 995-7835  
RobertHeroux@bcso-ma.org

CERTIFICATE OF SERVICE

I, Lorraine J. Rousseau, Esq., hereby certify that on this 23<sup>rd</sup> day of December, 2020, I have caused a copy of this response to be served by email transmission to:

Christopher E. Hart, Esq. at [CHart@foleyhoag.com](mailto:CHart@foleyhoag.com);  
Nicholas Anastasi, Esq. at [NAnastasi@foleyhoag.com](mailto:NAnastasi@foleyhoag.com);  
Amanda Hainsworth, Esq. at [amanda.hainsworth@mass.gov](mailto:amanda.hainsworth@mass.gov);  
Matthew Segal, Esq. at [MSegal@aclum.org](mailto:MSegal@aclum.org);  
Daniel L. McFadden, Esq. at [DmcFadden@aclum.org](mailto:DmcFadden@aclum.org);  
Kristin M. Mulvey, Esq. at [kmulvey@alcum.org](mailto:kmulvey@alcum.org);  
Robert Novack, Esq. at [robertnovack@bcso-ma.org](mailto:robertnovack@bcso-ma.org);  
Abigail Taylor, Chief, Civil Rights Division at [abigail.taylor@state.ma.us](mailto:abigail.taylor@state.ma.us).

  
Lorraine J. Rousseau, Esq.

# **EXHIBIT 10**

## Garvey, Stephen

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**From:** Hart, Christopher  
**Sent:** Thursday, January 28, 2021 9:59 AM  
**To:** Lorraine Rousseau  
**Cc:** Garvey, Stephen; Daniel McFadden  
**Subject:** ACLUM v. BCSO - Proposed Search Parameters  
**Attachments:** ACLUM v. BCSO - Proposed Search parameters - 1.28.21.docx

Lorraine,

Thanks for the helpful conversation yesterday – I am hopeful that we can continue to work in good faith to resolve any disputes we might have about BCSO's responses to requests 6, 8, and 10.

To that end, and as I mentioned during our call yesterday, attached is a chart outlining out proposed search parameters, proposing time limitations, domain addresses, custodians, and search terms, where applicable. As I mentioned on the call, we need BCSO's assistance in identifying the appropriate custodians, and would appreciate a proposed list from you.

Please review the attached and let me know if you have any questions or would like to discuss. Should you agree to these parameters, then I suggest that the next step is for you to run searches and let us know what you're seeing in terms of responsive documents so we can determine whether these are the appropriate parameters and what the timing of production will be. I would be grateful for any proposal you might have along these lines on how you will communicate your hit rate, but from my perspective a simple chart or table keyed to the specific requests would be sufficient (e.g., #of documents hit, sample review, % responsive).

Finally, as I mentioned on the call, this communication and proposal are without prejudice to further refinement and/or discovery requests, in such an event, and ACLUM reserves all rights.

Best,  
Chris

**Christopher Escobedo Hart** | Partner  
Pronouns: he, him, his

**FOLEY HOAG LLP**  
Seaport West | 155 Seaport Boulevard | Boston, Massachusetts 02210-2600  
617 832 1232 direct | 202 607 0859 cell | 617 832 1000 main | 617 832 7000 fax  
[chart@foleyhoag.com](mailto:chart@foleyhoag.com) | [www.foleyhoag.com](http://www.foleyhoag.com)



# ACLUM v. BCSO – Proposed Search Parameters

*Please note: these suggested parameters are without prejudice to further refinement, suggestions, or discovery requests.*

Request	Source/Time Period	Domain Names	Custodians	Search Terms
<b>No. 6:</b> All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and any federal department or agency (including the Department of Homeland Security and U.S. Immigration and Customs Enforcement), on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.	Electronic communications, including emails, text messages, instant messages, etc. from <u>May 1 to 15, 2020</u> .	All communications to/from/cc an address at a domain ending in a dhs.gov or doj.gov	<ul style="list-style-type: none"> <li>• Sheriff Hodgson,</li> <li>• Superintendent Souza</li> <li>• Major Bulgar</li> <li>• PIO Johnathan Darling</li> <li>• Director of Immigration Services</li> <li>• Legal department personnel (including Robert Novack and Bruce Assad)</li> <li>• Any other custodians who were in communication with ICE on or after May 1 about the Incident.</li> </ul>	N/A

Request	Source/Time Period	Domain Names	Custodians	Search Terms
	Electronic communications, including emails, text messages, instant messages, etc. from <u>May 16, 2020 to present.</u>	All communications to/from/cc an address at a domain ending in a dhs.gov or doj.gov	Same as above	May 1, 5/1, riot, incident, ICE, Covid, coronavirus, virus, hospital, testing, segregate!, isolate!, discipline!, AGO, Attorney General, Healey, Hainsworth, Taylor, DHS, OIG, Senat!, investigat!, violen!, struggle, K9, “response team”
<b>No. 8:</b> All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Office of the Inspector General for the Department of Homeland Security, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.	Electronic communications, including emails, text messages, instant messages, etc. from <u>May 1, 2020 to present.</u>	All communications to/from/cc a domain ending in oig.dhs.gov.	N/A	N/A
<b>No. 10:</b> All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Executive Office of the President, on the other, concerning the Incident. The requested records include, but	Electronic communications, including emails, text messages, instant messages, etc. from <u>May 1, 2020 to present.</u>	All communications to/from/cc a domain ending in eop.gov (e.g., eop.gov, who.eop.gov, etc.)	Sheriff Hodgson	N/A

Request	Source/Time Period	Domain Names	Custodians	Search Terms
are not limited to, any such electronic mail and any and all attachments thereto.				

# **EXHIBIT 11**

**From:** Lorraine Rousseau <LORRAINEROUSSEAU@bcso-ma.org>  
**Sent:** Wednesday, March 3, 2021 2:23 PM  
**To:** Hart, Christopher <CHart@foleyhoag.com>  
**Subject:** RE: Following up

**\*\*EXTERNAL\*\***

---

Chris,

Here are search results from IT.

**Under No. 6:**

Conducting a search of domain “doj.gov” without any other parameters returned **2 emails**.

Conducting a search of domain “us.doj.gov” without any other parameters returned 29,540 emails. I believe this shows that when using the domain name to search, the system looks only for exactly what you ask for. Usually, when you add a parameter, it narrows the results, it does not generally add to the results.

Conducting a search of domain “dhs.gov” without any other parameters returned 29,650 emails. IT is now running this search with the parameters you provided to narrow the results.

**Under No. 8:**

Conducting a search of domain “oig.dhs.gov” from 05/01/20 to today, the search found **40 emails**.

**Under No. 10:**

Conducting a search of domain “eop.gov” from 05/01/20 to today, there are 0 emails.

Conducting a search of domain “who.eop.gov” from 05/01/20 to today from/to Sheriff Hodgson, the search found **198 emails**.

IT is sending me the 2 emails under No. 6, 40 emails under No. 8, and 198 emails under No. 10 to review.

Lorraine

# **EXHIBIT 12**

## Garvey, Stephen

---

**From:** Hart, Christopher  
**Sent:** Wednesday, March 24, 2021 10:54 AM  
**To:** Lorraine Rousseau  
**Cc:** Daniel McFadden; Garvey, Stephen  
**Subject:** Follow up/status on document production re ACLUM request

Lorraine –

While I appreciate your efforts thus far in locating documents response to ACLUM's Requests 6, 8, and 10, at this point I believe we need to have documents produced to us. The Court provided its Order on October 27, 2020; we had a conversation on January 27 about getting documents produced. We then promptly provided you search parameters. April now approaches, with no end to this process in sight.

Allow me to clarify where BCSO currently stands in its record search:

- You last sent us an update on March 3, 2021, in which you stated that conducting an email database search by domain name returned 40 emails under Request #8, and 198 emails under Request # 10.
- Searching by domain names under Request #6 returned 2 emails including the domain name "doj.gov," 29,540 emails including "us.doj.gov," and 29,650 emails including "dhs.gov."
- You also stated that your IT department would send you all emails found under Requests #8 and #10 and the two emails found under "doj.gov." You further represented that IT would next run our proposed search terms under Request #6.

Please provide an update as soon as possible on whether you have begun to review emails returned under Requests #8 and #10 and a proposed timeline on when you expect to complete that review. Additionally, please clarify whether your IT Department has run our proposed search terms under Request #6.

More than enough time has passed that BCSO should be (and should long have been) prioritizing this process and producing documents. Requests #8 and #10 have returned a number of documents; without conceding that the search was sufficient, please produce these as soon as possible for our review.

Please let me know if you have any questions; I remain as always available to discuss these matters. Barring any questions, please provide a clarification by the end of the week and a timeline for when you will produce the first tranche of documents.

ACLUM reserves all of its rights.

Best,  
Chris Hart

**Christopher Escobedo Hart** | Partner  
Pronouns: he, him, his

Seaport West | 155 Seaport Boulevard | Boston, Massachusetts 02210-2600  
617 832 1232 direct | 202 607 0859 cell | 617 832 1000 main | 617 832 7000 fax  
[chart@foleyhoag.com](mailto:chart@foleyhoag.com) | [www.foleyhoag.com](http://www.foleyhoag.com)

# **EXHIBIT 13**



**REDACTED**

# **EXHIBIT 14**

-----Original Message-----

From: Lorraine Rousseau <[LORRAINEROUSSEAU@bcso-ma.org](mailto:LORRAINEROUSSEAU@bcso-ma.org)>

Sent: Friday, April 9, 2021 3:23 PM

To: Hart, Christopher <[CHart@foleyhoag.com](mailto:CHart@foleyhoag.com)>

Cc: Daniel McFadden ([DmcFadden@aclum.org](mailto:DmcFadden@aclum.org)) <[DmcFadden@aclum.org](mailto:DmcFadden@aclum.org)>; [timothy.walsh@jud.state.ma.us](mailto:timothy.walsh@jud.state.ma.us)

Subject: Re: Email Batch for April 9, 2021

Importance: High

**\*\*EXTERNAL\*\***

Chris,

Yes, they are produced subject to the protective order. Error on my part. I will correct that more formally next week.

Lorraine.

---

From: Hart, Christopher <[CHart@foleyhoag.com](mailto:CHart@foleyhoag.com)>

Sent: Friday, April 9, 2021 1:17:44 PM

To: Lorraine Rousseau

Cc: Daniel McFadden

Subject: RE: Email Batch for April 9, 2021

Lorraine, thank you for this email and the 6 others I received this afternoon with attachments. We will review and let you know if we have any questions or issues with the documents.

Just for the sake of clarity, we understand the documents you provided to me today are being produce by BCSO as public records pursuant to ACLUM's public records request, and are not subject to the Court's October 27, 2020 (or any other) protective order.

Thanks,

Chris

---

From: Lorraine Rousseau <[LORRAINEROUSSEAU@bcso-ma.org](mailto:LORRAINEROUSSEAU@bcso-ma.org)>

Sent: Friday, April 9, 2021 12:41 PM

To: Hart, Christopher <[CHart@foleyhoag.com](mailto:CHart@foleyhoag.com)>

Subject: FW: Email Batch for April 9, 2021

**\*\*EXTERNAL\*\***

Chris,

I could only send the pst file in a zipped / compressed format. If you have problems opening it, please let me know and I'll get it fixed for you.

Thank you,

Lorraine

Have a nice weekend!

From: Lorraine Rousseau

Sent: Friday, April 09, 2021 12:39 PM

To: Hart, Christopher ([CHart@foleyhoag.com](mailto:CHart@foleyhoag.com)<<mailto:CHart@foleyhoag.com>>)

<[CHart@foleyhoag.com](mailto:CHart@foleyhoag.com)<<mailto:CHart@foleyhoag.com>>>

Subject: Email Batch for April 9, 2021

Any tax advice included in this document and its attachments was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify Foley Hoag LLP immediately -- by replying to this message or by sending an email to [postmaster@foleyhoag.com](mailto:postmaster@foleyhoag.com) -- and destroy all copies of this message and any attachments without reading or disclosing their contents. Thank you.

For more information about Foley Hoag LLP, please visit us at [www.foleyhoag.com](http://www.foleyhoag.com).

# **EXHIBIT 15**

From: Lorraine Rousseau LORRAINEROUSSAU@bcso-ma.org"  
Sent: Wednesday, March 3, 2021 2:23 PM"  
To: Hart, Christopher CHart@foleyhoag.com"  
Subject: RE: Following up"

**\*\*EXTERNAL\*\***

-----  
Chris,"

Here are search results from IT."

Under No. 6:"

Conducting a search of domain "doj.gov" without any other parameters returned **2 emails**."

Conducting a search of domain "us.doj.gov" without any other parameters returned 29,540 emails. I believe this shows that when using the domain name to search, the system looks only for exactly what you ask for. Usually, when you add a parameter, it narrows the results, it does not generally add to the results."

Conducting a search of domain "dhs.gov" without any other parameters returned 29,650 emails. IT is now running this search with the parameters you provided to narrow the results."

Under No. 8:"

Conducting a search of domain "oig.dhs.gov" from 05/01/20 to today, the search found **40 emails**."

Under No. 10:"

Conducting a search of domain "eop.gov" from 05/01/20 to today, there are 0 emails."

Conducting a search of domain "who.eop.gov" from 05/01/20 to today from/to Sheriff Hodgson, the search found **198 emails**."

IT is sending me the 2 emails under No. 6, 40 emails under No. 8, and 198 emails under No. 10 to review.

Lorraine

# **EXHIBIT 16**

United States Department of Homeland Security  
Bureau of Immigration & Customs Enforcement

*Intergovernmental Service Agreement for Housing Federal Detainees*

1. Agreement Number ACB-0-H-0026	2. Effective as of 1 October 2003	3. Modification Number 03
4. Issuing INS Office Address:  Department of Homeland Security 70 Kimball Avenue South Burlington, VT 05403-6813  Contact Person: Ned R Ross Phone: (802) [REDACTED] b2Low		5. City/County/State Government:  Bristol County Correctional Facility 400 Faunce Corner Road N. Dartmouth, MA 02747  Contact Person: Peter Perroncello Phone: (508) [REDACTED] b6
6. Description of Modification (EXCEPT AS SPECIFICALLY PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE AGREEMENT IDENTIFIED IN BLOCK 1 REMAIN UNCHANGED): The purpose of this modification is to add payment provisions for transportation and escort of aliens, and to modify medical services requirements for preauthorization and payment for off-site medical treatment, payment for guarding/escort for off-site medical treatments, and other minor changes to medical service requirements. Accordingly, the following changes are made:  (1) Article III Covered Services is modified by adding the following paragraph E captioned "Escort and Transportation Services" E. <u>Escort and Transportation Services</u> . The Service Provider will provide, upon request and as scheduled by BICE, necessary escort and transportation services for BICE detainees to and from designated locations. Escort services will be required for escorting detainees to court hearings, escorting witnesses to the courtroom and escorting detainees to various other locations required for medical services and/or deportation. Transportation services shall be performed by qualified, sworn law enforcement or correctional officer personnel employed by the Service Provider and under its policies, procedures and authorities.		
Continued on Page 2		
<input type="checkbox"/> Local Government is <u>not</u> required to sign this document <input checked="" type="checkbox"/> Local Government is required to sign this document and return <u>1</u> copie(s) to the issuing office.		
7. Local Government:  [Signature] 10-22-03 Sheriff Thomas M. Hodgson Signature Date Name and Title (Type or print)  (For additional signatures, please attach another page)		
8. Federal Government:  [Signature] 1/23/04 ROGER E FREGEAU Contracting Officer Signature Date Name (Type or print)		



BICE shall reimburse the Service Provider at the rate of \$25/hour per guard if the Service Provider is required to provide such service. Transportation costs shall be allowed at the rate of 36 cents per mile when transportation is provided using Service Provider's vehicles. When utilizing BICE vehicles the Service Provider will be reimbursed for actual hours provided only. All costs for escort and transportation services shall be listed separately. This provision applies to all transportation and escort excluding transportation of detainees for court appearances in Boston, MA and Providence, RI. Payment for transport and escort services for court appearances in Boston and Providence is included in the daily rate per item 6 in the original agreement.

- (2) Article VI Medical Services is replaced in its entirety by the following:

**Article VI. Medical Services**

A. Auspices of Health Authority. The Service Provider shall provide BICE detainees with on-site health care services under the control of a local government designated Health Authority. The Service Provider shall ensure equipment, supplies, and materials, as required by the Health Authority, are furnished to deliver health care on-site.

B. Level of Professionalism. The Service Provider shall ensure that all health care service providers utilized for BICE detainees hold current licenses, certifications, and/or registrations with the State and/or City where they are practicing. The Service Provider shall retain a registered nurse to provide health care and sick call coverage unless expressly stated otherwise in this Agreement. In the absence of a health care professional, non-health care personnel may refer detainees to health care resources based upon protocols developed by United States Public Health Service (USPHS) Division of Immigration Health Service (DIHS). Healthcare or health trained personnel may perform screenings.

C. Access to health care. The Service Provider shall ensure that on-site medical and health care coverage as defined below is available for all BICE detainees at the facility for at least eight (8) hours per day, seven (7) days per week. The Service Provider shall ensure that its employees solicit each detainee for health complaints and deliver the complaints in writing to the medical and health care staff. The Service Provider shall furnish the detainees instructions in his or her native language for gaining access to health care services as prescribed in Article III, Paragraph D.

D. On-site health care. The Service Provider shall furnish on-site health care under this Agreement. The Service Provider shall not charge any BICE detainee an additional fee or co-payment for medical services or treatment provided at the Service Provider's facility. The Service Provider shall ensure that BICE detainees receive no lower level of on-site medical care and services than those it provides to local inmates. On-site health care services shall include arrival screening within 24 hours of arrival at the facility, sick call coverage, provision of over-the-counter medications, treatment of minor injuries (e.g., lacerations, sprains, contusions), treatment of special needs and mental health assessments. Detainees with chronic conditions shall receive prescribed treatment and follow-up care.

E. Arrival screening. Arrival screening shall include at a minimum TB symptom screening, planting of the Tuberculin Skin Test (PPD), and recording the history of past and present illnesses (mental and physical).

Continued on Page 3

F. Unacceptable medical conditions. If the Service Provider determines that a BICE detainee has a medical condition which renders that person unacceptable for detention under this Agreement, (for example, contagious disease, condition needing life support, uncontrollable violence), the Service Provider shall notify BICE. Upon such notification the Service Provider shall allow BICE reasonable time to make the proper arrangements for further disposition of that detainee.

G. DIHS Pre-approval for non-emergent off-site care. The DIHS acts as the agent and final health authority for BICE on all off-site detainee medical and health related matters. The relationship of the DIHS to the detainee equals that of physician to patient. The Service Provider shall release any and all medical information for BICE detainees to the DIHS representatives upon request. The Service Provider shall solicit DIHS approval before proceeding with non-emergency, off-site medical care (e.g. off site lab testing, eyeglasses, cosmetic dental prosthetics, dental care for cosmetic purposes). The Service Provider shall submit supporting documentation for non-routine, off-site medical/health services to DIHS. For medical care provided outside the facility, the DIHS may determine that an alternative medical provider or institution is more cost-effective or more aptly meets the needs of BICE and the detainee. The BICE may refuse to reimburse the Service Provider for non-emergency medical costs incurred that were not pre-approved by the DIHS. The Service Provider shall send all requests for pre-approval for non-emergency off-site care to:

Immigration Health Services  
Managed Care Program  
Fax: 202-318-0080  
Managed Care Coordinators: 1-888-718-8947

The Service Provider is to notify all medical providers approved to furnish off-site health care of detainees to submit their bills in accordance with instructions provided to:

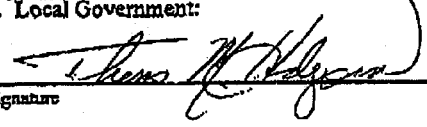

Immigration Health Services  
PMB 468  
1220 L STREET N.W.  
Washington, DC 20005-4018  
Medical Claims Status Inquiry: 1-888-238-8163

More information is available at the PHS DIHS web site at:  
<http://inshealth.hrsa.gov/provider/provider.html>

H. Emergency medical care. The Service Provider shall furnish 24-hour emergency medical care and emergency evacuation procedures. In an emergency, the Service Provider shall obtain the medical treatment required to preserve the detainee's health. The Service Provider shall have access to an off site emergency medical provider at all times. The Health Authority of the Service Provider shall notify the DIHS Managed Care Coordinator by calling the telephone number listed in paragraph G above as soon as possible, and in no case more than seventy-two hours after detainee receipt of such care. The Health Authority will obtain pre-authorization from the DIHS Managed Care Coordinator for service(s) beyond the initial emergency situation.

Continued on Page 4

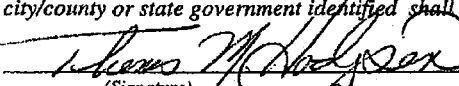
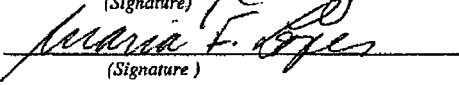
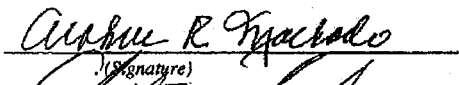
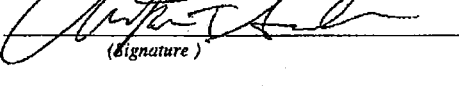
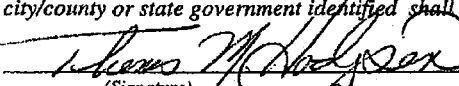
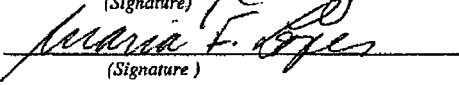
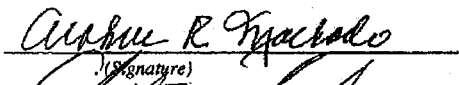
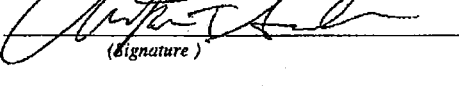
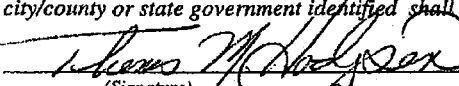
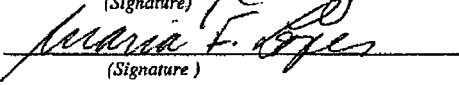
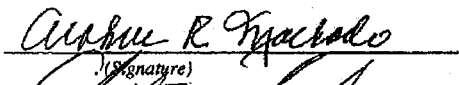
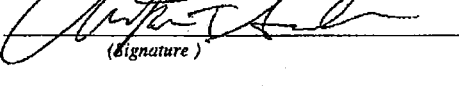



United States Department of Justice  
Immigration & Naturalization Service*Intergovernmental Service Agreement for Housing Federal Detainees*

1. Agreement Number <b>ACB-0-H-0026</b>	2. Effective as of date in block 3	3. Modification Number <b>01</b>
4. Issuing INS Office Address:  Immigration & Naturalization Service 70 Kimball Avenue South Burlington, VT 05403-6813  Contact Person: Roger E. Fregeau, Contracting Officer Phone: (802) b2Low		5. City/County/State Government:  Bristol County Correctional Facility 400 Farnce Corner Road N. Dartmouth, MA 02747  Contact Person: Thomas M. Hodgson, Sheriff Phone: (508) b6
6. Description of Modification (EXCEPT AS SPECIFICALLY PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE AGREEMENT IDENTIFIED IN BLOCK 1 REMAIN UNCHANGED):  The purpose of this Modification 01 is to include the United States Marshals Service (USMS) as a participant in this Intergovernmental Service Agreement. This change is made specifically to authorize USMS to use the Bristol County Correctional Facility to detain persons in the custody of the USMS. Services will be provided to the USMS on the same basis as provided to the INS including the same Detainee Day Rate of \$75.00 per day. INS remains the contracting entity on behalf of the U S Government for this IGSA.  Specific Changes are as follows:  1. <b>ARTICLE VI MEDICAL SERVICES:</b> For detainees in the custody of the USMS requiring non emergency off-site medical care, the Service provider shall send pre-approval requests to: U.S. Marshals Service 55 Pleasant Street Concord, NH 03301  2. <b>ARTICLE XII ENROLLMENT, INVOICING, AND PAYMENT:</b> Invoices for USMS detainees, in the form described in paragraph B of this article, shall be sent to the following address:  U.S. Marshals Service 55 Pleasant Street Concord, NH 03301		
<input type="checkbox"/> Local Government is not required to sign this document <input checked="" type="checkbox"/> Local Government is required to sign this document and return <u>1</u> copies to the issuing office.		
7. Local Government:   Signature <u>8/19/02</u> Date <u>Thomas M. Hodgson, Sheriff</u> Name and Title (Type or print)  (For additional signatures, please attach another page)		
8. Federal Government:   Contracting Officer Signature <u>8/19/02</u> Date <u>Roger E. Fregeau</u> Name (Type or print)		

TOTAL P.02

United States Department of Justice  
Immigration & Naturalization Service

*Intergovernmental Service Agreement for Housing Federal Detainees*

1. Agreement Number ACB-0-H-0026	2. Effective as of date in block 11	3. Requisition Number (If applicable)												
4. Issuing INS Office Address:  Immigration & Naturalization Service 70 Kimball Avenue South Burlington, VT 05403-6813  Contact Person: Roger E. Fregeau, Contracting Officer Phone: (802) b2Low	5. City/County/State Government:  Bristol County Correctional Facility 400 Faunce Corner Road No. Dartmouth, MA 02747  Contact Person: Thomas M. Hodgson, Sheriff Phone: (508) b6													
6. Services Covered by this Agreement: Housing, security, subsistence, clothing and medical care of persons detained by the Immigration & Naturalization Service in accordance with the terms and conditions set forth in this Agreement. Includes transportation of detainees for court appearances in Boston, MA and Providence, RI as required.	7. Detainee Day Rate: \$ <u>75.00</u> 8. Estimated detainee days _____ per year													
9. Type of Detainee: <input type="checkbox"/> Adult Male <input type="checkbox"/> Adult Female														
10. City/County or State Government Certification:  <i>To the best of my (our) knowledge and belief, data submitted in support of this agreement is true and correct; this agreement has been duly authorized by the governing body of the city/county or state government identified in block 5 above. The city/county or state government identified shall comply with all provisions set forth herein.</i> <table border="0"><tr><td> (Signature)</td><td><u>4-18-00</u> (Date)</td><td><u>THOMAS M. HODGSON</u> Sheriff (Name &amp; Title typed or printed)</td></tr><tr><td> (Signature)</td><td><u>5-2-00</u> (Date)</td><td><u>MARIA F. LOPES</u> County Commissioner (Name &amp; Title typed or printed)</td></tr><tr><td> (Signature)</td><td><u>5-2-00</u> (Date)</td><td><u>ARTHUR R. MACHADO</u> County Commissioner (Name &amp; Title typed or printed)</td></tr><tr><td> (Signature)</td><td><u>5-2-00</u> (Date)</td><td><u>CHRISTOPHER SAUNDERS</u> County Commissioner (Name &amp; Title typed or printed)</td></tr></table> (For additional signatures, please attach another page.)			 (Signature)	<u>4-18-00</u> (Date)	<u>THOMAS M. HODGSON</u> Sheriff (Name & Title typed or printed)	 (Signature)	<u>5-2-00</u> (Date)	<u>MARIA F. LOPES</u> County Commissioner (Name & Title typed or printed)	 (Signature)	<u>5-2-00</u> (Date)	<u>ARTHUR R. MACHADO</u> County Commissioner (Name & Title typed or printed)	 (Signature)	<u>5-2-00</u> (Date)	<u>CHRISTOPHER SAUNDERS</u> County Commissioner (Name & Title typed or printed)
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 (Signature)	<u>5-2-00</u> (Date)	<u>CHRISTOPHER SAUNDERS</u> County Commissioner (Name & Title typed or printed)												
11. This agreement is hereby approved and accepted for THE UNITED STATES OF AMERICA, by direction of the COMMISSIONER OF THE IMMIGRATION & NATURALIZATION SERVICE. <table border="0"><tr><td> (Contracting Officer Signature)</td><td><u>6/2/00</u> (Date)</td><td><u>ROGER E. FREGEAU</u> (Name typed or printed)</td></tr></table>			 (Contracting Officer Signature)	<u>6/2/00</u> (Date)	<u>ROGER E. FREGEAU</u> (Name typed or printed)									
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**Department of Justice**  
**Immigration and Naturalization Service**  
***Intergovernmental Service Agreement for Housing Federal Detainees***

**Article I. Purpose**

A. Purpose. The purpose of this Intergovernmental Service Agreement (IGSA) is to establish an Agreement between the Immigration and Naturalization Service (INS), a component of the Department of Justice, and the Bristol County Correctional Facility (*Service Provider*) for the detention and care of persons detained under the authority of the Immigration and Nationality Act, as amended. The term "Parties" is used in this Agreement to refer jointly to INS and the Service Provider.

B. Responsibilities. This Agreement sets forth the responsibilities of INS and the Service Provider. The Agreement states the services the Service Provider shall perform satisfactorily to receive payment from INS at the prescribed rate.

C. Guidance. The Parties will determine the detainee day rate in accordance with OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (Attachment A) and the INS Cost Statement (Attachment B).

**Article II. General**

A. Funding. The obligation of INS to make payments to the Service Provider is contingent upon the availability of Federal funds. The INS will, however, neither present detainees to the Service Provider nor direct performance of any other services until the INS has the appropriate funding.

B. Subcontractors. The Service Provider shall notify and obtain approval from the INS if it intends to house INS detainees in a facility other than that specified on the cover page of this document. If either that facility, or any future one, is operated by an entity other than the Service Provider, INS shall treat that entity as a subcontractor to the Service Provider. The Service Provider shall ensure that any subcontract includes all provisions of this Agreement, and shall provide INS with copies of all subcontracts in existence during any part of the term of this Agreement. The INS will not either accept invoices from, or make payments to, a subcontractor.

C. Consistent with law. Any provision of this Agreement contrary to applicable statutes, regulation, policies, or judicial mandates is null and void, but shall not necessarily affect the balance of the Agreement.

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**Article III. Covered Services**

A. Bed space. The Service Provider shall provide male/female beds on a space available basis. The Service Provider shall house all detainees as determined within the classification system. The INS will be financially liable only for the actual detainee days as defined in Paragraph C. of this Article.

B. Basic needs. The Service Provider shall provide adult INS detainees (gender as specified in Paragraph A. of this Article) with safekeeping, housing, subsistence, medical and other services in accordance with this Agreement. In providing these services, the Service Provider shall ensure compliance with all applicable laws, regulations, fire and safety codes, policies, and procedures. If the Service Provider determines that INS has delivered a person for custody who is under the age of 18, the Service Provider shall not house that person with adult detainees, and shall notify the INS immediately. The types and levels of services shall be those the Service Provider routinely affords to other inmates.

C. Unit of service and financial liability. The unit of service will be a "detainee day" (one person per day). The detainee day begins on the date of arrival. The Service Provider may bill INS for the date of arrival but not the date of departure. For example: If a detainee is brought in at 1900 Sunday and is released at 0700 on Monday, the Service Provider may bill for 1 detainee day. If a detainee is brought in at 0100, Sunday and is released at 2359 Monday, the Service Provider may bill for only 1 detainee day. The INS shall be responsible to pay for only those beds actually occupied.

D. Interpretive services. The Service Provider shall make special provisions for non-English speaking, handicapped or illiterate detainees. The INS will reimburse the Service Provider for any costs associated with providing commercial written or telephone language interpretive services, and upon request, will assist the Service Provider in obtaining translation services. The Service Provider shall provide all instructions verbally (in English or the detainee's native language as appropriate) to detainees who cannot read. The Service Provider shall include the amount that the Service Provider paid for such services on their regular monthly invoice. The Service Provider shall not use detainees for translation services, except in emergency situations. If the Service Provider uses a detainee for translation service, it shall notify INS within 24 hours.

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**Article IV. Receiving and Discharging Detainees**

A. Required activity. The Service Provider shall receive and discharge detainees only from and to either properly identified INS personnel or other properly identified Federal law enforcement officials with prior authorization from INS. Presentation of U.S. Government identification shall constitute proper identification. The Service Provider shall furnish receiving and discharging services twenty-four (24) hours per day, seven (7) days a week. The INS shall furnish the Service Provider with reasonable notice of receiving or discharging detainee(s). The Service Provider shall ensure positive identification and recording of detainees and INS officers. The Service Provider shall not permit medical or emergency discharges except through coordination with on-duty INS officers.

B. Restricted release of detainees. The Service Provider shall not release INS detainees from its physical custody to any persons other than those described in Paragraph A of this Article for any reason, except for either medical, other emergent situations, or in response to a federal writ of *habeas corpus*. If an INS detainee is sought for federal, state or local court proceedings, only INS may authorize release of the detainee for such purposes. The Service Provider shall contact INS immediately regarding any such requests.

C. Service Provider right of refusal. The Service Provider retains final and absolute right either to refuse acceptance, or request removal, of any detainee exhibiting violent or disruptive behavior, or of any detainee found to have a medical condition that requires medical care beyond the scope of the Service Provider's health provider. In the case of a detainee already in custody, the Service Provider shall notify the INS and request such removals, and shall allow the INS reasonable time to make alternative arrangements for the detainee.

D. Emergency evacuation. In the event of an emergency requiring evacuation of the Facility, the Service Provider shall evacuate INS detainees in the same manner, and with the same safeguards, as it employs for persons detained under the Service Provider's authority. The Service Provider shall notify INS within two hours of such evacuation.

**Article V. Minimum Service Standards**

The Service Provider shall:

A. house INS detainees in a facility that complies with all applicable fire and safety codes as well as ensure continued compliance with those codes throughout the duration of the Agreement.

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- B. provide guard personnel to ensure that there is a 24 hour visual supervision of detainees when housed in a dormitory type setting. The Service Provider shall visually and physically check detainees in individual cells at least hourly.
- C. segregate detainees in custody by gender and by risk of violence to other detainees.
- D. provide a mattress, with a mattress cover, and when appropriate, a blanket to each detainee held overnight. (Attachment C)
- E. provide a minimum of three nutritionally balanced meals in each 24 hour period for each detainee. These meals shall provide a total of at least 2,400 calories per 24 hours. There will be no more than 14 hours or fewer than 4 hours between meals. The Service Provider will provide a minimum of two hot meals in this 24 hour period.
- F. provide medical services as described in Article VI below. (Attachment C)
- G. provide a mechanism for confidential communication between INS detainees and INS officials regarding their case status and custody issues. The mechanism may be through electronic, telephonic, or written means, and shall ensure the confidentiality of the issue and the individual detainee.
- H. afford INS detainees, indigent or not, reasonable access to public telephones for contact with attorneys, the courts, foreign consular personnel, family members and representatives of *pro bono* organizations. (Attachment C)
- I. permit INS detainees reasonable access to presentations by legal rights groups and groups recognized by INS consistent with good security and order. (Attachment C)
- J. afford each INS detainee with reasonable access to legal materials for his or her case. The INS will provide the required materials. The Service Provider will provide space to accommodate legal materials at no additional cost to INS. (Note: The INS may waive this requirement where the average length of detention is 30 days or less.)(Attachment C)
- K. afford INS detainees reasonable visitation with legal counsel, foreign consular officers, family members, and representatives of *pro bono* organizations. (Attachment C)
- L. provide INS detainees with access to recreational programs and activities as described in the INS Recreation Standards (Attachment C) to the extent possible, under appropriate conditions of security and supervision to protect their safety and welfare.



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**Article VI. Medical Services**

A. Auspices of Health Authority. The Service Provider shall provide INS detainees with onsite health care services under the control of a local government designated Health Authority. The Service Provider shall ensure equipment, supplies, and materials, as required by the Health Authority, are furnished to deliver health care on site.

B. Level of Professionalism. The Service Provider shall ensure that all health care service providers utilized for INS detainees hold current licenses, certifications, and/or registrations with the State and/or City where they are practicing. The Service Provider shall retain a registered nurse to provide health care and sick call coverage unless expressly stated otherwise in this Agreement. In the absence of a health care professional, non-health care personnel may refer detainees to health care resources based upon protocols developed by United States Public Health Service (USPHS) Division of Immigration Health Service (DIHS). Healthcare or health trained personnel may perform screenings.

C. Access to health care. The Service Provider shall ensure that on-site medical and health care coverage as defined below is available for all INS detainees at the facility for at least eight (8) hours per day, seven (7) days per week. The Service Provider shall ensure that its employees solicit each detainee for health complaints and deliver the complaints in writing to the medical and health care staff. The Service Provider shall furnish the detainees instructions in his or her native language for gaining access to health care services as prescribed in Article III, Paragraph D.

D. On-site health care. The Service Provider shall furnish on-site health care under this Agreement. The Service Provider shall not charge any INS detainee an additional fee or co-payment for medical services or treatment provided at the Service Provider's facility. The Service Provider shall ensure that INS detainees receive no lower level of on-site medical care and services than those it provides to local inmates. Onsite health care services shall include arrival screening within 24 hours of arrival at the Facility, sick call coverage, provision of over-the-counter medications, treatment of minor injuries (e.g., lacerations, sprains, contusions), treatment of special needs and mental health assessments. Detainees with chronic conditions shall receive prescribed treatment and follow-up care.

E. Arrival screening. Arrival screening shall include at a minimum TB symptom screening, planting of the Tuberculin Skin Test (PPD), and recording the history of past and present illnesses(mental and physical).

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F. Unacceptable medical conditions. If the Service Provider determines that an INS detainee has a medical condition which renders that person unacceptable for detention under this Agreement, (for example, contagious disease, condition needing life support, uncontrollable violence), the Service Provider shall notify INS. Upon such notification the Service Provider shall allow INS reasonable time to make the proper arrangements for further disposition of that detainee.

G. DIHS Pre-approval for non-emergent off-site care. The DIHS acts as the agent and final health authority for INS on all off-site detainee medical and health related matters. The relationship of the DIHS to the detainee equals that of physician to patient. The Service Provider shall release any and all medical information for INS detainees to the DIHS representatives upon request. The Service Provider shall solicit DIHS approval before proceeding with non-emergency, off-site medical care (e.g. off site lab testing, eyeglasses, cosmetic dental prosthetics, dental care for cosmetic purposes). The Service Provider shall submit supporting documentation for non-routine, off-site medical/health services to DIHS. (See Attachment D.) For medical care provided outside the facility, the DIHS may determine that an alternative medical provider or institution is more cost-effective or more aptly meets the needs of INS and the detainee. The INS may refuse to reimburse the Service Provider for non-emergency medical costs incurred that were not pre-approved by the DIHS. The Service Provider shall send all requests for pre-approval for non-emergent off-site care to:

Annette Kolter  
Managed Care Coordinator  
c/o USINS  
811 Canal Street  
Manchester, NH 03101  
Telephone: (603) [REDACTED] b2Low  
Fax: (603) 666-8511

The Service Provider is to notify all medical providers approved to furnish off-site health care of detainees to submit their bills in accordance with instructions provided to:

UP & UP Health Services  
DIHS Claims  
P.O. Box 10250  
Gaithersburg, MD 20898-0250  
Telephone: (888) 383-3922  
Fax: (888) 383-3957

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H. Emergency medical care. The Service Provider shall furnish 24 hour emergency medical care and emergency evacuation procedures. In an emergency, the Service Provider shall obtain the medical treatment required to preserve the detainee's health. The Service Provider shall have access to an off site emergency medical provider at all times. The Health Authority of the Service Provider shall notify the DIHS Managed Care Coordinator by calling (603) 666-7375 as soon as possible, and in no case more than seventy-two hours after detainee receipt of such care. The Health Authority will obtain pre-authorization from the DIHS Managed Care Coordinator for service(s) beyond the initial emergency situation.

I. Off site guards. The Service Provider shall, without any additional charge to INS, provide guards during the initial 8 hours detainees are admitted to an outside medical facility. If negotiated with INS, the Service Provider shall provide guards beyond the initial 8-hour period, at the regular hourly rate of those guards. Absent such an arrangement, INS will be responsible for providing the guards at the end of the initial 8-hour period. The Service Provider shall not, however, remove its guards until INS personnel relieve them. The Service Provider shall submit a separate invoice for guard services beyond the initial 8 hours with its regular monthly billing.

J. DIHS visits. The Service Provider shall allow DIHS Managed Care Coordinators reasonable access to its facility for the purpose of liaison activities with the Health Authority and associated Service Provider departments.

**Article VII. No Employment of Unauthorized Aliens**

Subject to existing laws, regulations, Executive Orders, and addenda to this Agreement, the Service Provider shall not employ aliens unauthorized to work in the United States. Except for maintaining personal living areas, persons detained for INS shall not be required to perform manual labor.

**Article VIII. Period of Performance**

This Agreement shall remain in effect indefinitely, or until terminated by either Party upon 60 days written notice, unless an emergency situation requires the immediate relocation of detainees, or the Parties agree to a shorter period under the procedures prescribed in Article X.

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**Article IX. Inspection**

A. Jail Agreement Inspection Report. The Service Provider shall allow INS to conduct inspections of the facility, as required, to ensure an acceptable level of services and acceptable conditions of confinement as determined by the INS. No notice to the Service Provider is required prior to an inspection. The INS will conduct such inspections in accordance with the Jail Agreement Inspection Report a copy of which is included as Attachment E to this Agreement. The Jail Inspection Report stipulates minimum requirements for fire/safety code compliance, supervision, segregation, sleeping utensils, meals, medical care, confidential communication, telephone access, legal counsel, legal library, visitation, and recreation. The INS will share findings of the inspection with the Service Provider's facility administrator to promote improvements to facility operation, conditions of confinement, and level of service.

B. Possible termination. If the Service Provider fails to remedy deficient service INS identifies through inspection, INS may terminate this Agreement without regard to the provisions of Articles VIII and X.

C. Share findings. The Service Provider shall provide INS copies of facility inspections, reviews, examinations, and surveys performed by accreditation sources.

**Article X. Modifications and Disputes**

A. Modifications. Actions other than those designated in this Agreement will not bind or incur liability on behalf of either party. Either party may request a modification to this agreement by submitting a written request to the other. A modification will become part of this Agreement only after the INS Regional Contracting Officer and the authorized signatory of the Service Provider have approved it in writing.

B. Disputes. The INS Regional Contracting Officer and the authorized signatory of the Service Provider are the parties to settle disputes, questions, and concerns arising from this Agreement. Settlement of disputes shall be memorialized in a written modification between the INS Regional Contracting Officer and authorized signatory of the Service Provider.

**Article XI. Adjusting the Detainee Day Rate**

The INS shall reimburse the Service Provider at the detainee day rate shown on the cover page of this document. The Parties may adjust that rate 12 months after the date of signing, and every 12 months thereafter. The Parties shall base the rate and adjustments on the principles set forth in OMB Circular A-87. Such adjustments shall be effective on the first day of the month following execution of the modification.

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**Article XII. Enrollment, Invoicing, and Payment**

A. Enrollment in electronic funds transfer. The Service Provider shall provide the INS office with the information needed to make payment by electronic funds transfer (EFT). Since January 1, 1999, INS has made all payments only by EFT. The Service Provider shall identify their financial institution and related information on Standard Form 3881, Automated Clearing House (ACH) Vendor/Miscellaneous Payment Enrollment Form, (Attachment F). The Service Provider shall submit a completed SF 3881 to the INS payment office prior to submitting its initial request for payment under this Agreement. If the EFT data changes, the Service Provider shall be responsible for providing updated information to the INS payment office.

B. Invoicing. The Service Provider shall submit an original itemized invoice containing the following information: the name and address of the facility; the name of each INS detainee, his or her A-number, and his or her specific dates of detention; the total number of detainee days; the daily rate; the total detainee days multiplied by the daily rate ; an itemized listing of all other charges; and the name, title, address, and phone number of the local official responsible for invoice preparation. The Service Provider shall submit monthly invoices within the first ten working days of the month following the calendar month when it provided the services, to:

Immigration & Naturalization Service  
Boston District Office  
JFK Federal Building  
Government Center  
Boston, MA 02203-0701  
ATTN: Deportation Unit  
Phone: (617) 565-3304  
Fax: (617) 565-4128

C. Payment. The INS will transfer funds electronically through either an Automated Clearing House subject to the banking laws of the United States, or the Federal Reserve Wire Transfer System. The Prompt Payment Act applies to this Agreement. The Act requires INS to make payments under this Agreement the 30<sup>th</sup> calendar day after the Deportation office receives a complete invoice. Either the date on the Government's check, or the date it executes an electronic transfer of funds, shall constitute the payment date. The Act requires INS to pay interest on overdue payments to the Service Provider. The INS will determine any interest due in accordance with the Act.

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**Article XIII. Government Furnished Property**

A. Federal Property Furnished to the Service Provider. The INS may furnish federal property and equipment to the Service Provider. Accountable property remains titled to INS and shall be returned to the custody of INS upon termination of the agreement. The suspension of use of bed space made available to INS is agreed to be grounds for the recall and return of any or all government furnished property.

B. Service Provider Responsibility. The Service Provider shall not remove INS property from the facility without the prior written approval of INS. The Service Provider shall report any loss or destruction of such property immediately to INS.

**Article XIV. Hold Harmless and Indemnification Provisions**

A. Service Provider held harmless. The INS shall, subject to the availability of funds, save and hold the Service Provider harmless and indemnify the Service Provider against any and all liability claims and costs of whatever kind and nature, for injury to or death of any person(s), or loss or damage to any property, which occurs in connection with or incident to performance of work under the terms of this Agreement, and which results from negligent acts or omissions of INS officers or employees, to the extent that INS would be liable for such negligent acts or omissions under the Federal Tort Claims Act, 28 USC 2691 *et seq.*

B. Federal Government held harmless. The Service Provider shall save and hold harmless and indemnify federal government agencies to the extent allowed by law against any and all liability claims, and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of the occupancy, use, service, operation or performance of work under the terms of this Agreement, resulting from the negligent acts or omissions of the Service Provider, or any employee, or agent of the Service Provider. In so agreeing, the Service Provider does not waive any defenses, immunities or limits of liability available to it under state or federal law.

C. Defense of suit. In the event a detainee files suit against the Service Provider contesting the legality of the detainee's incarceration and/or immigration/citizenship status, INS shall request that the U.S. Attorney's Office, as appropriate, move either to have the Service Provider dismissed from such suit, to have INS substituted as the proper party defendant, or to have the case removed to a court of proper jurisdiction. Regardless of the decision on any such motion, INS shall request that the U.S. Attorney's Office be responsible for the defense of any suit on these grounds.

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D. INS recovery right. The Service Provider shall do nothing to prejudice INS' right to recover against third parties for any loss, destruction of, or damage to U.S. Government property. Upon request of the Contracting Officer, the Service Provider shall, at the INS' expense, furnish to INS all reasonable assistance and cooperation, including assistance in the prosecution of suit and execution of the instruments of assignment in favor of INS in obtaining recovery.

**Article XV. Financial Records**

A. Retention of records. All financial records, supporting documents, statistical records, and other records pertinent to contracts or subordinate agreements under this Agreement shall be retained by the Service Provider for at least three years for purposes of federal examinations and audit. The 3-year retention period begins at the end of the first year of completion of service under the Agreement. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular 3-year period, whichever is later.

B. Access to records. The INS and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers or other records of the Service Provider or its sub-recipients. Which are pertinent to the award, in order to make audits, examinations, excerpts, and transcripts. The rights of access must not be limited to the required retention period, but shall last as long as the records are retained.

C. Delinquent debt collection. The INS will hold the Service Provider accountable for any overpayment, or any breach of this Agreement that results in a debt owed to the Federal Government. The INS shall apply interest, penalties, and administrative costs to a delinquent debt owed to the Federal Government by the Service provider pursuant to the Debt Collection Improvement Act of 1982, as amended.

**Article XVI. Provision of Space to INS and EOIR**

A. Service Provider responsibilities. The Service Provider shall provide suitable support, office and administrative space, for use by INS. As necessary, the Service Provider will provide sufficient safe and secure storage space for all INS detainee baggage. In addition, the Service Provider agrees, if required, to furnish acceptable office and administrative space to the Executive Office of Immigration Review (EOIR). The Service Provider shall bear all costs associated with the use of jail and office space by INS and EOIR (e.g. those for preparing, operating and maintaining such facilities for INS and EOIR, and incurred for temporarily relocating the Service Provider's employees). The Service Provider shall equip the office and administrative space furnished to INS and EOIR with a telephone

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system compatible with the federal telephone network. The Service Provider shall furnish the security and janitorial services for this space. The Service Provider shall include all costs associated with providing space or services under this Paragraph in the calculation of the detainee rate day rate. (Note: the Service Provider shall have no obligation under this Paragraph unless the Parties negotiate specific terms for such space or services.)

B. Federal Government responsibilities. The INS will incur the costs of installing computer cabling, telephone lines and any additional telephone trunk lines and telephone switch equipment which may be required. The INS will be responsible for payment of INS long-distance telephone bills for INS staff.

End of document

Attachments:

- A. OMB Circular A-87
  - B. INS Cost Statement Form
  - C. INS Detention Standards
  - D. DIHS Pre-authorization Form
  - E. Jail Agreement Inspection Report
  - F. SF 3881, ACH Vendor/Miscellaneous Payment Enrollment Form
- Note: As additional INS Detention Standards are issued INS will include to the Agreement by modification.



UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

INTERGOVERNMENTAL COOPERATIVE AGREEMENT NUMBER 01-INS-02

This agreement is between the Immigration and Naturalization Service (INS) and Bristol County, MA, in accordance with the terms and conditions set forth in Articles I through XII and Schedules A, B, and C. The Cooperative Agreement Program is administered by the United States Marshals Service.

The following individuals are authorized, by law, to accept and commit to this agreement on the behalf of the:

IMMIGRATION AND NATURALIZATION SERVICE      BRISTOL COUNTY, MA

SIGNATURE: Benigno G. Reyna

TYPED NAME: Benigno G. Reyna

TITLE: Director

ADDRESS: U.S. Marshals Service  
Washington, D.C. 20530-1000

DATE: JUL 30 2002

SIGNATURE: Maria F. Lopes

TYPED NAME: Maria F. Lopes

TITLE: Chairperson  
County Commissioner

ADDRESS: 400 Faunce Corner Rd.  
North Dartmouth, MA 02747

DATE: JUL 4/2002

SIGNATURE: Anthony S. Tangeman

TYPED NAME: Anthony S. Tangeman

TITLE: Deputy Executive Commissioner

ADDRESS: 801 I Street, N.W.  
Washington, D.C. 20536

DATE: 6/25/02

(only signatories required by state or local law)  
SIGNATURE: Thomas M. Hodgson

TYPED NAME: Thomas M. Hodgson

TITLE: Sheriff

ADDRESS: 400 Faunce Corner Rd.  
North Dartmouth, MA 02747

Date: JUL 4/2002

SIGNATURE: Steven Farguharson

TYPED NAME: Steven Farguharson

TITLE: District Director

ADDRESS: JFK Federal Building  
Government Center  
Boston, MA 02203

DATE: JUN 3/2002

SIGNATURE: Vickie Taylor  
(Grant Specialist)

DATE: 5/16/02

TYPED NAME: Vickie Taylor

(NOTE: This cooperative agreement is neither binding nor effective unless signed by the Director, U.S. Marshals Service.)

## ARTICLE I

### AUTHORITY

The Immigration and Naturalization Service (INS) is authorized to enter into cooperative agreements with local entities to establish satisfactory conditions of confinement and detention services in return for guaranteed bedspace for federal detainees as authorized in 8 U.S.C. 1103(a)(9)(B).

### PURPOSE

The purpose of this cooperative agreement is to establish a legal relationship between the INS and Bristol County, Massachusetts (the recipient). This agreement is predicated upon the Federal Government's requirement for detention space and services and the recipient's provision of such services. All articles and schedules in this agreement are binding upon the signatures of all signatories.

## ARTICLE II

### ASSIGNMENT AND CONTRACTING OF PROJECT SUPPORTED EFFORT

Neither this agreement, nor any interest therein, may be assigned, or transferred to any other party without prior written approval by the United States Marshals Service (USMS), administrator of the CAP.

This cooperative agreement provides for federal funding of the recipient jail construction, renovation, and/or improvement programs. The recipient receiving federal funds is required to assure and certify that it will, as a condition of receiving the funds, comply with applicable federal law and regulations governing grants and cooperative agreements. By signature to this agreement, the recipient assures and certifies it will comply with all provisions, guidelines, regulations, and laws stipulated in this agreement.

None of the principal activities of the project-supported effort shall be contracted out to another organization without prior approval by the USMS. Where the intention to award contracts is made known at the time of application, the approval may be considered granted if these activities are funded as proposed.

All contracts or assignments must be formalized in a written contract or other written agreement between the parties involved.

The contract or agreement must, at a minimum, state the services to be performed, period of performance, the policies and procedures, and the flow-through requirements that are applicable to the contractor or other recipient. The contract or agreement must include the dollar limitation and the cost principles to be used in determining allowable costs. The contract or other written agreement must not affect the recipient's overall responsibility for the duration of the project and accountability to the Government.

### ARTICLE III

#### COOPERATIVE AGREEMENT PLAN

- A. Negotiations between the recipient and the USMS have resulted in a formulation of a Cooperative Agreement Plan which is incorporated as Schedule B of this agreement.
- B. Request(s) for modification, deletions, or additions to Schedule B may be made by the recipient by submitting a written request to the Grant Specialist, Prisoner Services Division, USMS Headquarters, who must approve all changes in writing. Neither the INS nor the Cooperative Agreement Program (CAP) recipient is authorized to modify or otherwise change this agreement in any way.
- C. The recipient has verified and ensures that all project(s) specified in Schedule B meet applicable state and local laws, standards, policies, procedures, or court orders.
- D. The recipient is responsible for planning, initiating, and overseeing the completion of the project(s); for preparing quarterly progress reports and periodic requests for payments; for certifying the accuracy of contractor and vendor billings; for ensuring the cost-efficient and timely completion of project(s); and for immediately notifying the USMS Headquarters, Prisoner Services Division, in writing, of any issues or problems that might affect the successful completion of the project(s) within the time frame(s) and cost ceiling(s) specified in Schedule B.
- E. The INS is responsible for conducting monthly on-site inspections of the project(s); for reviewing and certifying interim and final payment requests submitted by the recipient; for ensuring that CAP funding ceilings are not exceeded; for providing USMS Headquarters with written recommendations on any proposed changes or modifications to this agreement; and for immediately notifying USMS headquarters, in writing, of any issues or problems that might affect the successful completion of the project(s) within the time frame(s) and cost ceiling(s) specified in Schedule B.

### ARTICLE IV

#### FUNDING LEVEL

- A. The USMS will provide federal funding in an amount not to exceed \$500,000.00 for the project(s) listed in Schedule B. Only the USMS Headquarters, Prisoner Services Division is authorized to obligate and disburse the CAP funds.

- B. The recipient is responsible for . . . costs associated with the project(s) which exceed the specified federal funding level.
- C. Funds specified and approved for one project shall not be transferred to another project or be used for any other purpose unless authorized by a written modification to this agreement.
- D. USMS Headquarters, Prisoner Services Division is to be notified of any funds which will not be expended by the CAP recipient for any approved project listed in Schedule B. It is the sole discretion and right of the USMS to determine how unexpended funds will be used.

#### ARTICLE V

##### SERVICE AND SPACE GUARANTEE

- A. The recipient shall, at the request of the INS, provide detention space and services for 38 federal detainees each day from the date of acceptance of this agreement until the completion of the projects listed in Schedule B and for 38 federal detainees in INS custody each day at the Bristol County Jail for a period of ten (10) years commencing on the date of completion of all project(s) listed in Schedule B and the fulfillment of payments by the USMS.
- B. The USMS may, at its discretion, renegotiate the agreement to reduce the number of guaranteed bedspaces and the period of performance. Factors which may impact the level of use are: reduction in INS population, changes in Immigration law and construction of BOP facilities.
- C. The Intergovernmental Agreement (IGA) for the housing of federal detainees will remain in effect through the period specified in Article V, Paragraph A, and thereafter until terminated in writing by the INS or the recipient.
- D. Daily jail rate payments provided for in the IGA will be negotiated in accordance with the Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments." The recipient shall accept a daily jail rate which is supported by actual, allocable, and allowable jail operating costs. It is understood that costs of local law enforcement and local court support costs are not allowable for the computation of daily jail rates.

##### ADEQUATE DETENTION SPACE & SERVICE

- A. The recipient shall accept and provide secure custody, care, and safekeeping of federal prisoners in accordance with state and local laws, standards, policies, and procedures.

Failure to comply with these provisions may result in a Breach of Agreement as detailed in Article X.

The mandatory minimum conditions of confinement which are to be met during the entire period of the cooperative agreement are:

1. Adequate, trained jail staff will be provided 24 hours a day to supervise prisoners. Prisoners will be counted at least once on every shift, but at least twice in every 24-hour period. One of the counts must be visual to validate prisoner occupancy.
2. Jail staffing provides full coverage of all security posts and full surveillance of inmates.
3. Jail provides for three meals per day for prisoners. The meals must meet the nationally recommended dietary allowances published by the National Academy of Sciences.
4. Jail provides 24-hour emergency medical care for prisoners.
5. Jail maintains an automatic smoke and fire detection and alarm system, and maintain written policies and procedures regarding fire and other safety emergency standards.
6. Jail maintains a water supply and waste disposal program that is certified to be in compliance with applicable laws and regulations.

#### ARTICLE VI

##### FINANCIAL PROVISIONS

- A. The USMS will obligate and reserve the funds established under this agreement. Requests for reimbursement for work completed will be submitted by the recipient on a Standard Form 270 (Request for Advance or Reimbursement) with a CAP Reimbursement Detail Sheet to the INS for review and certification. Payment to the recipient will be made only after written authorization by the USMS Headquarters, Prisoner Services Division, or his/her designee. Payments will not be issued to vendors or contractors. Payments will be issued to recipients via electronic transfer of payment by the USMS.
- B. All requests for payment submitted by the recipient must be supported by valid invoices in accordance with authorized projects specified in Schedule B of this agreement. Payments will only be made after on-site inspection by the INS to ensure payment for work completed. Copies of paid

invoice shall be clearly marked with the appropriate CAP project number and maintained in CAP project files by the recipient. All such documentation shall be made available for review upon the request of the INS, USMS Headquarters staff, or a federal audit agency.

- C. The recipient shall certify that no request for payment will be submitted for work, materials, or services which have been previously funded from federal funds.
- D. The recipient shall use accepted accounting procedures and shall maintain such books, records, and documents accurately reflecting all costs relating to this agreement for a period of at least three (3) years following completion of all the projects and final payment. All such documents will be subject to periodic on-site review as deemed necessary by the INS, USMS Headquarters staff, and federal audit agencies.
- E. The recipient agrees to comply with the audit requirements of OMB Circular A-133, entitled "Audits of State, Local Governments and Non-Profit Organization," and agrees to:
  - 1) Submit an original and one copy of the audit report to the cognizant Federal agency within 30 days after the audit.
  - 2) Submit a copy of the audit report to the following Department of Justice Regional Inspector General Office:

Mr. Ferris B. Polk, Regional Audit Manager  
Philadelphia Regional Audit Office  
701 Market Street, Suite 201  
Philadelphia, PA 19106
  - 3) A copy of the transmittal letter addressed to the regional inspector general shall be sent to:
    - a) Audit Services  
Office of Justice Programs  
Department of Justice  
633 Indiana Avenue, N.W.  
Washington, D.C. 20531
    - b) U.S. Marshals Service  
Prisoner Services Division  
Washington, DC 20530-1000

- F. The recipient shall submit its corrective action plan with the audit report to the DOJ Regional Audit Office, when there are findings/recommendations disclosed in the audit report. The corrective action plan should include: (1) specific steps taken to comply with the recommendations; (2) timetable for performance and/or implementation date for each recommendation; and (3) description of monitoring to be conducted to ensure implementation.
- G. Audit reports must be submitted annually from the date of initial award of the cooperative agreement until all the work authorized in Schedule B has been completed and reimbursements from the USMS have been received. Failure to furnish an acceptable audit as determined by the cognizant agency may be a basis for withholding or denying future federal funds.
- H. The recipient must comply with the following special conditions contained in the Treasury, Postal Service and General Government Appropriations Act, Public Law No. 102-393, 106 Stat. 1729 (1992):
- (a) In any contract award of \$500,000 or more, the recipient agrees that no amount of the contract award shall be used to finance the acquisition of goods or services, including construction, for the project unless the recipient agrees, as a condition for receipt of the grant described herein, to -
    - (1) specify in any announcement of the awarding of the contract for the procurement of the goods and services involved, including construction services, the amount of federal funds that will be used to finance the acquisition; and
    - (2) express the amount announced pursuant to paragraph (1) as a percentage of the total costs of the planned acquisition.
  - (b) The requirements of subsection (a) shall not apply to a procurement for goods and services, including construction services, that has an aggregate value of less than \$500,000.
- I. The recipient shall be required to establish and maintain accounting systems and financial records that accurately account for the funds awarded. These records shall include both Federal Funds and all matching funds of State, local and private organizations. State and local recipients shall expend and account for funds in accordance with State laws and procedures for expending and accounting for its own funds, as well as meet the financial management standards in 28 Code of Federal Regulations (CFR) Part 66 and current revisions of Office of Management and Budget

(OMB) Circular A-87, Cost Principles for State and Local Governments.

- J. Recipients are responsible for complying with OMB Circular A-87 and 28 CFR Part 66 and the allowability of the costs covered therein. To avoid possible subsequent disallowance or dispute based on unreasonableness or unallowability under the specific cost principles, recipients must obtain prior approval on the treatment of special or unusual costs.
- K. Requests for prior approval of costs must be in writing and justified with an explanation to permit review of the allowability of the costs. The requests are to be submitted through inclusion in the application or as a separate written request to the USMS.
- L. Changes in CAP project. All requests for programmatic and/or administrative budget changes must be submitted in a timely manner by the recipient.

#### ARTICLE VII

##### DISPUTES

All questions relating to the interpretation of this agreement shall be addressed to the Chief, Programs and Assistance Branch, and resolved by negotiation between the representative(s) of the recipient and the Chief, Program and Assistance Branch. Unresolved disputes will be referred to the Assistant Director for the Prisoner Services Division and Chief Executive Officer of the local government.

The Director, USMS, will be the final deciding official in all disputes concerning this agreement, unless otherwise adjudicated in a court of law.

#### ARTICLE VIII

##### STOP WORK

- A. The recipient shall within thirty (30) days from the beginning of any delay, notify the Chief, Program and Assistance Branch, in writing, of the causes of the delay. If, in the judgement of the Chief, Programs and Assistance Branch, the delay is warranted, the time for completing the work shall be extended accordingly by formal modification. The findings of the Chief, Programs and Assistance Branch, shall be final and conclusive on the recipient, but is subject to resolution under the Disputes Clause in Article VII.
- B. The Chief, Programs and Assistance Branch, may issue and the recipient will accept a written order to stop work on any project(s) funded under this agreement. Such orders



may be based upon evidence that a recipient is failing to comply with generally accepted accounting principals, financial disclosure or reporting requirements, or is deviating from the agreed-upon projects or project descriptions in Schedule B. For project costs incurred during the stop work period, no CAP fund reimbursements may be made to the recipient.

- C. A Stop Work Order may be cancelled, reissued, or converted to an order of termination.
- D. The recipient is responsible for any costs incurred after the issuance of a Stop Work Order unless such work, material, equipment, or services were purchased prior to the issuance of the Stop Work Order and delivery cannot be cancelled.

#### ARTICLE IX

##### TERMINATION

- A. This agreement may be terminated in full or in part by the recipient at any time prior to the completion of the project(s) listed in Schedule B, provided that all federal funds received for the project(s) by the recipient are refunded in full to the USMS. If any CAP funds have been disbursed to the CAP recipient, reimbursement will include full repayment plus interest retroactively computed from the receipt of the first CAP payment. Interest will be calculated at the prevailing interest rate at time of termination. All termination notices shall be made in writing by the recipient and sent to the Chief, Programs and Assistance Branch, via registered mail, sixty (60) days prior to the effective date of the termination.
- B. This agreement may be terminated in full or in part by the USMS at any time prior to the completion of the project(s) listed in Schedule B. Such termination(s) may result from the failure of the recipient to start or complete a project in accordance with the agreement. A sixty (60) day written termination notice shall be made by the Chief, Programs and Assistance Branch, to the recipient.
- C. This agreement shall not be terminated by either party after the completion of all projects and the issuance of final payment by the USMS, unless there is mutual agreement to do so.
- D. This agreement shall not be delayed, suspended, or terminated by the CAP recipient for purposes of relieving overcrowded conditions due to the issuance of a federal or state court order or the issuance of a directive from a state or local government entity. Any such action by a CAP recipient will be considered a breach of the agreement and subject to the terms of Article X.

When faced with overcrowding conditions, it is the sole responsibility of the CAP recipient to identify and obtain alternative acceptable jail space so that the guaranteed INS bedspace under Article V will not be affected.

#### ARTICLE X

##### BREACH OF AGREEMENT

- A. The CAP recipient must provide secure housing and all the detention space and services outlined in Article V. Failure to do so may be considered a formal breach of this agreement as outlined in paragraph B below.
- B. In the event secure housing or detention space and services are not provided at the level guaranteed, the Assistant Director for the Prisoner Services Division may determine that a breach exists. However, before determining whether or not a formal breach of this agreement has occurred, the USMS will:
  - 1. Issue a letter of inquiry via registered mail to the CAP recipient who will respond within thirty (30) days of receipt, in writing, to the Assistant Director for the Prisoner Services Division, listing the reasons for not providing the agreed upon detention space and services.
  - 2. Upon receipt of the written response, the Assistant Director for the Prisoner Services Division will determine if the reasons for nonperformance (i.e., facility fire, natural disaster, inmate riot, etc.) are acceptable and may initiate formal negotiations to resolve noncompliance through revision of the terms of the agreement.
  - 3. If resolution cannot be reached, then a formal breach of agreement notice will be issued and sent to the CAP recipient via registered mail.
- C. If the USMS issues a written notice of breach of agreement, the CAP recipient shall:
  - 1. Refund all CAP funds provided under the cooperative agreement within thirty (30) days after receiving the written formal breach of cooperative agreement notice issued by the USMS.
  - 2. If any CAP funds have been disbursed to the CAP recipient, reimbursement will include full repayment plus interest retroactively computed to the date of receipt of the first CAP payment. Interest will be calculated at the prevailing interest rate at the time of breach.

3. The recipient shall also reimburse the USMS for all costs associated with the relocation of federal detainees to another facility, including all jail costs over and above the per diem rate paid that would have been paid to the recipient for the entire period of performance.
- D. The provisions of this Article will be enforced by the USMS only after a violation of the provisions for guaranteed space have been established, and negotiations between the USMS and the recipient have not resulted in an acceptable resolution to the USMS and a written notice of breach of agreement has been issued by the Assistant Director for the Prisoner Services Division and received by the recipient.

#### ARTICLE XI

##### CAP ADMINISTRATIVE REQUIREMENTS

- A. Upon execution of this agreement, the USMS shall provide written administrative packages to the CAP recipient and the INS.
- B. CAP Recipient
  1. The CAP recipient is responsible for submitting, through the local INS office and to USMS Headquarters, Prisoner Services Division, a quarterly progress report whether or not work has begun. The quarterly report must be sent no later than five (5) working days after the close of each quarter until all work has been completed.
  2. Failure to submit quarterly progress reports or comply with CAP administrative procedures may be interpreted as noncompliance with this agreement and subject to terms and conditions of Article X of this agreement.
  3. A final CAP close-out report shall be submitted by the recipient to the local INS office at the completion of all projects and after final payment has been received. This report includes the date(s) of completion, date(s) of activation, and final costs. This close-out report must be submitted no later than ninety (90) days after completion of the project(s), but preferably as soon as the final payment has been received.
  4. All recipients receiving direct awards from the USMS agency are responsible for the management and fiscal control of all funds. Responsibilities include the accounting of receipts and expenditures, cash management, the maintaining of adequate financial records, and the refunding of expenditures disallowed by audits.

5. When the project or one of its components is delegated to a contractor or other state or local organization, the recipient is nevertheless responsible for all aspects of the program, including proper accounting and financial record-keeping by the sub-recipient or contractor. These responsibilities include:

- (a) **Reviewing Financial Operations:** Recipients must be familiar with, and periodically monitor, the recipient's and contractor's financial operations, records, system, and procedures. Particular attention is to be directed to the maintenance of current financial data.
- (b) **Recording Financial Activities:** The recipient's award or contractor's obligation, as well as cash advances and other financial activities, shall be recorded in the books of the recipient in summary form. Recipient/contractor expenditures shall be recorded on the books of the recipient, or evidenced by report forms duly filed by the sub-recipient/contractor. Non-Federal contributions applied to programs or projects by sub-recipients must likewise be recorded, as would any program income resulting from program operations.

Program income means gross income earned by the recipient/sub-recipient during the funding period as a direct result of the CAP award. Direct result is defined as a specific act or set of activities that are directly attributable to the CAP funds and which are directly related to the goals and objectives of the project.

Determinations of "direct result" will be made by the USMS. Recipients who anticipate receiving income as a result of the award of CAP funds must disclose this information to the USMS at the time of award.

- (c) **Budgeting and Budget Review:** The recipient shall ensure that each sub-recipient/contractor prepare an adequate budget on which its award commitment will be based. The detail of each project budget shall be maintained on file by the sub-recipient or contractor.
- (d) **Accounting for Non-Federal Contributions:** Recipients will ensure, in those instances where recipients are required to furnish non-Federal matching shares, that the requirements, limitations, and regulations pertinent to non-Federal contributions are applied.

(c) Audit Requirements: Recipients are required to ensure that sub-recipients/contractors have met all necessary audit requirements as set forth in Article VI.

(f) Reporting Irregularities: Recipients and their sub-recipients/contractors are responsible for promptly notifying the recipient and the USMS of any illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

6. In accordance with 28 CFR Part 66 or OMB Circular A-110, all financial records, supporting documents, statistical records, and other records pertinent to contracts or sub-awards awarded with CAP funds shall be retained by each organization participating in the program or project for at least 3 years for purposes of Federal examination and audit.

The 3-year retention period set forth in the previous paragraph, starts from the date following completion of all projects and the final payment. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular 3-year period, whichever is later.

7. Access to Records: The USMS and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of recipients or its sub-recipients/contractors, which are pertinent to the award, in order to make audits, examinations, excerpts, and transcripts. The rights of access must not be limited to the required retention period, but shall last as long as the records are retained.
8. Delinquent debt collection: The USMS will hold recipient accountable for any overpayment, audit disallowance, or any breach of this agreement that results in a debt owed to the Federal Government. The USMS agency shall apply interest, penalties, and administrative costs to a delinquent debt owed by a debtor pursuant to the Federal Claims Collection Standards.

C. INS

1. A written monthly progress report must be completed, reviewed, and signed by the INS. The report must be submitted to USMS Headquarters, Prisoner Services Division, on the fifth workday of the month after receipt of the administrative package. A progress report is required even if actual site work has not yet begun.
2. Once all work has been completed, the INS is required to immediately perform an on-site close-out inspection.
3. When the request for final payment is made, it must be accompanied by the CAP close-out report from the INS.

ARTICLE XII

CONFLICT OF INTEREST

Personnel and other officials connected with the agreement shall adhere to the requirements given below:

- (1) Advice. No official or employee of the recipient, a sub-recipient, or a contractor shall participate personally through decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling, or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Department of Justice funds are used, where to his/her knowledge, he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as an officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest, or less than an arms-length transaction.
- (2) Appearance. In the use of Department of Justice project funds, officials or employees of the recipient, a sub-recipient or a contractor, shall avoid any action which might result in, or create the appearance of:
  - (a) using his or her official position for private gain;
  - (b) giving preferential treatment to any person;
  - (c) losing complete independence or impartiality;
  - (d) making an official decision outside official channels;  
or

(e) a ~~act~~ing adversely the confidence of the public in the integrity of the Government or the program.

INS/USMS COOPERATIVE AGREEMENT - SCHEDULE A  
AGREEMENT NO. 01-INS-02

The recipient hereby assures and certifies compliance with OMB Circulars A-87, Revised A-102 (28 CFR, Part 66), and A-133 as they relate to the project, and the following regulations, policies, guidelines, and requirements:

The recipient certifies that:

1. It possesses legal authority to apply for the grant, that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, and the rendering of all understandings and assurances contained therein; and that the person identified as the official representative of the applicant is authorized and directed to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), and in accordance with that Act, ensure that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to execute this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-3), prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefitting from the grant-aided activity.
4. It will comply with requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (Public Law No. 91-646, 84 Stat. 1894, as amended), which provides for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.
5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of state and local governments.



7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those that have family, businesses, or other ties.
8. It will give the grantor agency or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
9. It will comply with 28 CFR, Part 66, Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments concerning requirements of law, program requirements, and other administrative requirements.
10. It will comply with the audit provisions of OMB Circular A-133 (Audits of State and Local Governments) and copies of each annual audit report shall be submitted to the appropriate cognizant agency and the Department of Justice Regional Audit Office. The reports are to cover the period from initial award of the cooperative agreement until all the work authorized in Schedule B is completed and reimbursement from the USMS is received.
11. It will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of violating facilities and that it will notify the federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
12. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Public Law No. 93-234, 87 Stat. 975, as amended). Section 102(a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. For purposes of the Act, the phrase "Federal Financial Assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.

13. It will assist the federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.0) by the activity, and notifying the federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the federal grantor agency to avoid or mitigate adverse effects upon such properties.
14. It will comply with regulations at 28 CFR, Part 67, implementing Executive Order 12549, Debarment and Suspension. Prospective participants will submit certification regarding debarment, suspension, and other responsibility matters in accordance with regulations.
15. It will comply with 31 U.S.C. 1352, entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions," and provide Certification Regarding Lobbying and a Disclosure of Lobbying Activities Form, SF-LLL, if applicable, for awards of \$100,000 or more.
16. It will comply with the Drug-Free Workplace Act of 1988 regulated at 28 CFR, Part 67, Subpart F, and certify that it maintains a drug-free workplace in accordance with the regulations.
17. It will comply with Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, and the Earthquake Hazard Reduction Program Act of 1977, as amended. In accordance with the National Institute of Standards and Technology (NIST) IR 4852, Interagency Committee on Seismic Safety in Construction (ICSSC) RP 2.1-A, Guidelines and Procedures for Implementation of the Executive Order on Seismic Safety of New Building Construction, it will comply with the following 1991 International Conference of Building Officials (ICBO) Uniform Building Codes as its seismic design standard for new design and construction:
  - (1) 1991 ICBO Uniform Building Code;
  - (2) 1992 Supplement to the Building Officials and Code Administrators (BOCA) National Building Code; and
  - (3) 1992 Amendments to the Southern Building Code Congress (SBCC) Standard Building Code.

IMMIGRATION AND NATURALIZATION SERVICE  
SCHEDULE B  
COOPERATIVE AGREEMENT PLAN

AGREEMENT NO. 01-INS-02 GOVT. UNIT Bristol County, MA FACILITY Bristol County Jail & H.O.C.  
 ESTIMATED START DATE 5/15/01 \*ESTIMATED DATE  
 ESTIMATED PROJECT(S) COMPLETION 6-01-02 BEDS AVAILABLE 6-01-02 BEDS EXPIRE 6-01-12

PROJECT NUMBER	PROJECT DESCRIPTION	USMS FUNDING CEILING
001-INS-02 PP	Convert a male minimum-security facility into a medium security facility for (38 female offenders).	\$500,000.00

This schedule reflects the final cooperative agreement projects and their maximum allowable funding ceilings which have been approved by the INS. Attachments (as required) will show how the work will be accomplished, detailed project descriptions, plans, specifications, and questions.

\* These dates serve as pertinent CAP project time frames for bedspace availability. Any changes to these dates should be reflected on Schedule C, Recipient Quarterly CAP Progress Report. If the revision date exceeds a 90 day period, a modification to the cooperative agreement will be initiated.

# RECIPIENT QUARTERLY CAP PROGRESS REPORT

**INSTRUCTIONS:** It is the responsibility of the recipient facility to prepare a CAP Progress report quarterly for the projects(s) shown below which have been authorized in the CAP agreement. The CAP Recipient should make additional copies of the report for future quarterly submission. If additional space is needed, this report can be continued on plain white bond paper. The complete report should then be submitted to the local INS Office who will review and forward it to the USMS Headquarters. If you have any questions or need additional guidance, please contact the CAP Program Administrator, USMS, on (202) 307-5100.

1. Facility Name: Bristol County Jail & H.O.C. 2. INS CAP Agreement No.: 01-INS-02

3. CAP Project Number	Description	Funding Ceiling
001-INS-02 PP	Convert a male facility into a female facility.	\$500,000.00
	Total	\$500,000.00

4. Work Start Date: 5/15/01 5. Estimated Completion Date: 6/01/02

6. Funding Status:

	Funds Approved	Funds Obligated to Date	Balance Remaining
a. Local Funds			
b. INS Funds	\$500,000.00		
c. Total (a+b)			

7. Latest estimate of total cost \$\_\_\_\_\_ (If the cost estimate differs from the funds approved in item 6 above, please provide written justification as well as an explanation of how the additional funds required will be obtained.)

8. Progress to Date \_\_\_\_\_

9. Problems Noted (i.e., need for modifications, delays anticipated, etc.) \_\_\_\_\_

PREPARED BY: \_\_\_\_\_  
(name of local government official and title)

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

REVIEWED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
(INS Office)

**SCHEDULE C**

**DROIGSA-07-0032**  
INTER-GOVERNMENTAL SERVICE AGREEMENT  
BETWEEN THE  
UNITED STATES DEPARTMENT OF HOMELAND SECURITY  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
OFFICE OF DETENTION AND REMOVAL  
AND  
BRISTOL COUNTY SHERIFF OFFICE  
400 FAUNCE CORNER ROAD  
N. DARTMOUTH, MA 02747

This Inter-Governmental Service Agreement ("Agreement") is entered into between United States Department of Homeland Security Immigration and Customs Enforcement ("ICE"), and [Bristol County Sheriff Office ("Service Provider") for the detention and care of aliens ("detainees"). The term "Parties" is used in this Agreement to refer jointly to ICE and the Service Provider.

**FACILITY LOCATION:**

The Service Provider shall provide detention services for detainees at the following institution(s):

BRISTOL COUNTY CORRECTIONAL AND JAIL  
400 FAUNCE CORNER ROAD  
N. DARTMOUTH, MA 02747

**Article I. Purpose**

- A. **Purpose:** The purpose of this Intergovernmental Service Agreement (IGSA) is to establish an Agreement between ICE and the Service Provider for the detention, and care of persons detained under the authority of the Immigration and Nationality Act, as amended. All persons in the custody of ICE are "Administrative Detainees". This term recognizes that ICE detainees are not charged with criminal violations and are only held in custody to assure their presence throughout the administrative hearing process and to assure their presence for removal from the United States pursuant to a lawful final order by the Immigration Court, the Board of Immigration Appeals or other Federal judicial body.
- B. **Responsibilities:** This Agreement sets forth the responsibilities of ICE and the Service Provider. The Agreement states the services the Service Provider shall perform satisfactorily to receive payment from ICE at the rate prescribed in Article I, C.
- C. **Guidance:** This is a fixed rate agreement, not a cost reimbursable agreement, with respect to the detainee day rate. The detainee day rate is **\$90.00**. ICE shall be responsible for reviewing and approving the costs associated with this Agreement and subsequent modifications utilizing all applicable federal procurement laws, regulations and standards in arriving at the detainee day rate.

## Article II. General

- A. Funding: The obligation of ICE to make payments to the Service Provider is contingent upon the availability of Federal funds. ICE will neither present detainees to the Service Provider nor direct performance of any other services until ICE has the appropriate funding. Orders will be placed under this Agreement when specific requirements have been identified and funding obtained. Performance under this Agreement is not authorized until the Contracting Officer issues an order, in writing. The effective date of the Agreement will be negotiated and specified in a delivery order to this Agreement that is supported by the ICE Contracting Officer. This Agreement is neither binding nor effective unless signed by the ICE Contracting Officer. Payments at the approved rate will be paid upon the return of the signed Agreement by the authorized Local Government official to ICE.
- B. Subcontractors: The Service Provider shall notify and obtain approval from the ICE Contracting Officer's Technical Representative (COTR) or designated ICE official if it intends to house ICE detainees in a facility other than the Bristol County Correctional Facility. If either that facility, or any future facility is operated by an entity other than the Service Provider, ICE shall treat the entity as a subcontractor to the Service Provider. The Service Provider shall obtain the Contracting Officer's approval before subcontracting the detention and care of detainees to another entity. The Contracting Officer has the right to deny, withhold, or withdraw approval of the proposed subcontractor. Upon approval by the Contracting Officer, the Service Provider shall ensure that any subcontract includes all provisions of this Agreement, and shall provide ICE with copies of all subcontracts. All payments will be made to the Service Provider. ICE will not accept invoices from, or make payments to a subcontractor.
- C. Consistent with Law: This is a firm fixed rate agreement, not cost reimbursable agreement. This Agreement is permitted under applicable statutes, regulation, policies or judicial mandates. Any provision of this Agreement contrary to applicable statutes, regulation, policies or judicial mandates is null and void and shall not necessarily affect the balance of the Agreement.

## Article III. Covered Services

- A. Bedspace: The Service Provider shall provide male/female beds on a space available basis. The Service Provider shall house all detainees as determined within the Service Provider's classification system. ICE will be financially liable only for the actual detainee days as defined in Paragraph C of Article III.
- B. Basic Needs: The Service Provider shall provide ICE detainees with safekeeping, housing, subsistence, medical and other services in accordance with this Agreement. In providing these services, the Service Provider shall ensure compliance with all applicable laws, regulations, fire and safety codes, policies and procedures. If the Service Provider determines that ICE has delivered a person for custody who is under the age of eighteen (18), the Service Provider shall not house that person with adult detainees and shall immediately notify the ICE COTR or designated ICE official. The types and levels of services shall be consistent with those the Service Provider routinely affords other inmates.

C. Unit of Service and Financial Liability: The unit of service is called a "detainee day" and is defined as one person per day. The detainee day begins on the date of arrival. The Service Provider may bill ICE for the date of arrival but not the date of departure. The Service Provider shall not charge for costs that are not directly related to the housing and detention of detainees. Such costs include but are not limited to:

- 1) Salaries of elected officials
- 2) Salaries of employees not directly engaged in the housing and detention of detainees
- 3) Indirect costs in which a percentage of all local government costs are pro-rated and applied to individual departments unless, those cost are allocated under an approved Cost Allocation Plan
- 4) Detainee services which are not provided to, or cannot be used by, Federal detainees
- 5) Operating costs of facilities not utilized by Federal detainees
- 6) Interest on borrowing (however represented), bond discounts, costs of financing/refinancing, except as prescribed by OMB Circular A-87.
- 7) Legal or professional fees (specifically legal expenses for prosecution of claims against the Federal Government, legal expenses of individual detainees or inmates)
- 8) Contingencies

D. Interpretive Services: The Service Provider shall make special provisions for non-English speaking, handicapped or illiterate detainees. ICE will reimburse the Service Provider for the actual costs associated with providing commercial written or telephone language interpretive services. Upon request, ICE will assist the Service Provider in obtaining translation services. The Service Provider shall provide all instructions verbally either in English or the detainees' language, as appropriate, to detainees who cannot read. The Service Provider shall include the actual costs that the Service Provider paid for such services on its monthly invoice. Except in emergency situations, the Service Provider shall not use detainees for translation services. If the Service Provider uses a detainee for translation service, it shall notify ICE within twenty-four (24) hours of the translation service.

E. Escort and Transportation Services: The Service Provider will provide, upon request and as scheduled by ICE, necessary escort and transportation services for ICE detainees to and from designated locations. Escort services will be required for escorting detainees to court hearings; escorting witnesses to the courtroom and staged with the ICE Judge during administrative proceedings. Transportation Services shall be performed by at least two (2) qualified sworn law enforcement or correctional officer personnel employed by the Service Provider under their policies, procedures and authorities. See Article XVII.

#### Article IV. Receiving and Discharging Detainees

A. Required Activity: The Service Provider shall receive and discharge detainees only to and from properly identified ICE personnel or other properly identified Federal law enforcement officials with prior authorization from DHS/ICE. Presentation of U.S. Government identification shall constitute "proper identification." The Service Provider shall furnish receiving and discharging services twenty-four (24) hours per day, seven (7) days per week. ICE shall furnish the Service Provider with reasonable notice of receiving and discharging detainees. The Service Provider shall ensure positive identification and recording of detainees and ICE officers. The Service Provider

shall not permit medical or emergency discharges except through coordination with on-duty ICE officers.

- B. Emergency Situations: ICE detainees shall not be released from the facility into the custody of other Federal, state, or local officials for any reason, except for medical or emergency situations, without express authorization of ICE.
- C. Restricted Release of Detainees: The Service Provider shall not release ICE detainees from its physical custody to any persons other than those described in Paragraph A of Article IV for any reason, except for either medical, other emergency situations, or in response to a federal writ of habeas corpus. If an ICE detainee is sought for federal, state, or local proceedings, only ICE may authorize release of the detainee for such purposes. The Service Provider shall contact the ICE COTR or designated ICE official immediately regarding any such requests.
- D. Service Provider Right of Refusal: The Service Provider retains the right to refuse acceptance, or request removal, of any detainee exhibiting violent or disruptive behavior, or of any detainee found to have a medical condition that requires medical care beyond the scope of the Service Provider's health care provider. In the case of a detainee already in custody, the Service Provider shall notify ICE and request such removal of the detainee from the Facility. The Service Provider shall allow ICE reasonable time to make alternative arrangements for the detainee.
- E. Emergency Evacuation: In the event of an emergency requiring evacuation of the Facility, the Service Provider shall evacuate ICE detainees in the same manner, and with the same safeguards, as it employs for persons detained under the Service Provider's authority. The Service Provider shall notify the ICE COTR or designated ICE official within two (2) hours of evacuation.

#### Article V. DHS/ICE Detention Standards

##### SATISFACTORY PERFORMANCE

The Service Provider is required to house detainees and perform related detention services in accordance with the most current edition of ICE National Detention Standards (<http://www.ice.gov/partners/dro/opsmanual/index.htm>). ICE Inspectors will conduct periodic inspections of the facility to assure compliance with the ICE National Detention Standards.

#### Article VI. Medical Services

- A. Auspices of Health Authority: The Service Provider shall provide ICE detainees with on-site health care services under the control of a local government designated Health Authority. The Service Provider shall ensure equipment, supplies, and materials, as required by the Health Authority, are furnished to deliver health care on-site.
- B. Level of Professionalism: The Service Provider shall ensure that all health care service providers utilized for ICE detainees hold current licenses, certifications, and/or registrations with the State and/or City where they are practicing. The Service Provider shall retain a registered nurse to provide health care and sick call coverage unless expressly stated otherwise in this Agreement. In



the absence of a health care professional, non-health care personnel may refer detainees to health care resources based upon protocols developed by United States Public Health Service (USPHS) Division of Immigration Health Services (DIHS).

- C. Access to Health Care: The Service Provider shall ensure that on-site medical and health care coverage as defined below is available for all ICE detainees at the facility for at least eight (8) hours per day, seven (7) days per week. The Service Provider shall ensure that its employees solicit each detainee for health complaints and deliver the complaints in writing to the medical and health care staff. The Service Provider shall furnish the detainees instructions in his or her native language for gaining access to health care services as prescribed in Article III, Paragraph D.
- D. On-Site Health Care: The Service Provider shall furnish on-site health care under this Agreement. The Service Provider shall not charge any ICE detainee an additional fee or Co-payment for medical services or treatment provided at the Service Provider's facility. The Service Provider shall ensure that ICE detainees receive no lower level of on-site medical care and services than those it provides to local inmates. On-site health care services shall include arrival screening within twenty-four (24) hours of arrival at the Facility, sick call coverage, provision of over-the-counter medications, treatment of minor injuries (e.g. lacerations, sprains, and contusions), treatment of special needs and mental health assessments. Detainees with chronic conditions shall receive prescribed treatment and follow-up care.
1. Bristol County Sheriff Office contracts for medical care with Correctional Medical Care Inc. and it is comprehensive treatment, including diagnostic services and treatment. Under the terms of this agreement the Government will not be charged for any medical services until after December 6, 2009. DIHS will handle medical services after December 6, 2009.
- E. Arrival Screening: Arrival screening shall include at a minimum TB symptom screening, planting of the Tuberculin Skin Test (PPD), and recording the history of past and present illnesses (mental and physical). The health care service provider or trained health care personnel may perform the arrival screening.
- F. Acceptance of Detainees with Extreme Health Conditions: If the Service Provider determines that an ICE detainee has a medical condition which renders that person unacceptable for detention under this Agreement, (for example, contagious disease, condition needing life support, uncontrollable violence), the Service Provider shall notify the ICE COTR or the designated ICE official. Upon such notification the Service Provider shall allow ICE reasonable time to make the proper arrangements for further disposition of that detainee.
- G. DIHS Pre-Approval for Non-Emergency Off-Site Care: The Service Provider shall obtain DIHS approval for any non-emergency, off-site healthcare for any detainee. DIHS acts as the agent and final health authority for ICE on all offsite detainee medical and health related matters. The relationship of the DIHS to the detainee equals that of physician to patient. The Service Provider shall release any and all medical information for ICE detainees to the DIHS representatives upon request. The Service Provider shall solicit DIHS approval before proceeding with non-emergency, off-site medical care (e.g. off site lab testing, eyeglasses, cosmetic dental prosthetics, dental care for cosmetic purposes). The Service Provider shall submit supporting documentation for non-routine,

off-site medical health services to DIHS. For medical care provided outside the facility, DIHS may determine that an alternative medical provider or institution is more cost-effective or more aptly meets the needs of ICE and the detainee. ICE may refuse to reimburse the Service Provider for non-emergency medical costs incurred that were not pre-approved by the DIHS. The Service Provider shall send all requests for pre-approval for non-emergent off-site care to:

Phone: (888) 718-8947  
FAX: (866) 475-9349  
Via website: [www.inshealth.org](http://www.inshealth.org)

The Service Provider is to notify all medical providers approved to furnish off-site health care of detainees to submit their bills in accordance with instructions provided to:

United States Public Health Services  
Division of Immigration Health Services  
1220 L Street, NW PMB 468  
Washington, DC 20005-4018  
(Phone): (888)-718-8947  
(FAX): (866)-475-9349  
Via website: [www.inshealth.org](http://www.inshealth.org)

- H. Emergency Medical Care: The Service Provider shall furnish twenty-four (24) hour emergency medical care and emergency evacuation procedures. In an emergency, the Service Provider shall obtain the medical treatment required to preserve the detainee's health. The Service Provider shall have access to an off-site emergency medical provider at all times. The Health Authority of the Service Provider shall notify the DIHS Managed Care Coordinator by calling the telephone number listed in paragraph G above as soon as possible, and in no case more than seventy-two (72) hours after detainee receipt of such care. The Health Authority will obtain pre-authorization from the DIHS Managed Care Coordinator for service(s) beyond the initial emergency situation.
- I. Off-Site Guards: The Service Provider shall provide guards at all times detainees are admitted to an outside medical facility.
- J. DIHS Visits: The Service Provider shall allow DIHS Managed Care Coordinators reasonable access to its facility for the purpose of liaison activities with the Health Authority and associated Service Provider departments.

#### Article VII. No Employment of Unauthorized Aliens

Subject to existing laws, regulations, Executive Orders, and addenda to this Agreement, the Service Provider shall not employ aliens unauthorized to work in the United States. Except for maintaining personal living areas, ICE detainees shall not be required to perform manual labor.

#### Article VIII. Employment Screening Requirements

A. General. The Service Provider shall certify to the U.S. Immigration and Customs Enforcement, Contracting Officer that any employees performing under this Agreement, who have access to ICE detainees, will have successfully completed an employment screening that includes at a minimum a criminal history records check, employment reference checks and a citizenship check.

B. Employment Eligibility. Screening criteria that will exclude applicants from consideration to perform under this agreement includes:

1. Felony convictions
2. Conviction of a sex crime
3. Offense/s involving a child victim
4. Felony drug convictions
5. Pattern of arrests, without convictions, that brings into question a person's judgment and reliability to promote the efficiency and integrity of the ICE mission.
6. Intentional falsification and/or omission of pertinent personal information to influence a favorable employment decision.

Subject to existing law, regulations and/or other provisions of this Agreement, illegal or undocumented aliens shall not be employed by the Service Provider.

The Service Provider shall certify that each employee working on this Agreement will have a Social Security Card issued and approved by the Social Security Administration. The Service Provider shall be responsible to the Government for acts and omissions of his own employees and for any Subcontractor(s) and their employees.

The Service Provider shall expressly incorporate this provision into any and all Subcontracts or subordinate agreements issued in support of this Agreement.

The Service Provider shall recertify their employees every three years by conducting a criminal history records check to maintain the integrity of the workforce.

The Service Provider shall implement a Self-Reporting requirement for its employees to immediately report one's own criminal arrest/s to superiors.

C. Security Management. The Service Provider shall appoint a senior official to act as the Agreement Security Officer. The individual will interface with the COTR on all security matters, to include physical, personnel, and protection of all Government information and data accessed by the Service Provider.

The COTR and Contracting Officer shall have the right to inspect the procedures, methods, all documentation and facilities utilized by the Service Provider in complying with the security requirements under this Agreement. Should ICE determine that the Service Provider is not complying with the security requirements of this Agreement, the Service Provider shall be informed in writing by the Contracting Officer of the proper action to be taken in order to effect compliance with these employment screening requirements.

#### Article IX. Period of Performance

- A. This Agreement shall become effective upon the date of final signature by the ICE Contracting Officer and the authorized signatory of the Service Provider and will remain in effect indefinitely unless terminated in writing by either party. Either party must provide written notice of intention to terminate the agreement, 60 days in advance of the effective date of formal termination, or the Parties may agree to a shorter period under the procedures prescribed in Article XI.
- B. Basis for Price Adjustment: A firm fixed price with economic adjustment provides for upward and downward revision of the stated Per Diem based upon cost indexes of labor and operating expenses, or based upon the Service Provider's actual cost experience in providing the service.

#### Article X. Inspection

- A. Jail Agreement Inspection Report: The Jail Agreement Inspection Report stipulates minimum requirements for fire/safety code compliance, supervision, segregation, sleeping utensils, meals, medical care, confidential communication, telephone access, legal counsel, legal library, visitation, and recreation. The Service Provider shall allow ICE to conduct inspections of the facility, as required, to ensure an acceptable level of services and acceptable conditions of confinement as determined by ICE. No notice to the Service Provider is required prior to an inspection. ICE will conduct such inspections in accordance with the Jail Agreement Inspection Report. ICE will share findings of the inspection with the Service Provider's facility administrator. The Inspection Report will state any improvements to facility operation, conditions of confinement, and level of service that will be required by the Service Provider.
- B. Possible Termination: If the Service Provider fails to remedy deficient service identified through an ICE inspection, ICE may terminate this Agreement without regard to the provisions of Articles IX and XI.
- C. Share Findings: The Service Provider shall provide ICE copies of facility inspections, reviews, examinations, and surveys performed by accreditation sources.
- D. Access to Detainee Records: The Service Provider shall, upon request, grant ICE access to any record in its possession, regardless of whether the Service Provider created the record, concerning any detainee held pursuant to this Agreement. This right of access shall include, but is not limited to, incident reports, records relating to suicide attempts, and behavioral assessments and other records relating to the detainee's behavior while in the Service Provider's custody. Furthermore, the Service Provider shall retain all records where this right of access applies for a period of two (2) years from the date of the detainee's discharge from the Service Provider's custody.

#### Article XI. Modifications and Disputes

- A. Modifications: Actions other than those designated in this Agreement will not bind or incur liability on behalf of either Party. Either Party may request a modification to this Agreement by submitting a written request to the other Party. A modification will become a part of this Agreement only after the ICE Contracting Officer and the authorized signatory of the Service Provider have approved the modification in writing.
- B. Disputes: The ICE Contracting Officer and the authorized signatory of the Service Provider will settle disputes, questions and concerns arising from this Agreement. Settlement of disputes shall

be memorialized in a written modification between the ICE Contracting Officer and authorized signatory of the Service Provider. In the event a dispute is not able to be resolved between the Service Provider and the ICE Contracting Officer, the ICE Contracting Officer will make the final decision. If the Service Provider does not agree with the final decision, the matter may be appealed to the ICE Head of the Contracting Activity (HCA) for resolution. The ICE HCA may employ all methods available to resolve the dispute including alternative dispute resolution techniques. The Service Provider shall proceed diligently with performance of this Agreement pending final resolution of any dispute.

#### Article XII. Adjusting the Detainee Day Rate

ICE shall reimburse the Service Provider at the fixed detainee day rate shown on the cover page of the document, Article I. (C). The Parties may adjust the rate twenty-four (24) months after the effective date of the agreement and every twelve (12) months thereafter. The Parties shall base the cost portion of the rate adjustment on the principles of allowability and allocability as set forth in OMB Circular A-87, federal procurement laws, regulations, and standards in arriving at the detainee day rate. The request for adjustment shall be submitted on an ICE Jail Services Cost Statement. If ICE does not receive an official request for a detainee day rate adjustment that is supported by an ICE Jail Services Cost Statement, the fixed detainee day rate as stated in this Agreement will be in place indefinitely. See Article XI A.

ICE reserves the right to audit the actual and/or prospective costs upon which the rate adjustment is based. All rate adjustments are prospective. As this is a fixed rate agreement, there are no retroactive adjustment(s).

#### Article XIII. Enrollment, Invoicing, and Payment

- A. Enrollment in Electronic Funds Transfer: The Service Provider shall provide ICE with the information needed to make payments by electronic funds transfer (EFT). Since January 1, 1999, ICE makes all payments only by EFT. The Service Provider shall identify their financial institution and related information on Standard Form 3881, Automated Clearing House (ACH) Vendor Miscellaneous Payment Enrollment Form. The Service Provider shall submit a completed SF 3881 to ICE payment office prior to submitting its initial request for payment under this Agreement. If the EFT data changes, the Service Provider shall be responsible for providing updated information to the ICE payment office.
- B. Invoicing: The Service Provider shall submit an original itemized invoice containing the following information: the name and address of the facility; the name of each ICE detainee; detainee's A-number; specific dates of detention for each detainee; the total number of detainee days; the daily rate; the total detainee days multiplied by the daily rate; an itemized listing of all other charges; and the name, title, address, and phone number of the local official responsible for invoice preparation. The Service Provider shall submit monthly invoices within the first ten (10) working days of the month following the calendar month when it provided the services, to:

Department of Homeland Security  
ATTN: Immigration and Customs Enforcement  
Deportation Unit 7 Removal  
JFK Federal Building  
Government Center, Room 1775  
Boston, MA 02203  
Phone: 617-565-3304  
Fax: 617-551-5628

- C. Payment: ICE will transfer funds electronically through either an Automated Clearing House subject to the banking laws of the United States, or the Federal Reserve Wire Transfer System. The Prompt Payment Act applies to this Agreement. The Prompt Payment Act requires ICE to make payments under this Agreement the thirtieth (30<sup>th</sup>) calendar day after the ICE Deportation office receives a complete invoice. Either the date on the Government's check, or the date it executes an electronic transfer of funds, shall constitute the payment date. The Prompt Payment Act requires ICE to pay interest on overdue payments to the Service Provider. ICE will determine any interest due in accordance with the Prompt Payment Act.

#### Article XIV. Government Furnished Property

- A. Federal Property Furnished to the Service Provider: ICE may furnish Federal Government property and equipment to the Service Provider. Accountable property remains titled to ICE and shall be returned to the custody of ICE upon termination of the Agreement. The suspension of use of bed space made available to ICE is agreed to be grounds for the recall and return of any or all government furnished property.
- B. Service Provider Responsibility: The Service Provider shall not remove ICE property from the facility without the prior written approval of ICE. The Service Provider shall report any loss or destruction of any Federal Government property immediately to ICE.

#### Article XV. Hold Harmless and Indemnification Provisions

- A. Service Provider Held Harmless: ICE shall, subject to the availability of funds, save and hold the Service Provider harmless and indemnify the Service Provider against any and all liability claims and costs of whatever kind and nature, for injury to or death of any person(s), or loss or damage to any property, which occurs in connection with or is incident to performance of work under the terms of this Agreement, and which results from negligent acts or omissions of ICE officers or employees, to the extent that ICE would be liable for such negligent acts or omissions under the Federal Tort Claims Act, 28 USC 2691 *et seq.*
- B. Federal Government Held Harmless: The Service Provider shall save and hold harmless and indemnify federal government agencies to the extent allowed by law against any and all liability claims, and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of the occupancy, use, service, operation or performance of work under the tenets of this Agreement, resulting from the negligent acts or omissions of the Service Provider, or any employee, or agent of the Service Provider. In so agreeing, the Service Provider does not waive any defenses, immunities or limits of liability available to it under state or federal law.

- C. Defense of Suit: In the event a detainee files suit against the Service Provider contesting the legality of the detainee's incarceration and/or immigration/citizenship status, ICE shall request that the U.S. Attorney's Office, as appropriate, move either to have the Service Provider dismissed from such suit, to have ICE substituted as the proper party defendant, or to have the case removed to a court of proper jurisdiction. Regardless of the decision on any such motion, ICE shall request that the U.S. Attorney's Office be responsible for the defense of any suit on these grounds.
- D. ICE Recovery Right: The Service Provider shall do nothing to prejudice ICE's right to recover against third parties for any loss, destruction of, or damage to U.S. Government property. Upon request of the Contracting Officer, the Service Provider shall, at ICE's expense, furnish to ICE all reasonable assistance and cooperation, including assistance in the prosecution of suit and execution of the instruments of assignment in favor of ICE in obtaining recovery.

#### Article XVI. Financial Records

- A. Retention of Records: All financial records, supporting documents, statistical records, and other records pertinent to contracts or subordinate agreements under this Agreement shall be retained by the Service Provider for three (3) years for purposes of federal examinations and audit. The three (3) year retention period begins at the end of the first year of completion of service under the Agreement. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three (3) year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular three (3) year period, whichever is later.
- B. Access to Records: ICE and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers or other records of the Service Provider or its sub-contractors, which are pertinent to the award, in order to make audits, examinations, excerpts, and transcripts. The rights of access must not be limited to the required retention period, but shall last as long as the records are retained.
- C. Delinquent Debt Collection: ICE will hold the Service Provider accountable for any overpayment, or any breach of this Agreement that results in a debt owed to the Federal Government. ICE shall apply interest, penalties, and administrative costs to a delinquent debt owed to the Federal Government by the Service Provider pursuant to the Debt Collection Improvement Act of 1982, as amended.

#### Article XVII. Guard/Transportation Services

- A. Transport Services Rate: The Service Provider agrees, upon request of the Federal Government in whose custody an ICE detainee is held, to provide all such air/ground transportation services as may be required to transport detainees securely, in a timely manner, to locations as directed by the ICE COTR or designated ICE official. Transportation between the facility and ICE offices, plus related mileage is included in the daily per diem rate. Other ICE directed transportation will be reimbursed at the rate of \$26.21 per hour. Transportation mileage shall be reimbursed at the mileage rate established pursuant to the current General Services Administration (GSA)/federal travel allowance rates. Any incurred overtime pay for such services will be reimbursed at the applicable overtime rate \$39.10 of per hour. At least two (2) qualified law enforcement or

correctional officer personnel employed by the Service Provider under their policies, procedures and practices will perform transport services.

- B. Medical Transportation: Transportation and/or escort/stationary guard services for ICE detainees housed at the Service Provider's facility to and from a medical facility for outpatient care, and transportation and/or escort guard services for ICE detainees housed at the Service Provider's facility admitted to a medical facility; and to detainees attending off-site court proceedings. An officer or officers, shall keep the detainee under constant supervision twenty-four (24) hours per day until the detainee is ordered released from the hospital, or at the order of the COTR. The Service Providers agrees to augment such practices as may be requested by ICE to enhance specific requirements for security, detainee monitoring, visitation and contraband control.
- C. Indemnities: Furthermore, the Service Provider agrees to hold harmless and indemnify DHS/ICE and its officials in their official and individual capacities from any liability, including third-party liability or worker's compensation, arising from the conduct of the Service Provider and its employees during the course of transporting ICE detainees.
- D. Personal Vehicles: The Service Provider shall not allow employees to use their personal vehicles to transport detainees. The Service Provider shall furnish vehicles equipped with interior security features including physical separation of detainees from guards. The Service Provider shall provide interior security specifications of the vehicles to ICE for review and approval prior to installation.
- E. Training and Compliance: The Service Provider shall comply with ICE transportation standards (<http://www.ice.gov/partners/dro/opsmanual/index.htm>) related to the number of hours the Provider's employee may operate a vehicle. The transportation shall be accomplished in the most economical manner. The Service Provider personnel provided for the above services shall be of the same qualifications, receive training, complete the same security clearances, and wear the same uniforms as those personnel provided for in other areas of this agreement.
- F. Same Sex Transport: During all transportation activities, at least one (1) officer shall be the same sex as the detainee. Questions concerning guard assignments shall be directed to the COTR for
- G. final determination.
- H. Miscellaneous Transportation: The COTR may direct the Service Provider to transport detainees to unspecified, miscellaneous locations.
- I. Billing Procedures: The itemized monthly invoice for such stationary guard services shall state the number of hours being billed, the duration of the billing (times and dates) and the name of the detainee(s) that was guarded.

#### Article XVIII. Contracting Officer's Technical Representative

The Contracting Officer's Technical Representative (COTR) for this Agreement is will be appointed by the Contracting Officer for this agreement. When and if the COTR duties are reassigned, an administrative modification will be issued to reflect the changes. This designation does not include authority to sign contractual documents or to otherwise commit to, or issue changes, which could affect the price, quantity, or performance of this Agreement.



IN WITNESS WHEREOF, the undersigned, duly authorized officers, have subscribed their names on behalf of the  
Bristol County Sheriff and Department of Homeland Security, U.S. Immigration and Customs Enforcement.

ACCEPTED:

U.S. Immigration and Customs Enforcement

Susan D. Erickson  
Contracting Officer

By:

Date:

*Susan D. Erickson*  
*9/27/2007*

ACCEPTED:

Bristol County Sheriff Office

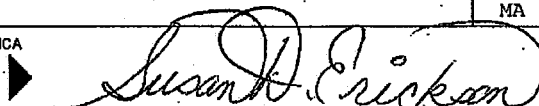
Name  
Title

By:

Date:

*John H. G...*  
*Sheriff*  
*September 27, 2007*

The Intergovernmental Service Agreement Number is DROIGSA-07-003Z

ORDER FOR SUPPLIES OR SERVICES						PAGE OF PAGES	
IMPORTANT: Mark all packages and papers with contract and/or order numbers.						1	3
1. DATE OF ORDER 09/27/2007		2. CONTRACT NO. (If any) DROIGSA-07-0032		6. SHIP TO:			
ORDER NO. HSCEOP-07-F-IG056		4. REQUISITION/REFERENCE NO. FBO071310		a. NAME OF CONSIGNEE Department of Homeland Security			
5. ISSUING OFFICE (Address correspondence to) ICE/Detention Mngt/Detention IGSA's Immigration and Customs Enforcement Office of Acquisition Management 425 I Street NW, Suite 2208 Washington DC 20536				b. STREET ADDRESS JFK Federal Building Government Center, room 1775			
				c. CITY Boston	d. STATE MA	e. ZIP CODE 02203	
7. TO:				f. SHIP VIA			
a. NAME OF CONTRACTOR BRISTOL COUNTY SHERIFFS OFFICE				8. TYPE OF ORDER			
b. COMPANY NAME				<input type="checkbox"/> a. PURCHASE REFERENCE YOUR:		<input checked="" type="checkbox"/> b. DELIVERY	
c. STREET ADDRESS 400 FAUNCE CORNER RD				Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.		Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.	
d. CITY NORTH DARTMOUTH							
e. STATE MA				f. ZIP CODE 02747-1275			
9. ACCOUNTING AND APPROPRIATION DATA See Schedule				10. REQUISITIONING OFFICE ICE Detention & Removal			
11. BUSINESS CLASSIFICATION (Check appropriate box(es))						12. F.O.B. POINT Destination	
<input type="checkbox"/> a. SMALL <input type="checkbox"/> b. OTHER THAN SMALL <input type="checkbox"/> c. DISADVANTAGED <input type="checkbox"/> g. SERVICE-DISABLED VETERAN-OWNED <input type="checkbox"/> d. WOMEN-OWNED <input type="checkbox"/> e. HUBZone <input type="checkbox"/> f. EMERGING SMALL BUSINESS							
13. PLACE OF			14. GOVERNMENT B/L NO.		15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date) 30 Days After Award		16. DISCOUNT TERMS  b2Low
INSPECTION Destination			b. ACCEPTANCE Destination				
17. SCHEDULE (See reverse for Rejections)							
ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)	
	Tax ID Number: 04-001421 DUNS Number: 556747269 This is a NOT-TO-EXCEED Task Order issued against the Inter-Governmental Services Agreement (IGSA) No. DROIGSA-07-0032 for detention and transportation services. Continued ...						
18. SHIPPING POINT		19. GROSS SHIPPING WEIGHT		20. INVOICE NO.		17(h) TOTAL (Cont. pages)	
21. MAIL INVOICE TO:							
a. NAME		DHS/ICE DRO BOSTON FIELD OFFICE				\$383,100.00	
b. STREET ADDRESS (or P.O. Box)		JFK FEDERAL BUILDING, RM 1700 15 NEW SUDBURY ST. GOVERNMENT CENTER					
c. CITY		d. STATE	e. ZIP CODE		\$383,100.00		17(i) GRAND TOTAL
BOSTON		MA	02203				
22. UNITED STATES OF AMERICA BY (Signature) 				23. NAME (Typed) Susan D. Erickson TITLE: CONTRACTING/ORDERING OFFICER			

AUTHORIZED FOR LOCAL REPRODUCTION  
PREVIOUS EDITION NOT USABLE

OPTIONAL FORM 347 (Rev. 3/2005)  
Prescribed by GSA/FAR 48 CFR 53.213(c)

**ORDER FOR SUPPLIES OR SERVICES  
SCHEDULE - CONTINUATION**

PAGE OF PAGES.

2

3

**IMPORTANT:** Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER CONTRACT NO.

09/27/2007 DROIGSA-07-0032

ORDER NO.

HSCEOP-07-F-IG056

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)
	<p>This order is issued under the authority of the Immigration and Nationality Act, as amended, and in accordance with the attached IGSA between the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) and Bristol County Sheriff's Office.</p> <p>DRO Program Office POC: Sophia Edwards, (202) b2Low</p> <p>Contract Officer's Technical Rep: TBD</p> <p>ICE Office of Acquisition Management POC: Susan Erickson, (202) b2Low</p> <p>Period of performance begins September 27, 2007 and is not to exceed sixty (60) months from date of award.</p> <p>Admin Office: US Department of Homeland Security Immigration and Customs Enforcement 425 I Street, NW Room 2208 Washington, DC 20536</p> <p>Accounting Info: b2Low</p>					
0001	Alien Adult Detention: For the housing, care and detention for persons detained at a daily rate of \$99.00.	1	LO	325,500.00	325,500.00	
0002	Transportation/ Guard Service - Provide all transportation services as may be required to transport detainees securely to location as directed by the ICE COTR or designated ICE official. Transportation between the facility and ICE Offices, plus related mileage is included in the daily per diem rate. Continued ...	1	LO	57,600.00	57,600.00	

TOTAL CARRIED FORWARD TO 1ST PAGE (ITEM 17(H))

NSN 7540-01-162-9082

533-49-101

OPTIONAL FORM 348 (Rev. 9/99)  
Prescribed by GSA  
FAR (48 CFR) 53.213(c)

ICE.08.4172.000078

# ORDER FOR SUPPLIES OR SERVICES

## SCHEDULE - CONTINUATION

PAGE OF PAGES

3

3

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER CONTRACT NO.

09/27/2007 DROIGSA-07-0032

ORDER NO.

HSCEOP-07-F-IG056

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)
	<p>INVOICING INSTRUCTIONS: Please submit one (1) original invoice to the Program Office POC. The program official must verify that the goods and/or services have been received/accepted prior to invoice processing by the Dallas Finance Center.</p> <p>The provider shall notify the Contracting Officer and Contracting Officer's Technical Representative in writing, when all allowable charges under this task order exceed 75% of the funded amount authorized under the task order. In no event is the provider authorized to incur costs, or submit invoices, in excess of the total amount authorized by the task order.</p> <p>The invoice must also include: (1) The Contract number (DROIGSA070032) in block #2; (2) the Task Order number (HSCEOP07FIG00056) in block #3; and (3) the name of the COTR.</p> <p>Direct payment inquiries to (214) 915-6161.</p> <p>The total amount of award: \$383,100.00. The obligation for this award is shown in box 17(i).</p>					

TOTAL CARRIED FORWARD TO 1ST PAGE (ITEM 17(H))

NSN 7540-01-152-8082

503-48-101

OPTIONAL FORM 348 (Rev. 6/95)  
Prescribed by GSA  
FAR (48 CFR) 53.213(a)

ICE.08.4172.000079

# **EXHIBIT 17**



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – Issued February 13, 2019

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## Bristol County Sheriff's Office

For the period July 1, 2015 through December 31, 2017





Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

February 13, 2019

Sheriff Thomas M. Hodgson  
Bristol County Sheriff's Office  
400 Faunce Corner Road  
North Dartmouth, MA 02747

Dear Sheriff Hodgson:

I am pleased to provide this performance audit of the Bristol County Sheriff's Office. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2015 through December 31, 2017. My audit staff discussed the contents of this report with management of your agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Bristol County Sheriff's Office for the cooperation and assistance provided to my staff during the audit.

Sincerely,

Suzanne M. Bump  
Auditor of the Commonwealth

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## LIST OF ABBREVIATIONS

ACA	American Correctional Association
BCSO	Bristol County Sheriff's Office
CFO	chief financial officer
DOC	Department of Correction
ICE	Immigration and Customs Enforcement
MMARS	Massachusetts Management Accounting and Reporting System
MSA	Massachusetts Sheriffs' Association
OSA	Office of the State Auditor
SCSD	Suffolk County Sheriff's Department

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## EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Bristol County Sheriff's Office (BCSO) for the period July 1, 2015 through December 31, 2017. In this performance audit, we reviewed BCSO's administrative expenditures, its procurement of goods and services, and its administration of staff overtime.

Below is a summary of our findings and recommendations, with links to each page listed.

<b>Finding 1</b> <b>Page <a href="#">8</a></b>	BCSO did not transfer \$348,922 of federal reimbursements to the Office of the State Treasurer or account for them in the state's accounting system.
<b>Recommendations</b> <b>Page <a href="#">8</a></b>	<ol style="list-style-type: none"><li>1. BCSO management should immediately remit \$348,922 to the Commonwealth.</li><li>2. BCSO management should ensure that US Immigration and Customs Enforcement (ICE) has the proper bank account information and that BCSO administers ICE revenue in accordance with state law.</li></ol>
<b>Finding 2</b> <b>Page <a href="#">9</a></b>	BCSO did not ensure that the Commonwealth received appropriate compensation for the services it provided under its service agreement with ICE.
<b>Recommendation</b> <b>Page <a href="#">10</a></b>	BCSO should establish a policy that requires the adequacy of this compensation to be annually reviewed and, if necessary, adjusted.
<b>Finding 3</b> <b>Page <a href="#">11</a></b>	BCSO did not submit required inmate total cost analysis reports.
<b>Recommendation</b> <b>Page <a href="#">12</a></b>	BCSO should work with the Massachusetts Sheriffs' Association to obtain revised report templates in order to prepare and submit fiscal year 2016 and 2017 inmate total cost analysis reports as soon as possible.
<b>Finding 4</b> <b>Page <a href="#">12</a></b>	BCSO did not have sufficient documentation for some credit card expenditures.
<b>Recommendations</b> <b>Page <a href="#">13</a></b>	<ol style="list-style-type: none"><li>1. BCSO should require itemized receipts to support all credit card transactions.</li><li>2. BCSO should establish monitoring controls to ensure that its policies and procedures are adhered to.</li></ol>

## OVERVIEW OF AUDITED ENTITY

The Bristol County Sheriff's Office (BCSO) was established as an independent state agency on August 6, 2009, when the Bristol County government was abolished.<sup>1</sup> The Sheriff became an employee of the Commonwealth, but remained an elected official and retained administrative and operational control over BCSO. During our audit period, BCSO had an average of 726 employees. According to its website,

*BCSO works in partnership with law enforcement agencies, government entities and community groups, lending resources to train, educate, and respond to the safety concerns of our communities. Three adult correctional facilities, a juvenile alternative lock-up, a regional lock-up, and a host of divisions ranging from Civil Process to Homeland Security comprise the Department.*

BCSO operates the Bristol County House of Correction at 400 Faunce Corner Road in North Dartmouth. This multi-building facility was opened in 1990 and is used for the care and custody of people who are sentenced or awaiting trial, as well as federal detainees who are undergoing deportation proceedings with US Immigration and Customs Enforcement (ICE). As of December 25, 2017, BCSO reported that 751 inmates and 198 ICE detainees (68% of capacity) lived at the House of Correction. BCSO also operates a regional lockup facility at 26 Ash Street in New Bedford, which houses 187 inmates (83% of capacity) who either have been sentenced or are awaiting trial. Finally, BCSO provides police dogs to assist municipalities throughout Bristol County in search and rescue operations.

BCSO received state appropriations of \$43,752,046 in fiscal year 2016 and \$43,314,526 in fiscal year 2017. During our audit period, the Commonwealth was reimbursed for services BCSO provided to house and transport federal immigration detainees, as indicated below.

### Federal ICE Reimbursements

Period	Housing	Transportation	Fiscal Year Total
Fiscal Year 2016	\$ 3,635,506	\$ 596,209	\$ 4,231,715
Fiscal Year 2017	5,742,114	686,940	6,429,054
Fiscal Year 2018 (July 1, 2017–December 31, 2017)	2,207,842	565,189	2,773,031
Total Reimbursements	<u>\$ 11,585,462</u>	<u>\$ 1,848,338</u>	<u>\$ 13,433,800</u>

1. Chapter 61 of the Acts of 2009, An Act Transferring County Sheriffs to the Commonwealth, which was enacted on August 6, 2009, transfers, except where specified, all functions, duties, and responsibilities of certain sheriffs' offices. The transition was completed on January 1, 2010.

BCSO received additional revenue from the following federal grants.

Program	State Fiscal Year 2016	State Fiscal Year 2017	Total
Adult Basic Education Distribution	\$ 192,374	\$ 177,231	\$ 369,605
Families First: Improving Outcomes for Youth in Court	89,891	195,532	285,423
Federal Inmate Reimbursement	0	56,657	56,657
Justice Assistance Grant	39,708	194,928	234,636
State Homeland Security	0	5,874	5,874
Adult Education	246,923	245,680	492,603
Urban Areas Security Initiative	0	0	0
Total	<u>\$ 568,896</u>	<u>\$ 875,902</u>	<u>\$ 1,444,798</u>

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## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of certain activities of the Bristol County Sheriff's Office (BCSO) for the period July 1, 2015 through December 31, 2017.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Were certain administrative expenses applicable and allowable in accordance with BCSO policies and procedures, and did they directly support BCSO's mission?	No; see Finding <u>4</u>
2. Did BCSO properly administer its revenue and its contracting process for goods and services in accordance with its policies and procedures, the Massachusetts Sheriffs' Association's (MSA's) budgetary requirements, contractual agreements, and Section 27 of Chapter 30 of the General Laws?	No; see Findings <u>1</u> , <u>2</u> , and <u>3</u>
3. Did BCSO properly administer overtime for its employees who received the most overtime, in accordance with its policies and procedures?	Yes

To achieve our objectives, we gained an understanding of the internal controls related to our audit objectives by reviewing applicable laws, agency policies, and procedures, as well as conducting interviews with BCSO management. We evaluated the design and tested the operating effectiveness of controls over the following areas: administrative expenses, contractual procurement of goods and services, and administration of BCSO employee overtime.

We assessed the reliability of BCSO's electronic data by reviewing its computer use policies, testing security settings, and testing access controls. In addition, we traced a sample of source documents to BCSO's systems and verified a sample of items from the systems to source documents.

In 2018, OSA performed a data reliability assessment of the Commonwealth's Massachusetts Management Accounting and Reporting System (MMARS) focused on testing selected system controls (access controls, application controls, configuration management, contingency planning, and segregation of duties) for the period April 1, 2017 through March 31, 2018. As part of the current audit, we obtained payment information from MMARS for all expenses incurred by BCSO during our audit period and compared this information to the expense data in BCSO's accounting records (invoices, spreadsheet data, and purchase orders). We selected a random sample of six invoices from BCSO's files and determined whether the information on the invoices matched the data in MMARS. Further, we reviewed 30 months of credit card statements, comparing the beginning and ending balances on these statements to determine whether any statements were missing.

We requested from BCSO a list of all contracts it executed during our audit period. To test the accuracy and completeness of this list, we reviewed the minutes of the Sheriff's Internal Committee meetings held during our audit period, noting any discussions of contracts, and compared those discussed to the list provided. We also reviewed a random sample of 28 of the 25,209 transactions involving payments BCSO made during the audit period to determine whether they corresponded to any contractual agreements that were not on the list provided.

We extracted from MMARS a list of BCSO employees who received overtime payments during our audit period and compared it to BCSO's payroll records to determine the accuracy of the records.

We obtained from BCSO officials a list of all the bank accounts BCSO used during our audit period and a list of all credit cards in use. To verify the number of active credit cards in use, we examined BCSO bank activity reports for any credit card transactions. We analyzed the information in BCSO's credit card statements to determine whether the listed payment amounts reconciled to amounts reported in MMARS.

Based on the results of these data reliability assessment procedures, we determined that the information obtained for our audit period was sufficiently reliable for the purposes of our audit work.

### **Administrative Expenses**

To determine whether administrative expenses were applicable and allowable in accordance with BCSO internal control policies and procedures, MSA's budgetary requirements, contractual agreements, and

Section 27 of Chapter 30 of the General Laws, we selected a statistical sample of 31 transactions (totaling \$232,105) out of a population of 25,209 transactions (totaling \$57,544,435), with a tolerable error rate of 7.5% and confidence level of 90%. We reviewed each transaction and determined whether purchases were related to BCSO activities, payment amounts were properly calculated, purchases had sufficient documentation, invoice amounts matched expenditure amounts, and invoices were properly approved and marked as paid.

## **Procurement**

To determine whether BCSO properly administered its contracting process for goods and services, we selected a judgmental sample of 8 out of 35 contracts (such as the inmate telephone, US Immigration and Customs Enforcement [ICE], and medical contracts) that BCSO awarded during our audit period. We reviewed the contract files to determine whether each contract was awarded in accordance with BCSO policies and procedures. In the case of BCSO's contract with ICE, we also determined whether BCSO annually calculated the cost of housing ICE detainees and, if necessary, amended the contract to ensure proper reimbursement. Finally, we determined whether any revenue derived from a contract was properly deposited in the appropriate bank account by examining invoice amounts and comparing them to bank statements and MMARS transaction data.

To assess whether assets that were procured during the audit period were properly inventoried, we judgmentally selected 67 out of 1,083 items from BCSO's inventory record, located them, and determined whether they had inventory tags affixed.

## **Overtime**

To determine whether overtime was properly managed and approved for the BCSO employees who earned the most overtime pay, we selected a judgmental sample of the top 39 employees out of the 100 employees who received the most overtime pay during our audit period. We reviewed roll call matrixes<sup>2</sup> and employee punch cards to determine why employees were required to work overtime and whether overtime had supervisory approval. Finally, we reviewed payroll records to determine whether overtime had been approved by senior management.

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2. A roll call matrix is a mandatory briefing that correction officers receive when they arrive for their shifts that describes any relevant activities that occurred at the facility before they arrived.

## **Credit Card Expenditures**

To determine whether credit card expenditures were procured in accordance with BCSO policies and procedures, were allowable under those policies and procedures, and were directly applicable to BCSO's mission, we performed the following audit procedures regarding credit card expenditures:

- We randomly selected a nonstatistical sample of eight monthly credit card statements from a period of 30 months.
- We tested all 67 credit card purchases (totaling \$39,294) made during the eight-month period selected to determine whether purchases were business-related and properly documented, and we determined whether items listed on the receipts were applicable and allowable for BCSO use, transactions were authorized and reviewed, and the amounts on the receipts matched those on the credit card statements.
- We compared the credit card payment statements to payment information in MMARS to determine whether the payment amounts reconciled.

We used a combination of judgmental and statistical sampling methods for our audit objectives and did not project the sample results to any of the population.



## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### **1. The Bristol County Sheriff's Office did not transfer \$348,922 of federal reimbursements to the Office of the State Treasurer or account for them in the state's accounting system.**

During our audit period, the Bristol County Sheriff's Office (BCSO) did not transfer \$348,922 of federal reimbursements that it received from US Immigration and Customs Enforcement (ICE) to the Commonwealth's General Fund or account for these funds in the Commonwealth's Massachusetts Management Accounting and Reporting System. The Commonwealth should have received these funds from ICE as payment for BCSO's having housed and transported federal immigration detainees who were in deportation proceedings. By not transferring these funds, BCSO deprived the Commonwealth of their use.

### **Authoritative Guidance**

Section 27 of Chapter 30 of the Massachusetts General Laws states,

*Except as otherwise expressly provided, all fees or other money received on account of the commonwealth shall be paid daily into the treasury thereof, but if in the opinion of the commissioner of administration and the state treasurer the interests of the commonwealth require, payments may be made weekly in accordance with such rules and regulations as the state treasurer may prescribe.*

### **Reasons for Issue**

According to BCSO officials, ICE used the routing number of a BCSO bank account that BCSO does not typically use to receive funds from ICE before it deposits them with the Commonwealth. BCSO officials could not explain why the funds were not remitted to the Commonwealth in fiscal year 2016 when they were received.

### **Recommendations**

1. BCSO management should immediately remit \$348,922 to the Commonwealth.
2. BCSO management should ensure that ICE has the proper bank account information and that BCSO administers ICE revenue in accordance with state law.

### **Auditee's Response**

*We bill monthly to ICE for transportation and housing of federal inmates. Since becoming a State agency, we have consistently provided the proper routing numbers for bank transfers of funds to*

*be deposited within a Commonwealth account. We have made ICE officials aware of this each time the error was made. We have reiterated the proper account that the funds are to be transmitted to on each monthly billing form. There has been turnover in staff at ICE that has resulted in them using an account that was used prior to State takeover in 2010. We have made them aware of the mistake. The issue has been settled with these funds transferred to the State and the issue has not occurred since that time.*

## **Auditor's Reply**

Based on its response, BCSO has taken measures to address our concerns in this area. However, in the future, regardless of which BCSO account ICE contract payments are deposited in, BCSO should take the measures necessary to ensure that they are properly remitted and recorded in a timely manner.

## **2. BCSO did not ensure that the Commonwealth received appropriate compensation for the services it provided under its service agreement with ICE.**

BCSO did not make sure that the amount it charged ICE to house ICE detainees was appropriate. BCSO has entered into an intergovernmental service agreement with ICE to house and transport federal immigration detainees who are in deportation proceedings and are awaiting trial or deportation for violations of US immigration laws, as well as to transport these detainees for deportation activities, court appearances, and medical emergencies. In return for these services, ICE, in its most recent contract, agreed to pay BCSO a negotiated bed day rate,<sup>3</sup> which is currently \$98. Although BCSO renegotiated the amount that ICE reimburses the Commonwealth for transporting these detainees in 2017, it has not renegotiated the bed day rate for housing them since 2010. As a result, the Commonwealth may not be receiving equitable compensation for these services under this agreement.

## **Authoritative Guidance**

Section B of Article IX of the intergovernmental service agreement between ICE and BCSO states,

*Basis for Price Adjustment: A firm fixed price with economic adjustment provides for upward and downward revision of the stated Per Diem based upon cost indexes of labor and operating expenses, or based upon the Service Provider's actual cost experience in providing the service.*

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3. The bed day rate is a daily rate per detainee that, through negotiations, ICE agrees to pay for the temporary housing and detention of ICE detainees awaiting trial or deportation.

Regarding calculation of adjustments to the bed day rate for detainees, Article XII of the agreement states,

*ICE shall reimburse the Service Provider at the fixed detainee day rate. . . . The Parties may adjust the rate twenty-four (24) months after the effective date of the agreement and every twelve (12) months thereafter. The Parties shall base the cost portion of the rate adjustment on the principles of allowability and allocability as set forth in [federal Office of Management and Budget] Circular A-87, federal procurement laws, regulations, and standards in arriving at the detainee day rate.*

To administer this contract properly, BCSO should annually review the compensation it receives under the contract to determine whether it is reasonable.

### **Reasons for Issue**

According to BCSO's Sheriff, the office was unaware that it had not renegotiated the bed day rate since 2010. The Sheriff further explained that because the ICE reimbursement is transferred into the Commonwealth's General Fund, not retained by BCSO, there is little incentive for his office to determine whether any increases in the bed day rate are necessary. In addition, BCSO does not have controls, e.g., policies and procedures, in place that require it to annually assess the reasonableness of its compensation under this contract.

### **Recommendation**

BCSO should establish a policy that requires the adequacy of this compensation to be annually reviewed and, if necessary, adjusted.

### **Auditee's Response**

*The Bristol County Sheriff's Office [chief financial officer] is responsible to insure each year that revenues generated through ICE detention meet or exceed the cost of care for detainees. The cost per detainee is \$88 per day and the rate paid to the BCSO is \$98 per day per detainee. Since our cost is \$10 less per inmate per day, it is difficult to justify negotiating a higher rate. We have and will continue to analyze our negotiated rate of actual cost versus revenue, and in the instance when justified by cost increases we will negotiate a higher daily rate.*

*[The] reference to lack of incentive to negotiate new rates was not meant to suggest that we would not be paying attention to the need to renegotiate should revenues not be meeting costs, but rather point out that negotiating to increase contract rates when revenues are exceeding costs, lacks incentive since the Commonwealth absorbs the surplus revenues and leaves the burden of day to day operations on the BCSO.*

## Auditor's Reply

Based on its response, BCSO will take measures to ensure that it receives equitable compensation for the services it provides under its agreement with ICE. However, in order to ensure that this happens, we again recommend that BCSO establish a policy requiring this compensation to be annually reviewed and, if necessary, adjusted.

### 3. BCSO did not submit required inmate total cost analysis reports.

BCSO did not prepare, and submit to the appropriate government agencies and legislative committees, inmate total cost analysis reports<sup>4</sup> for fiscal years 2016 and 2017. As a result, these governmental entities may not have had all the information they needed to properly inform their consideration of any policy, operational, or financial issues regarding BCSO's operations. Further, BCSO lacked detailed information in this area that could have allowed it to manage this aspect of its operations more effectively.

## Authoritative Guidance

According to Line Item 8910-7110 in the Commonwealth's fiscal year 2018<sup>5</sup> budget summary,

*Each sheriff's office shall . . . report, in a format designated by the [Massachusetts Sheriffs' Association], in consultation with the executive office for administration and finance, fiscal year 2017 total costs per inmate by facility and by department not later than December 1, 2017; provided further, that each sheriff's office shall submit the report directly to the executive office for administration and finance, the house and senate committees on ways and means, the joint committee on public safety and homeland security, the executive office of public safety and security, the Massachusetts Sheriffs' Association and the department of correction.*

## Reasons for Issue

According to BCSO management, the Massachusetts Sheriffs' Association (MSA) did not provide the inmate total cost analysis report template that prescribed the required format of these reports, as it had done in previous years, and therefore BCSO could not prepare them. BCSO does not have any policies and procedures that prescribe how the annual report preparation process is to be conducted.

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4. Inmate total cost analysis reports are compiled by each sheriff's office in conjunction with the Massachusetts Sheriffs' Association and detail the total costs for the care and custody of inmates for each facility and department.  
5. The fiscal year 2017 budget included the same requirement for the previous fiscal year.

## Recommendation

BCSO should work with MSA to obtain revised report templates in order to prepare and submit fiscal year 2016 and 2017 inmate total cost analysis reports as soon as possible.

## Auditee's Response

*The BCSO had in fact processed the information in parts to the Massachusetts Sheriffs' Association by the mandated reporting deadline. The MSA did report on behalf of all Sheriffs' departments as part of their duties and reporting requirements to [the Executive Office for Administration and Finance] and the Legislature by the deadline set forth. These reports for [fiscal years] 2016 and 2017 were provided to the Audit team the next business day after the closeout meeting. They will again be provided for 2018 to the MSA as part of the annual reporting requirements of the MSA to the Legislature. Said reports demonstrate that the Bristol County Sheriff's Department has the lowest cost of care for inmates in the Commonwealth.*

## Auditor's Reply

Although BCSO did provide us with copies of the reports it mentions in its response, our review of these reports indicated that they were deficient in that they did not contain information on total costs per inmate for each facility and department as required by statute. Further, contrary to statute, they were not submitted directly to the Executive Office for Administration and Finance, the House and Senate Committees on Ways and Means, the Joint Committee on Public Safety and Homeland Security, the Executive Office of Public Safety and Security, MSA, and the Department of Correction.

### **4. BCSO did not have sufficient documentation for some credit card expenditures.**

Some of BCSO's credit card expenditures were insufficiently documented. We examined 67 credit card purchases (totaling \$39,294) that BCSO made during our audit period and found that for 19 (totaling \$1,129), there were no itemized receipts, and for 5 others (totaling \$192), there were no receipts at all. Without proper documentation, including itemized receipts, for all expenses, there is a higher-than-acceptable risk that payments for improper expenses could occur.

## Authoritative Guidance

The Commonwealth Procurement Card Program Policy and Procedure issued by the Office of the State Comptroller states, "An itemized receipt must be obtained for each transaction." BCSO's Personnel Policy 02.01.00(N1) states that BCSO will follow this policy.

## Reasons for Insufficient Documentation

According to BCSO management, the five missing receipts were misplaced while the Sheriff was traveling. With regard to the 19 receipts that were not itemized, BCSO management stated that they were unaware that itemized receipts were required. BCSO has not established any monitoring controls to ensure that its credit card policies are adhered to.

## Recommendations

1. BCSO should require itemized receipts to support all credit card transactions.
2. BCSO should establish monitoring controls to ensure that its policies and procedures are adhered to.

## Auditee's Response

*Most documentation was presented upon request. The detailed level may not have been present as to what meal was actually eaten; however, receipts of charges for expenses were provided. We have since implemented that any charges to the department credit cards shall be detailed to include actual meals purchased and all receipts will be required by department personnel. All receipts are now itemized by card holders and we have set firm monitoring controls to adhere to policy and procedure both within the department and at the State level. The [chief financial officer] monitors any purchases by the Sheriff and the Assistant Superintendent of Finance monitors any purchases made by the [chief financial officer].*

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## OTHER MATTERS

During our audit, certain concerns were brought to our attention in relation to the operations of the Bristol County Sheriff's Office (BCSO). The work we performed regarding our audit objectives covered some of these concerns, such as those related to the Sheriff's travel expenses and agency revenue. We considered all of the concerns that were not part of our audit objectives, and for those that appeared to be significant and within our ability to assess, we performed some limited review work. For a number of concerns, such as those that involved the treatment of inmates, we deferred to the work conducted by the American Correctional Association<sup>6</sup> (ACA) on BCSO as detailed in the standards compliance accreditation audit report for BCSO issued by the ACA Commission on Accreditation for Corrections on October 3, 2016. Below is a brief description of the concerns we reviewed during our audit, as well as the results of our review.

### **1. Concern: BCSO has an insufficient number of healthcare workers.**

BCSO did not give us any information regarding authoritative requirements or generally accepted standards related to the ratio of healthcare personnel to inmates. We interviewed BCSO's chief financial officer (CFO) to obtain an understanding of the process BCSO uses to calculate the number of healthcare workers needed for the inmate population. Although we were not given any documentation to substantiate this assertion, the CFO stated that he consults with other prisons across the state and with medical professionals providing services to such prisons to determine the most appropriate number of contracted healthcare workers. We initially reviewed the October 2016 ACA accreditation report and learned that it found no significant concerns or problems in this area. During our audit period, BCSO contracted with a vendor, Correctional Psychiatric Services, to provide healthcare to its inmates. Under this contract, BCSO provided 20 healthcare workers: 5 full-time and 3 part-time mental-healthcare workers and 12 full-time non-mental-healthcare workers (1 medical director, 1 health service administrator, 1 director of nursing, 1 nurse practitioner, 6 licensed practical nurses, and 2 floating intake nurses). BCSO also employs 16 full-time social workers, who act as intermediaries between the inmates and contracted healthcare workers. These numbers reconciled to what was noted in the accreditation report. Because the Suffolk County Sheriff's Department (SCSD) is similar to BCSO in size, we then compared BCSO's healthcare worker staffing level to the level indicated in the ACA

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6. ACA's website states that the organization publishes standards that "address services, programs and operations essential to good correctional management."

accreditation report on SCSD dated March 1, 2017. We determined the ratio of healthcare personnel to inmates for SCSD to be similar to BCSO's: approximately 1 healthcare worker per 32 inmates.

## **2. Concern: BCSO's facilities are overcrowded.**

We determined BCSO's inmate count as of December 2017 and reviewed the Massachusetts Department of Correction's (DOC's) *Quarterly Report on the Status of Prison Capacity, First Quarter 2017*<sup>7</sup> and *Quarterly Report on the Status of Prison Capacity, Second Quarter 2017*. These reports indicated that BCSO was at 226% capacity during these two quarters. We contacted DOC to verify these calculations. According to the DOC official with whom we spoke, the calculations that DOC used to determine occupancy for this report were based on the original design capacity of the BCSO facilities and did not include any additions that may have increased the facilities' operational capacities. However, the Bristol County House of Correction in North Dartmouth opened in 1990 with a designed capacity of 360 inmates, and its operational capacity has since increased to 1,386 inmates. Similarly, BCSO's lockup facility at 26 Ash Street in New Bedford was built in 1888 with a design capacity of 206 inmates, but BCSO has since increased the capacity of the facility to 226 inmates. Based on this information, we reviewed the October 2016 ACA accreditation report. According to this report and BCSO's inmate count as of December 25, 2017, BCSO had 751 inmates and 198 Immigration and Customs Enforcement detainees living at its House of Correction, placing the facility at 68% of its current capacity, and 187 inmates at its lockup facility at 26 Ash Street in New Bedford, placing it at 83% of its current capacity.

## **3. Concern: BCSO's suicide rate is high compared to those of other prisons.**

We determined that during our audit period, BCSO experienced five inmate suicides: four in 2016 and one in 2017. BCSO's inmate population also experienced four unsuccessful suicide attempts in 2016, two in 2017, and none in the first half of 2018. As shown below, there was a downward trend in the number of suicides during our audit period, and the suicide rate (number of suicides as a percentage of the total inmate population) for BCSO was similar to that of other Sheriffs' Departments in the Commonwealth.

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7. Section 21 of Chapter 799 of the Acts of 1985 authorizes and directs the Commissioner of Correction to report, "by facility, the average daily census for the period of the report and the actual census on the first and last days of the report period. Said report shall also contain such information for the previous twelve months and a comparison to the rated capacity of such facility."



Sheriff's Department*	2016 Suicides	2016 Suicide Rate <sup>†</sup>	2017 Suicides	2017 Suicide Rate <sup>†</sup>	January 1, 2018–July 27, 2018 Suicides
Bristol County	4	0.33%	1	0.08%	0
Suffolk County	1	0.06%	2	0.12%	1 <sup>‡</sup>
Barnstable County	0	0.00%	2	0.50%	0
Plymouth County	0	0.00%	1	0.10%	0
Norfolk County	0	0.00%	0	0.00%	0

\* Information regarding suicide counts was provided by each Sheriff's Department.

† Percentages are based on actual inmate populations, which vary significantly among Sheriffs' Departments. For example, as of December 2017, the Barnstable County Sheriff's Office reported 317 inmates and SCSD reported 1,598.

‡ The medical examiner's determination of the cause of this death is pending.

#### 4. Other Issues

Below are examples of additional concerns that were brought to our attention during our audit. We did not perform any audit work related to these concerns; rather, in the case of these concerns, we reviewed the related sections of the October 2016 ACA audit report for BCSO to determine the extent of any problems.

##### a. Concern: Inmates are given poor-quality food.

During our audit, we toured BCSO's Dartmouth facility twice and its New Bedford facility once. Although the purpose of our tours was not specifically to assess food quality, these tours took us through inmate holding areas and the kitchen and food-preparation areas. We viewed the inmate lunch preparation and noticed that all kitchen personnel exercised proper hygiene in preparing and handling food.

According to the October 2016 ACA audit report,

*Members of the visiting committee sampled an inmate meal (Tuesday lunch) during the course of the audit. The food served was hot and palatable, and the portions were ample.*

##### b. Concern: The temperature where inmates are housed is excessive in summer.

We experienced a temperate and comfortable temperature while touring the Dartmouth and New Bedford facilities and all their buildings. Further, we reviewed the October 2016 ACA audit report, which stated,

*Members of the audit team spoke with inmates and staff members throughout the facility and received no significant complaints regarding environmental conditions. The audit team did not observe any equipment or building structure in need of repair.*

# **EXHIBIT 18**



Caution

As of: October 26, 2021 3:00 PM Z

## **Savino v. Souza**

United States District Court for the District of Massachusetts

May 12, 2020, Decided; May 12, 2020, Filed

CIVIL ACTION NO. 20-10617-WGY

### **Reporter**

459 F. Supp. 3d 317 \*; 2020 U.S. Dist. LEXIS 83371 \*\*; 2020 WL 2404923

MARIA ALEJANDRA CELIMEN SAVINO, JULIO CESAR MEDEIROS NEVES, and all those similarly situated, Plaintiffs-Petitioners, v. STEVEN J. SOUZA, Superintendent of Bristol County House of Correction in his official capacity, Defendant-Respondent.

Civil Rights Law > Protection of Rights > Prisoner Rights > Welfare

### **HN1 [Download] Prisoner Rights, Welfare**

The United States Constitution dictates that the government reasonably safeguard those in its custody, for the power to incarcerate implies the duty to protect.

**Prior History:** [Savino v. Souza, 2020 U.S. Dist. LEXIS 70405 \(D. Mass., Apr. 4, 2020\)](#)

## **Core Terms**

Detainees, preliminary injunction, testing, CDC, staff, bail, virus, immigration, spread, confinement, detention center, pandemic, tracing, merits, deliberate indifference, incarcerated, conditions, injunction, detention, inmates, irreparable harm, deportations, distancing, infection, releases, Interim, public interest, outbreak, Orders, serious harm

Civil  
Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

### **HN2 [Download] Injunctions, Preliminary & Temporary Injunctions**

A preliminary injunction is an interim equitable relief whose purpose is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward.

## **Case Summary**

### **Overview**

**HOLDINGS:** [1]-In a purported class action, where the immigration detainees alleged that the facility was simply too crowded to practice social distancing, and the conditions were otherwise unhygienic to prevent the spread of corona virus disease 2019 (COVID-19), the motion for preliminary injunction was allowed because the detainees showed a likelihood of irreparable harm since the government resisted widespread testing and continued to accept new detainees.

Civil  
Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Civil Procedure > Preliminary  
Considerations > Equity > Relief

### **HN3 [Download] Injunctions, Preliminary & Temporary Injunctions**

Once a preliminary injunction is invoked, the scope of a district court's equitable powers is broad, for breadth and flexibility are inherent in equitable remedies.

### **Outcome**

Motion for preliminary injunction granted.

## **LexisNexis® Headnotes**

Civil  
Procedure > Remedies > Injunctions > Permanent

Injunctions

Civil

Procedure > Remedies > Injunctions > Preliminary  
& Temporary Injunctions

parties from harming one another during the litigation; to keep the parties as far as possible in the respective positions they occupied when the suit began.

#### [HN4](#) **Injunctions, Permanent Injunctions**

If a request for a permanent injunction does not sound in habeas, it follows that the lesser included request for a temporary stay (or preliminary injunction) does not either.

Immigration Law > Deportation &  
Removal > Judicial Review

Civil Procedure > ... > Injunctions > Grounds for  
Injunctions > Irreparable Harm

Civil

Procedure > Remedies > Injunctions > Preliminary  
& Temporary Injunctions

Civil Procedure > ... > Injunctions > Grounds for  
Injunctions > Likelihood of Success

#### [HN5](#) **Deportation & Removal, Judicial Review**

[8 U.S.C.S. § 1252\(f\)](#) prohibits federal courts from granting classwide injunctive relief against the operation of [8 U.S.C.S. §§ 1221-1231](#), but this ban does not extend to individual cases.

Immigration Law > Deportation &  
Removal > Administrative  
Proceedings > Jurisdiction

#### [HN8](#) **Grounds for Injunctions, Irreparable Harm**

To secure a preliminary injunction, a plaintiff must show: (1) a substantial likelihood of success on the merits, (2) a significant risk of irreparable harm if the injunction is withheld, (3) a favorable balance of hardships, and (4) a fit (or lack of friction) between the injunction and the public interest. The first two factors, likelihood of success and of irreparable harm, are the most important in the calculus. The measure of irreparable harm is not a rigid one; it has been referred to as a sliding scale, working in conjunction with a moving party's likelihood of success on the merits, such that a greater likelihood of success on the merits permits somewhat less of a showing of irreparable harm.

#### [HN6](#) **Administrative Proceedings, Jurisdiction**

[8 U.S.C.S. § 1252\(f\)\(1\)](#) does not apply to individual aliens against whom immigration proceedings have been initiated. [8 U.S.C.S. § 1252\(f\)\(1\)](#) denies a court the jurisdiction or authority to enjoin or restrain the operation of certain immigration statutes. [8 U.S.C.S. § 1252\(f\)\(1\)](#).

Civil  
Procedure > Remedies > Injunctions > Preliminary  
& Temporary Injunctions

Civil Rights Law > ... > Scope > Law Enforcement  
Officials > Custody

Civil Rights Law > Protection of Rights > Prisoner  
Rights > Medical Treatment

Civil Rights Law > ... > Immunity From  
Liability > Local Officials > Deliberate Indifference

#### [HN7](#) **Injunctions, Preliminary & Temporary Injunctions**

Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents. The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. It serves as an equitable policing measure to prevent the

#### [HN9](#) **Law Enforcement Officials, Custody**

The barebones constitutional demand on the government is to refrain at least from treating a pretrial detainee with deliberate indifference to a substantial risk of serious harm to health. Proof of deliberate indifference requires a showing of greater culpability than negligence but less than a purpose to do harm, and it may consist of showing a conscious failure to provide medical services where they would be reasonably appropriate. To show such a state of mind, a

plaintiff must provide evidence that the defendant had actual knowledge of impending harm, easily preventable, and yet failed to take the steps that would have easily prevented that harm. This standard, requiring an actual, subjective appreciation of risk, has been likened to the standard for determining criminal recklessness. Courts generally apply the same standard for civil immigration detainees as for pre-trial detainees. The legal rights of an immigration detainee are analogous to those of a pretrial detainee.

Civil Rights Law > Protection of Rights > Prisoner Rights > Medical Treatment

#### [HN10](#) [📄] **Prisoner Rights, Medical Treatment**

In determining deliberate indifference, a district court has discretion to consider developments that postdate the pleadings and pretrial motions.

Constitutional Law > Bill of Rights > Fundamental Rights > Cruel & Unusual Punishment

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

#### [HN11](#) [📄] **Fundamental Rights, Cruel & Unusual Punishment**

The inquiry under the Due Process Clause is purely objective, with a subjective inquiry reserved for the [Eighth Amendment](#) context.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Public Interest

#### [HN12](#) [📄] **Grounds for Injunctions, Public Interest**

In the immigration context, the final two factors -- assessing the harm to an opposing party and weighing the public interest -- typically merge when the Government is the opposing party.

Immigration Law > Deportation & Removal > Administrative Proceedings > Bond, Custody & Detention

#### [HN13](#) [📄] **Administrative Proceedings, Bond, Custody & Detention**

There is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.

Civil Rights Law > Protection of Rights > Prisoner Rights > Confinement Conditions

#### [HN14](#) [📄] **Prisoner Rights, Confinement Conditions**

The government's custodial duty has both inward and outward aspects: that is, the government must guard the health and safety of those incarcerated within its facility, as well as protect the outside public from dangerous detainees.

**Counsel:** **[\*\*1]** For Maria Alejandra Celimen Savino, All those similarly situated, Julio Cesar Medeiros Neves, All those similarly situated, Petitioners: Ivan Espinoza-Madrigal, LEAD ATTORNEY, PRO HAC VICE, Lawyers Committee for Civil Rights and Economic Justice, Boston, MA; Oren N. Nimni, LEAD ATTORNEY, Boston, MA; Reena Parikh, LEAD ATTORNEY, PRO HAC VICE, Yale Law School, New Haven, CT; Michael J. Wishnie, Yale Law School, New Haven, CT; Oren M. Sellstrom, Lawyers' Committee for Civil Rights and Economic Justice, Boston, MA.

For Steven J. Souza, Superintendent Bristol County House of Corrections in his Official Capacity, Respondent: Michael P. Sady, Thomas E. Kanwit, LEAD ATTORNEYS, United States Attorney's Office, John Joseph Moakley Federal Courthouse, Boston, MA.

For Rick Raemisch, Amicus: William W. Fick, LEAD ATTORNEY, Fick & Marx LLP, Boston, MA.

**Judges:** WILLIAM G. YOUNG, DISTRICT JUDGE.

**Opinion by:** WILLIAM G. YOUNG

### **Opinion**

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**[\*320]** YOUNG, D.J.

#### **MEMORANDUM OF DECISION**

## I. INTRODUCTION

**HN1**<sup>1</sup> The Constitution dictates that the government reasonably safeguard those in its custody, for the power to incarcerate implies the duty to protect. How far does that duty go amidst the global pandemic of the COVID-19 virus? That is the enigma this Court, like **\*\*2** others across the nation, has grappled with in this case. A class of civil immigration detainees held in the Bristol County House of Correction, citing this unparalleled health crisis, press this Court to release them from confinement in tight and allegedly unsanitary quarters. The government refuses to play ball.

The Court has matched the unusual health emergency with an unusual procedural maneuver. Before addressing the merits of the petition, the Court relied on its inherent authority expeditiously to review bail applications for all of the detainees in the class, one by one, and released almost a third of them to house arrest under strict conditions. These releases have meaningfully reduced the crowding at the detention center and, one hopes, hindered the virus' spread. The Court then turned to the pending motion for a preliminary injunction and, after briefing and oral argument, preliminarily ordered the government (1) to test all detainees and staff who come into contact with them; and (2) not to admit any more detainees to this facility.<sup>1</sup> This memorandum lays out the Court's reasoning.

As explained more fully below, the Court reaches three essential conclusions. First, withholding **\*\*3** this preliminary injunction would likely cause the detainees irreparable harm because some number of them **\*\*321** would get seriously ill or die. Second, the government's response likely amounts to deliberate indifference to a substantial risk of serious harm to the detainees' health. This deliberate indifference is proven by the government's near-blanket opposition to the release of detainees throughout the bail process (though it did somewhat reduce the population through limited bond releases and deportations), as well as by its minimal efforts at testing and contact tracing.

Third, the balance of the equities and the public interest weigh in favor of the injunction. In so finding, the Court notes that this injunction does not prohibit the

government's (and the public's) two primary interests in enforcing the immigration laws -- deporting those unlawfully present and confining those who are dangerous or flight risks. Yet, to the extent it reduces the risk of an uncontrollable outbreak in the facility, the injunction secures the safety of the detainees, the guards and other staff, their families, and ultimately the public at large. The scale thus tips lopsidedly toward the interim equitable **\*\*4** relief ordered by the Court.

## II. PROCEDURAL BACKGROUND

The named plaintiffs-petitioners are two of 148 individuals (the "Detainees") detained by Immigration and Customs Enforcement ("ICE") on civil immigration charges who, at the start of this litigation, were held at the Bristol County House of Correction ("BCHOC") in North Dartmouth, Massachusetts. Pet. Writ Habeas Corpus ("Pet.") ¶ 1, ECF No. 1; Opp'n Mot. Temporary Restraining Order ("Opp'n TRO"), Ex. A, Aff. Sheriff Thomas H. Hodgson ("Hodgson Aff.") ¶ 6(o), ECF No. 26-1. On March 27, 2020, the Detainees filed a purported class action suit alleging, as relevant here, that the conditions of their confinement violated their due process rights and seeking release. See generally Pet. The gravamen of the complaint was that the facility was simply too crowded to practice social distancing in accordance with ubiquitous medical advice, id. ¶¶ 67-68, and that the conditions were otherwise unhygienic, id. ¶ 70. The Detainees also filed a motion for class certification, ECF No. 13, and a motion for a temporary restraining order, ECF No. 14, which the Court converted into a motion for a preliminary injunction at the initial hearing held on **\*\*5** March 30, 2020.<sup>2</sup>

At a hearing on April 2, 2020, the Court provisionally certified five subclasses, ECF No. 36, and later that day put together a list (using information from a spreadsheet helpfully provided by the respondent, or "the government") of twelve Detainees with no criminal history or pending criminal charges, ECF No. 38. The next morning, counsel for the government informed the Court that ICE would voluntarily release six of those individuals on Orders of Supervision. At a hearing that same day, the government told the Court that ICE would not voluntarily release anyone else. Tr. Hr'g (Apr. 3, 2020) 6:4-8, ECF No. 48. The Court ordered bail for three Detainees at that hearing and requested that the

<sup>1</sup> The preliminary injunction was issued orally at the hearing held by video conference on May 7, 2020. ECF No. 168. The full order is recorded at the end of this memorandum. The Court modified the order on May 11, 2020. ECF No. 172.

<sup>2</sup> All hearings in this matter have been held remotely by video conference in light of the danger posed by COVID-19.



parties supply (jointly or separately) a list of fifty names to consider for bail. *Id.* at 8, 15-17. Neither party opted to select fifty candidates. On April 8, 2020, the Court certified the general class of presently incarcerated Detainees and explained the basis for its bail procedures. [\*Savino v. Souza \(Savino I\)\*, No. 20-10617-WGY, F. Supp. 3d, 2020 U.S. Dist. LEXIS 61775, 2020 WL 1703844 \(D. Mass. Apr. 8, 2020\)](#).

Over the next several weeks, the Court received briefing from the parties relating **[\*322]** to each Detainee's criminal and medical histories, as well as other pertinent information, and assessed each one **[\*\*6]** individually. True to its word, ICE systematically opposed bail for every Detainee after the initial six. For each group the Court considered, the government stated: "It is ICE's position, for the record, that release of none of the listed individuals is required for either their safety or the safety of the remaining civil detainee population at BCHOC." ECF Nos. 50, 58, 67, 75, 79, 80, 85, 88, 94, 102, 105, 111, 116.<sup>3</sup> The Court ruled on the bail applications that were relatively clear cases -- whether granting or denying -- and took the rest under advisement.<sup>4</sup>

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<sup>3</sup>The only cracks in this wall of refusal were two Detainees whom the government offered as substitutes in place of individuals the Court had previously ordered released on bail. See ECF Nos. 51, 63.

<sup>4</sup>Detention for immigrants awaiting deportation is roughly equivalent to denying bail to a person accused of crime. In both cases the goals are the same: to minimize danger to the community and curtail the risk of flight. As an experienced trial judge at both the state and federal levels, I have been struck by the fact that the great bulk of these 148 detainees --not all but most -- would have been admitted to bail on terms were they American citizens facing criminal charges. The fact I did not release more is due solely to the proper respect I owe to the administrative hearing officers within the executive.

If this small cohort is at all reflective of the nearly thirty thousand detainees in ICE custody across the nation, it would appear we are spending millions of our national treasure to lock up thousands of people who might better be released on strict bail conditions without impairing the safety of our citizens or the operations of our government. See Detention Statistics, <https://www.ice.gov/detention-management> (last accessed May 11, 2020) (listing 28,865 immigration detainees in custody as of May 2, 2020); see also ICE, U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report 5, 8, <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf> (stating that 50,165 individuals, on average, were daily in ICE custody in fiscal year 2019, with an average length of stay of 34.3 days).

Between the filing of the case and the preliminary injunction, six Detainees were released by ICE on Orders of Supervision, forty-four were granted bail by this Court, fifteen were released on bond through the immigration courts, fifteen were (or were soon scheduled to be) deported, and five new individuals were added by ICE. Of the 148 Detainees held at BCHOC at the start of the litigation, there remained 80 after the Court's last bail order on May 5, 2020. ECF No. 147; Opp'n Mot. Prelim. Inj. ("Opp'n") 5, ECF No. 164; *id.*, Ex. A, Third Decl. Steven Souza ("Third Souza Decl.") ¶ 9, ECF NO. 164-1.

The Court received briefing on **[\*\*7]** the motion for a preliminary injunction. Pls.' Suppl. Mem. Supp. Mot. Prelim. Inj. ("Pls.' Suppl. Mem."), ECF No. 150; Opp'n. After a hearing held on May 7, 2020, the Court orally issued the preliminary injunction and explained its reasoning. ECF No. 168. This memorandum of decision further explicates the basis for the preliminary injunction. See [\*Fed. R. Civ. P. 52\(a\)\*](#).

### III. THRESHOLD ISSUES



Before embarking on the preliminary injunction discussion, the Court briefly detours to address several threshold hurdles raised by the government. First, the government argues that the Detainees lack constitutional standing for this preliminary injunction. Opp'n 27-28. The Court disagrees for the reasons articulated in its prior opinion certifying the class. [\*Savino I\*, 2020 U.S. Dist. LEXIS 61775, 2020 WL 1703844, at \\*4](#); see also [\*Helling v. McKinney\*, 509 U.S. 25, 33, 113 S. Ct. 2475, 125 L. Ed. 2d 22 \(1993\)](#) ("It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening **[\*323]** condition in their prison on the ground that nothing yet had happened to them.").


Second, the government argues that the Detainees cannot challenge the conditions of confinement in a habeas action, which is limited to challenges to the fact or duration of confinement. Opp'n 19-20 (quoting [\*Jenkins v. Spaulding\*, No. 19-10078-MPK, 2019 U.S. Dist. LEXIS 45148, 2019 WL 1228093 \(D. Mass. Feb. 22, 2019\)](#) (Kelley, M.J.); [\*Kane v. Winn\*, 319 F. Supp. 2d 162, 213-15 \(D. Mass. 2004\)](#)). Even were habeas **[\*\*8]** actions so limited,<sup>5</sup> the Detainees have styled their

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<sup>5</sup>The Court need not decide whether this is indeed the law in the First Circuit, and if so whether that rule applies to detainees in federal custody. Compare [\*Gonzalez-Fuentes v.\*](#)



action as both a habeas petition under [28 U.S.C. § 2241](#) and a complaint seeking declaratory and injunctive relief. Pet. 1. That being so, a cause of action for equitable relief relating to their conditions of confinement is available wholly apart from habeas. See [Simmat v. U.S. Bureau of Prisons](#), 413 F.3d 1225, 1231-33 (10th Cir. 2005). Moreover, [HN2](#)  this preliminary injunction is not itself habeas relief, but rather "interim equitable relief [whose purpose] is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward." [Trump v. International Refugee Assistance Project \(IRAP\)](#), 137 S. Ct. 2080, 2087, 198 L. Ed. 2d 643 (2017) (citing [University of Tex. v. Camenisch](#), 451 U.S. 390, 395, 101 S. Ct. 1830, 68 L. Ed. 2d 175 (1981)). Thus, the Court does not see why this preliminary injunction must stick within habeas' fact-of-confinement domain.<sup>6</sup> [HN3](#)  "Once invoked, the scope of a district court's equitable powers . . . is broad, for breadth and flexibility are inherent in equitable remedies." [Brown v. Plata](#), 563 U.S. 493, 538, 131 S. Ct. 1910, 179 L. Ed. 2d 969 (2011) (omission in original) (internal quotation marks and citations deleted).

Finally, the government contends that [8 U.S.C. § 1252\(f\)](#) bars the Court from issuing any classwide injunctive relief. Opp'n 25-27. The Supreme Court has observed that [HN5](#)  [section 1252\(f\)](#) "prohibits federal courts from granting classwide injunctive relief against the operation of [§§ 1221-1231](#), but specifies that this ban does not extend [**\*\*9**] to individual cases." [Reno v. American-Arab Anti-Discrimination Committee](#), 525 U.S. 471, 481-82, 119 S. Ct. 936, 142 L. Ed. 2d 940 (1999). That provision, however, does not apply here for two


reasons.

First, [HN6](#)  [section 1252\(f\)\(1\)](#) does not apply to "individual alien[s] against whom [immigration] proceedings . . . have been initiated" -- a category that embraces all class members here. See [Rodriguez v. Marin](#), 909 F.3d 252, 256 (9th Cir. 2018). Second, [section 1252\(f\)\(1\)](#) denies this Court the "jurisdiction or authority to enjoin or restrain the operation" of certain immigration statutes. [8 U.S.C. § 1252\(f\)\(1\)](#). Yet the Court's preliminary injunction simply requires COVID-19 testing and halts admissions of new detainees to a particular facility, matters as to which the immigration [**\*324**] statutes are silent. The statute does say that "[t]he Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal," [8 U.S.C. § 1231\(g\)\(1\)](#), but the First Circuit has explained that "[section 1231\(g\)](#) fails to 'specify' that individualized transfer decisions are in the Attorney General's discretion." [Aguilar v. United States Immigration & Customs Enforcement Div. of the Dep't of Homeland Sec.](#), 510 F.3d 1, 20 (1st Cir. 2007). To the extent [section 1231\(g\)\(1\)](#) grants transfer authority, merely taking one facility off the list of possible detention centers while litigation ensues does not "enjoin or restrain the operation" of the statute absent some showing that the Attorney General cannot arrange for a detainee to be housed in another appropriate place. [**\*\*10**]

Having cleared these threshold obstacles, the Court moves on to discuss the grounds for its preliminary injunction.


#### IV. THE PRELIMINARY INJUNCTION

##### A. Legal Standard

[HN7](#)  "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." [IRAP](#), 137 S. Ct. at 2087. The "purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." [Benisek v. Lamone](#), 138 S. Ct. 1942, 1945, 201 L. Ed. 2d 398 (2018) (quoting [Camenisch](#), 451 U.S. at 395 (1981)). It "serves as an equitable policing measure to prevent the parties from harming one another during the litigation; to keep the parties . . . as far as possible in the respective positions they occupied when the suit began." [Francisco Sanchez](#)

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[Molina](#), 607 F.3d 864, 873-74 (1st Cir. 2010) (prisoners' challenge to conditions of state confinement must be brought under [42 U.S.C. § 1983](#), not habeas), with [United States v. DeLeon](#), 444 F.3d 41, 59 (1st Cir. 2006) ("If the conditions of incarceration raise [Eighth Amendment](#) concerns, habeas corpus is available."), and [Brennan v. Cunningham](#), 813 F.2d 1, 4 (1st Cir. 1987); cf. [Aamer v. Obama](#), 742 F.3d 1023, 1035-38, 408 U.S. App. D.C. 291 (D.C. Cir. 2014).

<sup>6</sup> The Supreme Court has stated that [HN4](#)  "[i]f a request for a permanent injunction does not sound in habeas, it follows that the lesser included request for a temporary stay (or preliminary injunction) does not either." [Nelson v. Campbell](#), 541 U.S. 637, 647, 124 S. Ct. 2117, 158 L. Ed. 2d 924 (2004). Yet the Court is unaware of a case stating that when a permanent injunction does sound in habeas (as here, given that the petitioners seek release), the Court's equitable powers in fashioning an appropriate preliminary injunction are constrained.

*v. Esso Standard Oil Co.*, 572 F.3d 1, 15 (1st Cir. 2009) (quoting *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 742 (2d Cir. 1953) (Frank, J.)).

**HNS** "To secure a preliminary injunction, a plaintiff must show: '(1) a substantial likelihood of success on the merits, (2) a significant risk of irreparable harm if the injunction is withheld, (3) a favorable balance of hardships, and (4) a fit (or lack of friction) between the injunction and the public interest.'" *NuVasive, Inc. v. Day*, 954 F.3d 439, 443 (1st Cir. 2020) (quoting *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 120 (1st Cir. 2003)). "[T]he first two factors, likelihood of success and of irreparable harm, [are] 'the most important' in the calculus." *Bruns v. Mayhew*, 750 F.3d 61, 65 (1st Cir. 2014) (quoting **[\*\*11]** *Gonzalez-Droz v. Gonzalez-Colon*, 573 F.3d 75, 79 (1st Cir. 2009)). "[T]he measure of irreparable harm is not a rigid one; it has been referred to as a sliding scale, working in conjunction with a moving party's likelihood of success on the merits," such that a greater likelihood of success on the merits permits "somewhat less" of a showing of irreparable harm. *Vaqueria Tres Monjitas, Inc. v. Irizarry*, 587 F.3d 464, 485 (1st Cir. 2009) (quoting *EEOC v. Astra USA, Inc.*, 94 F.3d 738, 743 (1st Cir. 1996)).

## B. Likelihood of Irreparable Harm

The Court presumes that, in ordering the release on bail of a portion of the Detainees, it has substantially reduced the risk of infection for those who remain. Yet the threat persists. As of May 7, when the preliminary injunction was issued, the record indicates that eleven BCHOC staff members, one ICE detainee, and one state inmate had tested positive for COVID-19. *See* Pls.' Suppl. Mem. 8 & n.6.<sup>7</sup> Twenty- **[\*325]** four ICE detainees had tested negative (six refused to be tested), and the rest had never been tested. Decl. Oren Sellstrom Supp. Pls.' Mot. Prelim. Inj. ("First Sellstrom Decl."), Ex. B, Inmate Testing Chart ("Testing Chart") (May 4, 2020) (listing five negative tests of ICE detainees); Third Souza Decl. ¶ 5 (adding nineteen more). As of April 28, about twenty-two staff members had tested negative. Decl. Oren Sellstrom **[\*\*12]** Supp.

<sup>7</sup> *See also* Bristol County Sheriff's Office (@BristolSheriff), Twitter (May 5, 2020, 4:22 PM), <https://twitter.com/BristolSheriff/status/1257767668561489921> (last accessed May 8, 2020) (press release stating that a state inmate tested positive for COVID-19, seven staff members who tested positive were away recovering, and four staff members who tested positive had returned to work).

Pls.' Mot. Prelim. Inj. ("Second Sellstrom Decl."), Ex. D, Dep. Steven Souza ("Souza Dep.") 288, ECF No. 151-4. According to the Special Master's Weekly Report filed in the Supreme Judicial Court on May 4 regarding state inmates, BCHOC had administered just twenty-three COVID-19 tests, nineteen of which were for inmates. *Committee for Pub. Counsel Servs. v. Chief Justice of the Trial Court*, SJC-12926, Special Master's Weekly Report (May 4, 2020) App. 4, available at <https://www.mass.gov/doc/sjc-12926-special-masters-weekly-report-5420/download> (last accessed May 8, 2020). In sum, the virus is clearly present in BCHOC, though its current prevalence is unknown.

The Court acknowledges and commends the significant steps that BCHOC has taken in order to prevent the spread of COVID-19 at the facility and treat anyone infected. The Centers for Disease Control and Prevention ("CDC") has issued guidance for correctional facilities and detention centers. CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* ("Interim Guidance") (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>. **[\*\*13]** ICE has also issued a document requiring every facility housing immigration detainees to, among other standards, comply with the CDC's recommendations. ICE, *COVID-19 Pandemic Response Requirements* ("Pandemic Response Requirements") (Apr. 10, 2020), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>. The government vigorously asserts that BCHOC has followed all of these recommendations. Def.'s Mem. Supp. Mot. Stay Further Releases 12-14, ECF No. 83. The Court previously noted several protective measures BCHOC has put in place since February, including restricting contact with outsiders, performing temperature screenings, and splitting up detainees during meals and recreation. *Savino I*, 2020 U.S. Dist. LEXIS 61775, 2020 WL 1703844, at \*1-2. The Court recognizes the commendable efforts of the BCHOC staff, who have been operating in difficult and risky conditions where much is unknown. It is necessary to point this out given that, while the Court and the attorneys have been conferring remotely due to the pandemic, the dedicated professionals at BCHOC continue to perform their duties on site. That is no small thing.

Nonetheless, there remain critical safety gaps that establish a likelihood of irreparable harm in the absence **[\*\*14]** of preliminary equitable relief. Testing of

both staff and detainees has been minimal, so the real infection rate is a mystery. Measures to isolate the carriers and prevent the disease's spread cannot succeed without testing. The CDC has cautioned for some time that even asymptomatic individuals may be infected with COVID-19 and spread the virus. See, e.g., Souza I., 2020 U.S. Dist. LEXIS 61775, 2020 WL 1703844, at \*2 (citing CDC, Social Distancing, Quarantine, and Isolation (reviewed Apr. 4, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>). Indeed, asymptomatic spreaders have been called the "Achilles' heel" of prevention strategies.<sup>8</sup> Recognizing this weakness, the "Testing Blueprint" released by the White House, CDC, and [\*326] Food and Drug Administration ("FDA") recommends that "congregate living settings" should "actively" perform "sentinel monitoring," which "involves targeted, voluntary testing of asymptomatic individuals."<sup>9</sup> The logic is simple. As the Director-General of the World Health Organization put it, "[y]ou cannot fight a fire blindfolded. And we cannot stop this pandemic if we don't know who is infected."<sup>10</sup>

A related problem is the "insufficient and ad hoc" contact tracing of Detainees and BCHOC staff who may have interacted with COVID-19-positive individuals. Pls.' Suppl. Mem. 11. The White House, CDC, and FDA advise that "contact tracing can help prevent or contain outbreaks, especially within . . . congregate living settings in which the residents are particularly vulnerable to rapid spread." Testing Blueprint 6. "Contact tracing . . . is a key strategy for preventing further spread of COVID-19."<sup>11</sup> Particularly in

"congregate living settings," the CDC stresses, contact tracing "is a priority."<sup>12</sup>

While BCHOC made some efforts at contact tracing for employees who tested positive, there were no follow-up tests ordered for those with whom the employees may have come into contact and no written policy related to contact tracing at all. Souza Dep. 279-80, 288. Nor is there any evidence that those who came into contact with COVID-19-positive employees or detainees practiced quarantining as if they were symptomatic [\*\*16] themselves, as the CDC expressly recommends. CDC, FAQs for Administrators, Staff, People Who Are Incarcerated, and Families ("CDC FAQs for Detention Centers") (Apr. 9, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/downloads/316368A\\_FS\\_COVID19\\_CorrectionDetention.pdf](https://www.cdc.gov/coronavirus/2019-ncov/downloads/316368A_FS_COVID19_CorrectionDetention.pdf) ("Close contacts of the sick person (who have been within 6 feet of the sick person or have had direct contact with infectious droplets, such as from a cough or squeeze) should self-quarantine at for 14 days home and follow CDC recommended steps for people who are sick with COVID-19 symptoms.").

Of particular concern is the contradictory evidence in the record regarding monitoring of those Detainees who are especially vulnerable to COVID-19.<sup>13</sup> In an affidavit dated April 2, 2020, BCHOC's medical director averred that "[w]e are also monitoring and reviewing all detainees/inmates who are known to have chronic disease or other comorbidities which would make them more susceptible to a COVID-19 infection." Aff. Nicholas J. [\*327] Rencricca, MD, PhD ¶ 20. The sheriff swore to similar effect. Hodgson Aff. ¶ 6(k). Yet when asked in depositions conducted nearly a month later, BCHOC's nursing supervisor for ICE detainees and its superintendent [\*\*17] denied that vulnerable detainees were subject to special monitoring or protocols. Sellstrom Decl., Ex. B, Dep. Nelly Floriano (Rough Tr.) 95-96, ECF No. 151-2; Souza Dep. 81-82. Moreover, ICE requires detention centers to notify ICE "12 hours

<sup>8</sup> Monica Gandhi, Deborah S. Yokoe, & Diane V. Havlir, M.D., Asymptomatic Transmission, the Achilles' Heel of Current Strategies to Control Covid-19 [\*\*15], *New England J. of Medicine* (Apr. 24, 2020), <https://www.nejm.org/doi/10.1056/NEJMe2009758>.

<sup>9</sup> White House, CDC & FDA, Testing Blueprint 3 & n.1 (Apr. 27, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/04/Testing-Blueprint.pdf>.

<sup>10</sup> World Health Organization, WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 (Mar. 16, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---16-march-2020> ("We have a simple message for all countries: test, test, test.").

<sup>11</sup> CDC, Contract Tracing: Part of a Multipronged Approach to Fight the COVID-19 Pandemic ("CDC Contact Tracing") 1 (Apr. 29, 2020), [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/principles-contact-tracing-booklet.pdf)

[ncov/downloads/php/principles-contact-tracing-booklet.pdf](https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/principles-contact-tracing-booklet.pdf).

<sup>12</sup> Id. at 2.

<sup>13</sup> See CDC, People Who Are at Higher Risk for Severe Illness, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last accessed May 8, 2020) ("Based on currently available information and clinical expertise, **older adults and people of any age who have serious underlying medical conditions** might be at higher risk for severe illness from COVID-19.") (emphasis in original).



after identifying any detainee who meets the CDC's identified populations potentially being at higher-risk for serious illness from COVID-19." Pandemic Response Requirements 5-6. ICE says it will then "review the case to determine whether continued detention is appropriate," *id.* at 14. The record is devoid of any such notification or consideration for release. *See* Souza Dep. 236-37; Pls.' Suppl. Mem. 12 n.9. This is obviously worrying.


Additionally, the chances of a more dangerous outbreak would rise were additional detainees to be added to the mix. ICE acknowledges that "[t]he combination of a dense and highly transient detained population presents unique challenges for ICE efforts to mitigate the risk of infection and transmission." Opp'n TRO, Ex. 2, Mem. from Enrique M. Lucero, ICE, to Detention Wardens & Superintendents **[\*\*18]** 1 (Mar. 27, 2020), ECF No. 26-2; *see also* Interim Guidance 2 (listing "transfer of incarcerated/detained persons between facilities and systems" and "admitting new entrants" as examples of "many opportunities for COVID-19 to be introduced into a correctional or detention facility"); CDC FAQs for Detention Centers 1 ("Because of close contact and the number of people in correctional and detention facilities (including prisons and jails), staff and people who are incarcerated are at greater risk for the spread of germs."). Barring the government from adding new detainees ameliorates the twin problems of detainee density and transience, thus lowering the chances of further spread.

The Court does not disagree with the government's protestation that "[i]rreparable harm cannot be assumed from the fact of the pandemic alone." Opp'n 12. It is the government's response to the pandemic that matters. On the evidence in the record, it appears highly likely that serious harm would have followed from the Court's inaction. Had the Court stayed its hand, little or no progress would have been made at BCHOC towards accurately determining the virus' presence among the detainees and staff and towards effectively **[\*\*19]** separating potential carriers from others -- and it is likely that the gains in density reduction achieved through the bail orders would be jeopardized by new arrivals. This is not a case where "the defendants implemented many of th[e] measures [in the preliminary injunction] before the plaintiffs even filed the complaint." Swain v. Junior, No. 20-11622-C, 958 F.3d 1081, 2020 U.S. App. LEXIS 14301, 2020 WL 2161317, at \*5 (11th Cir. May 5, 2020) (per curiam). The government has resisted widespread testing and has continued to accept new detainees. Accordingly, the Court found that the Detainees showed

a likelihood of irreparable harm.

### C. Likelihood of Success on the Merits

The Detainees' claim on the merits is that the conditions of their confinement violate the Due Process Clause of the Fifth Amendment. Pet. ¶¶ 98-105. Underlying their claim is the cardinal principle that when the government "so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs -- e.g., food, clothing, shelter, medical care, and reasonable safety -- it transgresses . . . the Due Process Clause." DeShaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189, 197, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989).

**[\*328]** HNG  The barebones constitutional demand on the government is "to refrain at least from treating a pretrial detainee with deliberate indifference to a substantial risk of serious harm to health." Coscia v. Town of Pembroke, 659 F.3d 37, 39 (1st Cir. 2011) (citing City of Revere v. Massachusetts Gen. Hosp., 463 U.S. 239, 244, 103 S. Ct. 2979, 77 L. Ed. 2d 605 (1983) & Farmer v. Brennan, 511 U.S. 825, 835, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)). "Proof **[\*\*20]** of deliberate indifference requires a showing of greater culpability than negligence but less than a purpose to do harm," *id.* (citing Farmer, 511 U.S. at 835), "and it may consist of showing a conscious failure to provide medical services where they would be reasonably appropriate," *id.* (citing Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)). "To show such a state of mind, the plaintiff must provide evidence that the defendant had actual knowledge of impending harm, easily preventable, and yet failed to take the steps that would have easily prevented that harm." Leite v. Bergeron, 911 F.3d 47, 52-53 (1st Cir. 2018) (quoting Zingg v. Groblewski, 907 F.3d 630, 635 (1st Cir. 2018)) (further citation and internal quotation marks omitted). "This standard, requiring an actual, subjective appreciation of risk, has been likened to the standard for determining criminal recklessness." *Id. at 53* (quoting Giroux v. Somerset Cty., 178 F.3d 28, 32 (1st Cir. 1999)). Courts generally apply the same standard for civil immigration detainees as for pre-trial detainees. *See E. D. v. Sharkey, 928 F.3d 299, 306-07 (3d Cir. 2019)* (stating that "the legal rights of an immigration detainee [are] analogous to those of a pretrial detainee" and collecting cases of other circuits).

There is little doubt that the Detainees would likely demonstrate at trial a substantial risk of serious harm to

their health arising from their conditions of confinement amidst the COVID-19 outbreak. The CDC states that "[i]ncarcerated/detained [**\*\*21**] persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced." Interim Guidance 2. "Social distancing," the CDC explains, "is the practice of increasing the space between individuals and decreasing the frequency of contact to reduce the risk of spreading a disease (ideally to maintain at least 6 feet between all individuals, even those who are asymptomatic)." Id. at 4. Social distancing "is a cornerstone of reducing transmission of respiratory diseases such as COVID-19." Id. Were it not for the Court's bail orders and preliminary relief -- all of which expire upon a ruling on the merits, and thus cannot decide the merits -- the Detainees would be packed together in close quarters where social distancing is impossible. See Savino I, 2020 U.S. Dist. LEXIS 61775, 2020 WL 1703844, at \*2 (describing close living quarters before bail releases). This threat would be compounded by lackluster testing and contact tracing, as well as inattention to those with special vulnerabilities. The virus is present in BCHOC and is hardly going to stop in its tracks.

There is still much to learn about the COVID-19 virus and its confoundingly uneven assault on humanity.<sup>14</sup> Though COVID-19 surely poses [**\*\*22**] a greater threat to those with CDC-recognized heightened risk factors, "it cannot be denied that the virus is gravely dangerous to all of us." Savino I, 2020 U.S. Dist. LEXIS 61775, 2020 WL 1703844, at \*7.<sup>15</sup> Given what is now (preliminarily) known about [**\*329**] the virus and the facts on the ground in BCHOC, the Detainees would likely show a substantial risk of serious harm resulting from their confinement in such conditions.

The more difficult question is whether the Detainees have shown that the government is likely deliberately

indifferent to that risk.<sup>16</sup> The staff at BCHOC have admirably taken significant steps toward protecting the Detainees from COVID-19. Nonetheless, the Detainees have demonstrated at least three cavernous holes in the government's mitigation strategy -- holes it has obstinately refused to plug throughout this litigation. See Farmer, 511 U.S. at 846 (holding that, HN10 [↑] in determining deliberate indifference, district court has "discretion" to consider "developments that postdate the pleadings and pretrial motions").

First, [**\*\*23**] the government has steadfastly objected to the release on bail of all Detainees after the first six (and two others it wished to substitute for two whom the Court released). The exigencies of the moment demand flexibility. Both state and federal governments have recognized the need to release some incarcerated individuals in order to allow for minimal social distancing. Congress responded to the pandemic by authorizing the Bureau of Prisons to exceed the statutory maximum period of home confinement if the Attorney General makes a finding of "emergency conditions." CARES Act, Pub. L. No. 116-136, § 12003(b)(2) (2020). The Attorney General has found such an emergency.<sup>17</sup> The Massachusetts Supreme

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<sup>16</sup> At oral argument, counsel for the Detainees suggested that the deliberate indifference standard must be satisfied only in the Eighth Amendment context, not for civil detainees whose claim lies in the Fifth Amendment's due process right. The distinction matters little, however, because the First Circuit has stated that "[t]he two standards are not all that far apart." Battista v. Clarke, 645 F.3d 449, 453 (1st Cir. 2011). Several circuits now hold, after Kingsley v. Hendrickson, 576 U.S. 389, 135 S. Ct. 2466, 192 L. Ed. 2d 416 (2015), that HN11 [↑] the inquiry under the Due Process Clause is purely objective, with a subjective inquiry reserved for the Eighth Amendment context. See Banks v. Booth, No. 20-849(CKK), 2020 U.S. Dist. LEXIS 68287, 2020 WL 1914896, at \*6 (D.D.C. Apr. 19, 2020) (citing cases). Yet the First Circuit has continued to conduct the subjective inquiry in due process cases even after Kingsley. See Miranda-Rivera v. Toledo-Dávila, 813 F.3d 64, 74 (1st Cir. 2016); Couchon v. Cousins, No. 17-10965-RGS, 2018 U.S. Dist. LEXIS 149109, 2018 WL 4189694, at \*6 (D. Mass. Aug. 31, 2018) (Stearns, J.).

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<sup>14</sup> James Hamblin, Why Some People Get Sicker Than Others, The Atlantic (Apr. 21, 2020), <https://www.theatlantic.com/health/archive/2020/04/coronavirus-s-immune-response/610228/>.

<sup>15</sup> See Nancy Chow et al., CDC COVID-19 Response Team, Preliminary Estimates of the Prevalence of Selected Underlying Health Conditions Among Patients with Coronavirus Disease 2019 - United States, February 12-March 28, 2020, 69 Morbidity & Mortality Weekly Report 382, 382-84 (Apr. 3, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6913e2-H.pdf>.

<sup>17</sup> See Memorandum of Attorney General William Barr to Director of Bureau of Prisons (Apr. 3, 2020), <https://www.justice.gov/file/1266661/download>; Memorandum of Attorney General William Barr to Director of Bureau of Prisons (Mar. 26, 2020), [https://www.bop.gov/coronavirus/docs/bop\\_memo\\_home\\_conf\\_inement.pdf](https://www.bop.gov/coronavirus/docs/bop_memo_home_conf_inement.pdf) (directing the Bureau of Prisons "to prioritize the use of [its] various statutory authorities to grant home

Judicial Court has ordered that, "[t]o decrease exposure to COVID-19 within correctional institutions, any individual who is not being held without bail . . . and who has not been charged with an excluded offense (i.e., a violent or serious offense . . .) is entitled to a rebuttable presumption of release." [\*Committee for Pub. Counsel Servs. v. Chief Justice of the Trial Court\*, 484 Mass. 431, 435, 142 N.E.3d 525, 530 \(2020\)](#). ICE itself requires that "[e]fforts . . . be made to reduce the population to approximately 75% of capacity." [\*Pandemic Response Requirements\*](#) 13. As mentioned above, ICE also requires that BCHOC report the identities of vulnerable **[\*\*24]** detainees **[\*330]** and promises to "review the case to determine whether continued detention is appropriate." *Id.* at 14. The Court has not seen evidence of any reporting to ICE or of a review of Detainees at BCHOC for possible release.

The directives of the Attorney General, the Supreme Judicial Court, and ICE's nationwide policy do not encapsulate the Constitution's demands in this crisis. The Court mentions these policies for a different reason: they highlight that diverse governmental actors see the need for serious thought and actual efforts to release those whose confinement is not worth the cost. In this case, the authorities have displayed the contrary mindset. Where elasticity is vital, they are rigid; where life hangs upon a carefully drawn line, they opt for near-blanket incarceration. That is evidence of deliberate indifference. See [\*Battista v. Clarke\*, 645 F.3d 449, 453 \(1st Cir. 2011\)](#) (affirming preliminary injunction issued after finding of deliberate indifference stemming from prison authorities' "composite of delays, poor explanations, missteps, changes in position and rigidities . . . taken to an extreme"); [\*Pesce v. Coppinger\*, 355 F. Supp. 3d 35, 47 \(D. Mass. 2018\)](#) (Casper, J.) (issuing preliminary injunction on basis of likelihood of deliberate indifference when prison authorities "implemented **[\*\*25]** a blanket policy prohibiting the use of methadone treatment . . . without any indication that they would consider [the plaintiff's] particular medical history and prescribed treatment in considering whether departure from such policy might be warranted").

In fairness, ICE has made some headway on its own. Through a combination of deportations, bond releases by immigration officials, and the six releases on Orders of Supervision, ICE has managed to transfer about thirty individuals out of BCHOC since the start of this litigation (though it has also added five in). Yet the record tends

to show that the government never formulated a plan to determine a safe population level or how to reach that mark. Souza Dep. 231-34. The few bond releases were conducted "in the normal course," not as part of a strategy to reduce the density of detainees, and even those dried up in mid-April. Def.'s Input Apr. 22 List 2, ECF No. 111. Deportations are always a slow business and the pandemic has introduced new complexities. It has been apparent from the start that these mechanisms alone would not reduce the population to a density that could safely withstand the COVID-19 onslaught. The government was indifferent. **[\*\*26]**

When this Court forced individual bail applications upon the government, it resisted all of them. Day in and day out, the Court was told that "[i]t is ICE's position, for the record, that release of none of the listed individuals is required for either their safety or the safety of the remaining civil detainee population at BCHOC."<sup>18</sup> Opposition was understandable for some of the forty-four whom the Court admitted to bail, but at least twenty-five of those had either no criminal records or minimal or nonviolent ones (e.g., fraud, operating under the influence, larceny, drug possession, or failure to appear) along with mitigating circumstances that indicated little continued threat to the public. Several also had health conditions elevating their risk from the virus. ICE is free to disagree with this Court's determination regarding this or that individual's aptness for release. A wholesale blockade on bail, however, cannot be justified when the government proffers no alternative method of reducing the population to a safe number.

**[\*331]** The government began this litigation suggesting, contrary to all known expert guidance, that social distancing was unnecessary because the virus **[\*\*27]** could somehow be kept out of BCHOC. [\*Savino I\*, 2020 U.S. Dist. LEXIS 61775, 2020 WL 1703844, at \\*4 n.7](#). Even after the fallacy of this view became apparent, as eleven staff members and one Detainee tested positive, the government continued to argue that "BCHOC is not like the world at large" since it "is able to control who comes into its facility, where they go, and what steps are taken to screen such individuals. Social interaction, the primary focus of the social distancing recommendations, is much more limited at BCHOC than in the outside world." Opp'n 29. This

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confinement to inmates seeking transfer in connection with the ongoing COVID-19 pandemic").

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<sup>18</sup> That refrain calls to mind "Bartleby, the Scrivener," who met every reasonable request with a firm "I would prefer not to." Herman Melville, [\*The Piazza Tales\*](#) 51-52 (1856).



thinking flies in the face of the CDC's direct warnings that detention centers are hardly impregnable fortresses and that, in fact, they are more susceptible to outbreaks once the virus penetrates. Interim Guidance 2 ("There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress . . . ."); id. ("Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced."). The government's purported rationale for refusing to work toward a safe population level was beyond "the realm of reason." Kosilek v. Spencer, 774 F.3d 63, 92 (1st Cir. 2014) (en banc) (quoting Battista, 645 F.3d at 454).

The **[\*\*28]** other acute flaws in the government's prevention strategy are the lack of testing and contact tracing. The record indicates that BCHOC tested no Detainees before April, five in April, and at least twenty on May 1 (following a violent clash between Detainees and staff that broke out, it seems, over an effort to test certain Detainees). Testing Chart; Third Souza Decl. ¶ 5. Yet it is apparent that many Detainees and staff have not yet been tested; nor does the record demonstrate adequate contact tracing. See supra IV.B (discussing evidence of testing and contact tracing). Without robust testing and contact tracing, the spread of the virus cannot be known or contained.<sup>19</sup> Keeping individuals confined closely together in the presence of a potentially lethal virus, while neither knowing who is carrying it nor taking effective measures to find out, likely displays deliberate indifference to a substantial risk of serious harm. That is what the evidence shows here.

On these facts, taken together, the Court found that the Detainees would likely succeed on the merits of their due process claim.

#### D. Balance of the Hardships and the Public Interest

The Supreme **[\*\*29]** Court has stated HN12<sup>(↑)</sup> in the immigration context that the final two factors -- "assessing the harm to the opposing party and weighing the public interest" -- typically "merge when the

<sup>19</sup> See Testing Blueprint 3 (recommending "targeted, voluntary testing of asymptomatic individuals" in "congregate living settings" to assess and contain potential spread); CDC Contact Tracing 1-2 ("Contact tracing . . . is a key strategy for preventing further spread of COVID-19," and "is a priority" in "congregate living settings.").

Government is the opposing party." Nken v. Holder, 556 U.S. 418, 435, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009). Accordingly, the Court will analyze these factors together.

The hardship caused to the Detainees by remaining in unsafe conditions needs no further elaboration. Moreover, the Supreme Court has noted that "[o]f course HN13<sup>(↑)</sup> there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." Id. at 436. Thus, allowing harm to **[\*332]** befall the Detainees is contrary to the public interest as well.

On the other side of the scale, this preliminary injunction causes minimal hardship to the government or injury to the public. The primary interests that the government (and the public) have in operating this detention system are twofold: ensuring the deportation of those unlawfully present and confining those deportable individuals who may be dangerous to the public. This preliminary injunction does not meaningfully impede either of these objectives, since it neither prohibits the government from deporting any Detainee **[\*\*30]** nor prevents it from confining a new individual in a different facility.<sup>20</sup> The hardship to the government here, such as it is, boils down to providing tests. That burden pales in comparison to the public health benefits of thwarting the spread of COVID-19 within this detention center. Indeed, the public has a powerful interest in ensuring that there is not an outbreak within the detention center that is then primed to spread via the staff to the wider community.

This latter point is paramount. HN14<sup>(↑)</sup> The government's "custodial duty" has both "inward" and "outward" aspects: that is, the government must guard the health and safety of those incarcerated within its facility, as well as protect the outside public from dangerous detainees. United States v. Volungus, 595 F.3d 1, 8 (1st Cir. 2010). In one sense, this case exposes the tension between those dual responsibilities. The Detainees legitimately complain of unsafe crowded quarters amidst the COVID-19 pandemic and demand release, while the government --just as legitimately -- objects that many of the petitioners are too dangerous to let out. The Court has sought to balance these considerations by making individualized bail determinations, releasing to house arrest enough detainees as to hamper the **[\*\*31]** virus' spread but not

<sup>20</sup> There is no evidence in the record suggesting that ICE has nowhere else to put new detainees other than BCHOC.

those who pose real danger to the public.

Yet the dichotomy is somewhat misleading here. Even the government's "outward" protective duties of custody, those it owes to the public at large, are jeopardized by locking up as many inmates as possible. The virus, if allowed to thrive in the detention centers, will migrate back into our neighborhoods. At least eleven officers or other staff, one immigration detainee, and one state inmate at Bristol County House of Correction have already tested positive for COVID-19; many others have yet to be tested. Employees returning to their homes after their shifts may expose their families, friends, bus drivers, cashiers, and doctors. The chain of infection thus grows. Were the government to loose an uncontrollable viral outbreak from within its detention centers, it would betray its duty to the public, not just to the detainees. Seen in this light, the government's "inward" and "outward" custodial duties converge upon the need to deny the virus a habitat inside the facility. This convergence suggests that the balance of hardships and the public interest weigh heavily in favor of a preliminary injunction.

## V. CONCLUSION

Having found **[\*\*32]** that all factors point towards awarding interim equitable relief, the Court issued the following preliminary injunction:

1. As soon as reasonably possible, all immigration detainees at Bristol County House of Correction and staff who come into contact with them must be tested for COVID-19. The Court shall be satisfied with a polymerase chain reaction (PCR) **[\*333]** test approved by the Food and Drug Administration for this purpose. The test shall be provided at no cost to the detainees or BCHOC staff; if there are costs, ICE is to bear them. Anyone covered by this order may decline to be tested, but a declination shall be treated as a positive COVID-19 result and that person shall be presumed to be carrying the COVID-19 virus.

2. No new immigration detainees may be admitted to Bristol County House of Correction. Any detainee who was already admitted but has left or will leave the facility, for whatever reason, shall not return.

3. The above orders shall automatically dissolve upon the latter of the following two events: (a) the Judicial Conference of the United States rescinds its authorization under the CARES Act for the use

of video and teleconferencing during certain proceedings;<sup>21</sup> (b) the Supreme **[\*\*33]** Judicial Court rescinds the rebuttable presumption of release for certain inmates it has described in [\*Committee for Pub. Counsel Servs. v. Chief Justice of the Trial Court\*, 484 Mass. 431, 142 N.E.3d 525 \(2020\)](#).

4. At a hearing held on May 11, 2020, the Court modified the preliminary injunction as follows: No immigration detainee shall be transferred from the Bristol County House of Correction to another detention center until the testing required by the preliminary injunction has been performed and the Court has been informed that the test was negative. If the individual declines the test, then that person may be moved upon proper notice to the Court so long as existing ICE protocols having to do with the health of the individual are followed. The order in this paragraph shall dissolve together with the rest of the preliminary injunction.

**SO ORDERED.**

/s/ William G. Young

WILLIAM G. YOUNG

DISTRICT JUDGE

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End of Document

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<sup>21</sup> See [Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic](https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic) (Mar. 31, 2020), <https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic>.



# **EXHIBIT 19**



# Homeland Security

May 20, 2021

MEMORANDUM FOR: Tae Johnson  
Acting Director  
Immigration and Customs Enforcement

FROM: Alejandro N. Mayorkas

A handwritten signature in blue ink, reading "AN Mayorkas", written over the printed name.

CC: Joseph Maher  
Acting General Counsel  
Office of General Counsel

Katherine Culliton-González  
Officer for Civil Rights and Civil Liberties  
Office for Civil Rights and Civil Liberties

SUBJECT: A First Step to Address the Conditions in Detention Facilities

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Thank you for your leadership as we work to more effectively accomplish ICE's critical missions.

In the area of civil immigration enforcement, we already have made meaningful strides in allocating apprehension and removal resources to better achieve public safety and security outcomes. I look forward to our ongoing workforce engagements that will further inform our promulgation of the civil immigration enforcement priorities to replace the current interim guidance.

I am also looking forward to tackling the other areas of civil immigration enforcement in which we can make significant advances. One of the areas involves civil immigration detention. I have been analyzing the use of detention and the conditions in civil immigration detention facilities. I have read DHS reports, including those of our Office for Civil Rights and Civil Liberties, government accountability reports, and numerous additional reports that governmental and non-governmental organizations have issued. I also have benefited from my discussions with you and other subject-matter experts.

Preliminarily, allow me to state one foundational principle: we will not tolerate the mistreatment of individuals in civil immigration detention or substandard conditions of detention.

Pending our further discussion of the lasting improvements we can make regarding civil immigration detention, I direct the following interim actions be taken on the timelines identified below:

I understand the C. Carlos Carreiro Immigration Detention Center in Dartmouth, Massachusetts, is of minimal operational significance to the agency. Moreover, there is ample evidence that the Detention Center's treatment of detained individuals and the conditions of detention are unacceptable. Accordingly, please discontinue use of the C. Carlos Carreiro Immigration Detention Center as soon as possible, including by terminating both the 287(g) agreement that is no longer operationally needed and the Intergovernmental Services Agreement with the Bristol County Sheriff's Office. Detained individuals whose continued detention is needed to achieve our national security, public safety, and border security mission should be moved to a different facility in the area.

Please also prepare to discontinue the use of the Irwin County Detention Center in Ocilla, Georgia, as soon as possible and consistent with any legal obligations. The preparations should include the following measures:

1. coordination with the Office of General Counsel to ensure (a) the preservation of evidence potentially relevant in litigation or investigations, (b) the availability and protection of witnesses in litigation or investigations, and, in any other way needed, (c) the protection of parties' litigation rights and the integrity of investigations;
2. placement or relocation of ICE personnel as appropriate;
3. the movement to a different facility or facilities those detained individuals whose continued detention is needed to achieve our national security, public safety, and border security mission. Access to counsel should be an important factor in placement decisions;
4. an assessment of the impact on Congressional appropriations; and,
5. an assessment of any potential costs associated with the discontinuance of the facility's use.

I will schedule a meeting with you, Joe Maher, and Kathy Culliton-González for the end of next week to discuss the plan for the discontinued use of the Irwin County Detention Center and any issues or concerns you have. In our meeting, we will also discuss my concerns with other federal immigration detention centers. Please be prepared to discuss relevant Congressional appropriations and, as to each specific facility, ICE's current and potential operational needs in the geographic area, the quality of treatment of detained individuals, the conditions of detention, and other factors relevant to the continued operation of each facility.

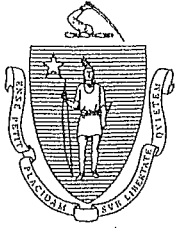
Please also prepare for me a catalog of new detention contracts and agreements, and any extensions or modifications of detention contracts and agreements, executed between January 1, 2020 and January 20, 2021. The catalog should identify the date on which the contract, agreement, modification, or extension was entered, the contracting parties, and, as to each extension or modification, the changes in terms. In addition, please include in the catalog, for the same time period, any solicitations issued for new detention contracts that have not yet been awarded and the date of anticipated award of each contract. Please let me know how much time you will need to prepare this catalog.

\*\*\*

I am available this week to discuss any aspect of this memorandum.

Thank you.

# **EXHIBIT 20**



THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE  
BRISTOL COUNTY SHERIFF

THOMAS M. HODGSON  
SHERIFF

May 6, 2020

400 Faunce Corner Road  
North Dartmouth, MA 02747

TEL 508-995-1311  
FAX 508-995-7835

Matthew P. Gittens, Special Agent  
Department of Homeland Security  
Office of Inspector General  
Thomas O'Neill Building  
10 Causeway Street, Suite 465  
Boston, MA 02114

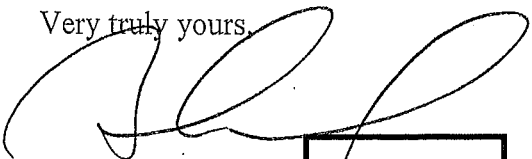
Dear Mr. Gittens:

I understand that the Office of Inspector General of the Department of Homeland Security has opened an investigation into the detainee disturbance that occurred in the C. Carlos Carreiro ICE Detention Center on May 1, 2020. As we told you over the phone, we have been receiving multiple requests from Massachusetts state entities as well as the press seeking information and documents relative to the incident. From our phone call we understand that this matter is the subject of a federal investigation which we will of course cooperate with to the fullest. As such, it would be helpful if your office could confirm by letter, which could be shared with all such information requesters, the following:

1. That the incident on May 1, 2020 at the ICE detention center is a federal matter and is being investigated by the Inspector General of Homeland Security;
2. That we are to turn over all investigative material relative to the incident to your office; and
3. That any requests for documents or material relative to the incident must be referred to and approved by your office.

Such a letter would be helpful to us as we would then provide it to all persons or entities requesting information and/or filing public record requests. Please let us know if we can be of any further assistance in this matter.

Very truly yours,

  
Bruce A. Assad, Esq.  
Special Sheriff

**754**

BAA/rlm

## **Sheriff Thomas Hodgson**

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**From:** Robert Perry  
**Sent:** Wednesday, May 06, 2020 10:48 AM  
**To:** Sheriff Thomas Hodgson  
**Subject:** FW: Request for video surveillance and Incident reports

Sheriff Hodgson, This is the e-mail request from DHS OIG requesting information. I also have forwarded this to Supt. Souza.

Thank You

Captain Robert T. Perry, Jr.  
Special Investigations Unit  
Bristol County Sheriff's Office  
400 Faunce Corner Road  
North Dartmouth, MA 02747  
(508) 995-1311 ext. 2514  
(508) 995-3507 fax  
[robertperry@bcso-ma.org](mailto:robertperry@bcso-ma.org)

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**From:** Gittens, Matthew [mailto:Matthew.Gittens@oig.dhs.gov]  
**Sent:** Monday, May 4, 2020 2:37 PM  
**To:** Robert Perry  
**Subject:** Request for video surveillance and Incident reports

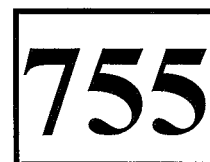
Captain Perry,

Per our conversation this morning, my office will be opening an investigation regarding the riot that took place this past weekend. I would like to request any incident reports, medical reports, and video surveillance that your office might have. Also, can you confirm whether the individuals have been quarantined.

Thank you,

Matt

Matthew P. Gittens  
Special Agent  
Department of Homeland Security  
Office of Inspector General  
(609) 358-2103 (C)



# **EXHIBIT 21**



## **Declaration of Ira Alkalay**

1. I am a Massachusetts attorney in good standing. My office is in Fall River, MA. I practice criminal and immigration law, and I regularly represent immigration detainees held by the Bristol County Sheriff's Office (the "BCSO"). I visited multiple ICE detainees there in and after May 2020, including shortly after the incident that took place in ICE Unit B on May 1, 2020 (the "May 1 Incident").
2. My understanding is that, immediately following the May 1 Incident, the detainees in Unit B were placed in segregation at the BCSO. BCSO staff then interrogated many of these detainees in the month of May. My understanding is that these interrogations were substantially completed by the end of May. As far as I am aware, the BCSO is not currently conducting any interviews or interrogations of detainees relating to the May 1 Incident, and has not for quite some time.
3. I understand that, in late May and/or early June, the BCSO brought disciplinary charges relating to the May 1 Incident against multiple detainees from Unit B. At least some of those detainees were ordered to spend 60 days in disciplinary confinement, and I understand that those 60-day periods have been largely or entirely completed. As far as I am aware, the BCSO is not conducting any ongoing internal disciplinary proceedings against detainees relating to the May 1 Incident.
4. The population of immigration detainees in BCSO custody varies considerably over time because detainees are constantly being transferred, released, or deported. I believe that, of the detainees housed in Unit B on May 1, only about a half-dozen are currently detained at the BCSO.

Signed under the pains and penalties of perjury this 10<sup>th</sup> day of August, 2020.



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Ira Alkalay

## **EXHIBIT 22**

## Anastasi, Nicholas

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**From:** Lorraine Rousseau <LORRAINEROUSSEAU@bcso-ma.org>  
**Sent:** Thursday, May 14, 2020 9:46 AM  
**To:** Anastasi, Nicholas; Public Records  
**Cc:** Hart, Christopher  
**Subject:** RE: Public Records Request - ACLU of Massachusetts

Mr. Anastasi,

The Bristol County Sheriff's Office ("BCSO") is in receipt of your request for public records, dated May 5, 2020, requesting records relating to an incident in the C. Carlos Carreiro Immigration Detention Center on May 1, 2020.

In response, please be advised that the requested records are exempt from disclosure as a public record under G.L. c. 4, §§ 7(26)(f) and (n).

Exemption (f) applies to "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." G.L. c. 4, § 7(26)(f). The incident, underlying your request, is presently under investigation by the BCSO as well as the United States Immigration and Customs Enforcement (ICE). The records requested are central to the investigation and disclosure of such would be prejudicial to the efficacy of a thorough and efficient inquiry into the cause and subsequent action of the May 1<sup>st</sup> incident. Thus, until all investigations of the incident are concluded, records relating to the incident are exempt from disclosure as a public record under G.L. c. 4, § 7(26)(f).

Further, Exemption (n) applies to: "records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security." G.L. c. 4, § 7 (26)(n). Disclosure of video and/or photographs of the interior of the secure facility would be akin to releasing the internal layout of the facility, which the statute expressly forbids. Releasing interior videos and/or photographs would jeopardize the operational security required to maintain the effective, safe, and secure operation of the jail. It would provide the BCSO's tactical and strategic "playbook" for responding to emergency situations and inmate/detainee disturbances, which would compromise the BCSO's ability to respond in a timely, effective and safe manner. Releasing the requested information could place BCSO inmates and staff at an unnecessary risk by giving the public an unfettered view of structural layouts, officer movements, and operational security measures. The release of any video and/or photographs would place the security and safety of the facility at risk by disclosing to the public camera placement and recording capabilities. The BCSO has a duty to maintain vigilant observation for safety, investigatory, and security concerns and to release the requested records could be used to circumvent the public's interest in inmate and staff safety. As such, the requested records are exempt from disclosure under G.L. c. 4, § 7(26)(n).

You have the right to appeal this decision to the Supervisor of Public Records under 950 CMR 32.08(1) and to seek judicial review by commencing a civil action in the Superior Court.

Thank you,  
Lorraine Rousseau, Esq.  
Records Access Officer

*Lorraine J. Rousseau, Esq.  
Bristol County Sheriff's Office  
400 Faunce Corner Road  
North Dartmouth, MA 02747  
Tel. (508) 995-1311  
Fax (508) 995-7835  
[lorrainerousseau@bcso-ma.org](mailto:lorrainerousseau@bcso-ma.org)*

---

**From:** Anastasi, Nicholas [mailto:[nanastasi@foleyhoag.com](mailto:nanastasi@foleyhoag.com)]  
**Sent:** Thursday, May 7, 2020 5:52 PM  
**To:** Public Records  
**Cc:** Hart, Christopher  
**Subject:** Public Records Request - ACLU of Massachusetts

Dear Ms. Rousseau,

Attached please find a public records request submitted on behalf of our client, the ACLU of Massachusetts. Please let me know if you have any questions.

Best,  
Nick

**Nicholas Anastasi** | Associate

**FOLEY  
HOAG** LLP

Seaport West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600  
[nanastasi@foleyhoag.com](mailto:nanastasi@foleyhoag.com) e-mail  
617.832.1241 phone  
617.832.7000 fax

[www.foleyhoag.com](http://www.foleyhoag.com)

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# **EXHIBIT 23**

May 7, 2020

**Via Electronic Mail**

Lorraine Rousseau, Esq.  
Records Access Officer  
Bristol County Sheriff's Office  
400 Faunce Corner Rd.  
North Dartmouth, MA 02747  
publicrecords@bcso-ma.org

Re: Public Records Request

Dear Ms. Rousseau:

This firm represents the ACLU of Massachusetts, Inc. ("ACLU"). This letter is a public records request by ACLU to the Bristol County Sheriff's Office (the "BCSO") under the Massachusetts Public Records Law, G.L. c. 66, § 10.

On May 1, 2020, the BCSO released a letter purporting to describe an incident that occurred that day at the BCSO's immigration detention facility (the "Incident"). *See* Ex. A. According to the BCSO, the Incident involved a confrontation between BCSO personnel and immigration detainees in the B Wing of the detention facility that escalated to physical violence. BCSO personnel evidently used force to restrain the detainees, and three detainees were hospitalized.

After the Incident, Bristol County Sheriff Thomas M. Hodgson made a series of public assertions regarding the sequence of events. For example, on or about May 2, 2020, Sheriff Hodgson gave a press conference in which he purported to describe the Incident.<sup>1</sup> Among other things, Sheriff Hodgson stated that the Incident began no later than 5:20 p.m. He appeared to assert that he was personally present in the B Wing during at least part of the Incident, and that he personally initiated the use of force against a non-violent detainee by, at least, attempting to forcibly remove a telephone from the detainee's hand. Sheriff Hodgson also appeared to express personal animus towards that detainee, calling him "the ringleader of all these people" and

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<sup>1</sup> <https://www.facebook.com/nbc10/videos/live-bristol-county-sheriff-thomas-hodgson-delivers-a-press-conference-regarding/931771247283424/>

referring to him multiple times as a “con man.” Sheriff Hodgson further stated “we have it all on film.”

Conflicting reports of the Incident have emerged. For example, news organizations have published audio recordings purportedly made during the Incident, in which a detainee stated that Sheriff Hodgson “attacked” him, and in which detainees assert that tear gas and pepper spray were deployed against them.<sup>2</sup> Sheriff Hodgson has made a series of additional public statements, including apparently on Twitter, Facebook, and the radio, addressing these allegations and denying certain of them. *See* Exs. B, C, & D.

This is a public records request for audiovisual recordings, documents, and other records concerning the Incident. We are aware that, on or about May 5, 2020, Sheriff Hodgson tweeted that the “[Department of Homeland Security] Office of Inspector General informed me today that they will be the official agency conducting the independent investigation of” the Incident.<sup>3</sup> Whether or not that is true, the BCSO is a Massachusetts state entity, and it may not voluntarily or contractually relinquish its responsibilities to comply with state public records law and with state investigations into the conduct of state officials.

Please provide the following records:

1. All audio and visual recordings of or concerning the Incident, including but not limited to recordings from any and all installed cameras, handheld or mobile cameras, mobile phones, and body cameras. We understand this would include, but is not limited to, all audio and visual recordings of the B Wing of the BCSO’s immigration detention facility, and events taking place therein, from 4:00 p.m. to midnight on May 1, 2020.
2. All still photographs of or concerning the Incident.
3. All reports and other records prepared by BCSO’s employees, agents, and contractors concerning the Incident, including, but not limited to, reports describing the Incident, and any reports describing the BCSO’s response to the Incident (including any reports documenting or concerning any use of force, chemical agents, and/or ammunition).
4. All records collected, made, or prepared during any investigation of the Incident by the BCSO, and a complete copy of any investigation file concerning the Incident.
5. All records containing any findings, conclusions, recommendations, or other results of any investigation by the BCSO concerning the Incident.
6. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and any federal department or agency (including the Department of Homeland Security and U.S. Immigration and Customs Enforcement), on the other, concerning the Incident. The requested

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<sup>2</sup> <https://commonwealthmagazine.org/immigration/recordings-of-detainees-at-bristol-jail-released/>

<sup>3</sup> <https://twitter.com/SheriffHodgson/status/1257753162255085571>

records include, but are not limited to, any such electronic mail and any and all attachments thereto.

7. All documents, audio and visual recordings, and other records provided by the BCSO to the Department of Homeland Security and/or to U.S. Immigration and Customs Enforcement in connection with any investigation into the Incident.
8. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Office of the Inspector General for the Department of Homeland Security, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.
9. All documents, audio and visual recordings, and other records provided by the BCSO to the Office of the Inspector General for the Department of Homeland Security in connection with any investigation into the Incident.
10. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Executive Office of the President, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.

If you withhold some portions of the requested documents on the grounds that they are exempt from disclosure, please specify which exemptions apply and release any portions of the records for which you do not claim an exemption. We ask that you provide the records in electronic format to the maximum extent possible.

To the extent you contend that any of the requested records are not public records, or are otherwise exempt from disclosure in response to this request, you should take steps to ensure that such records are preserved, and are not modified, deleted, or destroyed, pending our review of your contention and the resolution of any resulting dispute.

We request that you waive any fees and copying costs, including pursuant to 950 C.M.R. 32.07. Our client, ACLUM, is a not-for-profit, non-partisan organization dedicated to the principles of liberty and equality. As the Massachusetts affiliate of the national ACLU, a not-for-profit, non-partisan organization, ACLUM distributes information both within and outside of Massachusetts. Gathering and disseminating current information to the public is a critical and substantial component of ACLUM's mission and work. ACLUM publishes newsletters, news briefings, reports and other printed materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, at no cost. ACLUM also disseminates information through its website<sup>4</sup> and regular posts on social media sites such as Facebook and Twitter. Accordingly, disclosure of the records serves the public interest, and not the commercial interest of ACLUM.

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<sup>4</sup> [www.aclum.org](http://www.aclum.org)



Lorraine Rousseau, Esq.  
Records Access Officer  
May 7, 2020  
Page 4

With respect to the form of production, we request that responsive electronic records be provided electronically in their native file format, to the maximum extent possible. Paper records may be scanned and provided in static-image format (PDF). Please provide copies of entire correspondence in relevant searches, including any and all documents or attachments that were included or forwarded. Records should include but not be limited to electronic correspondence transmitted via computer, laptop, mobile phone and other electronic devices, and should include but not be limited to any emails in which an employee was the direct recipient, CC recipient, BCC recipient and/or listserv recipient. All images in any email should be downloaded and viewable before being copied.

A custodian of public records shall comply with a request within ten days of receipt.

**Thank you for your assistance. Please do not hesitate to contact me if I can clarify any part of this request.**

Sincerely,

*/s/ Nicholas L. Anastasi*

Nicholas L. Anastasi

cc: Christopher E. Hart, Esq.  
Daniel L. McFadden, Esq.

# **EXHIBIT 24**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
C.A. NO. 2084CV01035

AMERICAN CIVIL LIBERTIES UNION )  
OF MASSACHUSETTS, )  
Plaintiff, )  
v. )  
BRISTOL COUNTY SHERIFF'S OFFICE, )  
Defendants )

AFFIDAVIT OF LORRAINE J. ROUSSEAU, ESQ.

NOW comes Lorraine J. Rousseau, Esq., under oath, deposes and states as follows:

1. I am an attorney admitted to practice law within the Commonwealth of Massachusetts with 28 years of experience.
2. I am employed as an attorney by the Bristol County Sheriff's Office ("BCSO").
3. This affidavit is submitted in support of the Defendant's Response to the Second Order on Plaintiff's Request for Injunctive Relief.
4. Pursuant to the Court's Second Order on Plaintiff's Request for Injunctive Relief, the Court has ordered the Defendant BCSO to provide a written response and affidavit attesting to the existence or non-existence of email communications requested under Plaintiff American Civil Liberties Union of Massachusetts' ("ACLUM") under # 6, 8 and 10 of its public records request.
5. The ACLUM'S public records request requests records relating to a violent disturbance on May 1, 2020 in the BCSO ICE Building by Immigration and Customs Enforcement ("ICE") Detainees that resulted in injuries to staff and ICE Detainees and significant property damage ("Incident").
6. Very few written communications, excluding electronic communications

(“emails”) exist during the period of May 1, 2020 to the present between the BCSO, including Sheriff Thomas Hodgson and “BCSO employees”, and “any federal department or agency”, including Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), the Office of the Inspector General (“OIG”) for DHS, and the Executive Office of the President, relating to the Incident. Attached to this response is Defendant’s Second Custodial Index, dated December 23, 2020, listing two records produced to ACLUM.

7. The BCSO is continuing to search for any such other written communications (not emails) and will provide a further response on or before January 15, 2021 regarding whether any other such written communications exist.

8. The BCSO has conducted a search of its email system to determine if any email communications exist that may be responsive to request # 6, 8 and 10.

9. As the ACLUM did not provide specific search terms to use to conduct this search, the BCSO ran a search using numerous possible terms in order to find emails that are responsive to request # 6, 8 and 10. The result of this search identified over 40,000 emails that may or may not be responsive to the records requested under # 6, 8 and 10.

10. Thus, the BCSO records # 6, 8 and 10 are overly burdensome and broad and cannot be processed as requested.

11. A search of the BCSO email system requires the use of search terms and other parameters to find records that may be responsive to the records request.

12. First, the period time for the search is pretty straightforward, May 1, 2020 to the present.

13. Second, the search requires using search terms to find emails that may contain words related to the Incident.

14. As the ACLUM did not include search terms in its records request, the BCSO is

using “May 1, 2020”, “May 1”, “riot”, “disturbance”, “covid” and “detainee” as terms to search for emails. However, these search terms will return numerous emails that may or may not be responsive to the records request.

15. Third, searching for emails to and/or from Sheriff Hodgson and “BCSO employees”, which means “*all*” BCSO employees (approximately 600+ employees), means that the search will return numerous emails that may or may not be responsive to the records request.

16. Fourth, searching for emails to and/or from “*any federal department or agency*”, DHS, ICE, OIG and the Executive Office of the President requires using the domain part of email addresses for such agencies, which is the part of an email address that follows the ampersand (“@”) in the email address.

17. Finding emails for “any federal department or agency” requires using “.gov” as a search terms; however, this will return numerous emails that are not responsive to the records requested.

18. Other search terms would include using “dhs”, “oig”, “@ice”, “.ice”, “@who” or “who” (White House Office), and “@eop” or “.eop” (Executive Office of the President).

19. Presently, a preliminary search for emails using the above search terms and parameters identified over 40,000 emails that may or may not be responsive to the records requested under # 6, 8 and 10.

20. These records undoubtedly include numerous emails that are not responsive to the records requested and include numerous emails that are duplicates of emails that are responsive and not responsive to the records requested.

21. Regardless of the number of emails found based on the search terms used, each email must then be read to determine if it is responsive to the records requested.

22. Given the vast number of email communications that have been identified as

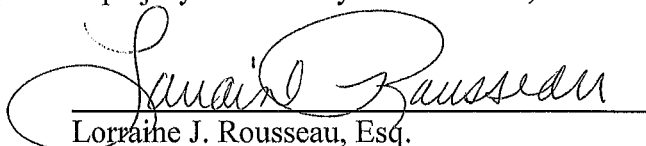
containing terms related to the ACLUM's records request, the BCSO recommends that the ACLUM narrow its records request or provide specific terms to be used to search for the requested emails.

23. The AGO has concluded his investigation and issued a Report regarding such on December 15, 2020.

24. The Senate investigation is ongoing and no information is available regarding the status of the investigation.

25. The OIG's investigation is ongoing and no information is available regarding the status of the investigation.

Signed under the penalties and pains of perjury the 23<sup>rd</sup> day of December, 2020.

  
Lorraine J. Rousseau, Esq.

# **EXHIBIT 25**

## Garvey, Stephen

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**From:** Lorraine Rousseau <LORRAINEROUSSEAU@bcso-ma.org>  
**Sent:** Friday, April 9, 2021 12:33 PM  
**To:** Hart, Christopher  
**Subject:** Email Batch for April 9, 2021  
**Attachments:** Log for April 9, 2021 Batch.pdf

**\*\*EXTERNAL\*\***

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Chris,

Attached please find a Log for the emails being provided today. The attached pst file only contains emails that did not require redaction. These emails do not have a number written on the left side of the Log.

The only material redacted are ICE Detainee names and Alien Numbers. This information is exempt from disclosure under Exemption (a), as required under 8 C.F.R. § 236.6, which prohibits the disclosure to the public of "the name of, or other information relating to," federal immigration detainees.

Several emails will follow this one with pdf attachments of emails #1 through 27 written in on the left side of the log and that required redaction of ICE Detainee information.

I will continue the work with emails next week and try to finish this up for you as soon as possible.

You have the right to appeal this decision to the Supervisor of Public Records under 950 CMR 32.08(1) and to seek judicial review by commencing a civil action in the Superior Court.

Thank you,  
Lorraine

*Lorraine J. Rousseau, Esq.  
Bristol County Sheriff's Office  
400 Faunce Corner Road  
North Dartmouth, MA 02747  
Tel. (508) 995-1311  
Fax (508) 995-7835  
lorrainerousseau@bcso-ma.org*



# **EXHIBIT 26**



**U.S. Department of Homeland Security**  
U.S. Immigration and Customs Enforcement  
Office of Professional Responsibility  
Inspections and Detention Oversight Division  
Washington, DC 20536-5501

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**Office of Detention Oversight  
Compliance Inspection**

**Enforcement and Removal Operations  
ERO Boston Field Office**

**Bristol County Detention Center  
North Dartmouth, Massachusetts**

**April 12-16, 2021**

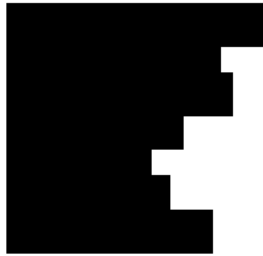
**COMPLIANCE INSPECTION**  
**of the**  
**BRISTOL COUNTY DETENTION CENTER**  
North Dartmouth, Massachusetts

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## COMPLIANCE INSPECTION TEAM MEMBERS



Team Lead	ODO
Inspections and Compliance Specialist	ODO
Inspections and Compliance Specialist	ODO
Contractor	Creative Corrections
Contractor	Creative Corrections
Contractor	Creative Corrections
Contractor	Creative Corrections

## FACILITY OVERVIEW

The U.S. Immigration and Customs Enforcement (ICE) Office of Professional Responsibility (OPR) Office of Detention Oversight (ODO) conducted a compliance inspection of the Bristol County Detention Center (BCDC) in North Dartmouth, Massachusetts, from April 12 to 16, 2021.<sup>1</sup> The facility opened in 1990 and is owned and operated by Bristol County. The ICE Office of Enforcement and Removal Operations (ERO) began housing detainees at BCDC in 2001 under the oversight of ERO's Field Office Director (FOD) in Boston (ERO Boston). The facility operates under the Performance-Based National Detention Standards (PBNDS) 2008.

ERO has assigned deportation officers and a detention services manager to the facility. A BCDC superintendent handles daily facility operations and manages █ personnel. Trinity Food Service provides food services, Correctional Psychiatric Services provides medical care, and Keefe provides commissary services at the facility. The facility received accreditation by the American Correctional Association in January 2020 and the National Commission on Correctional Health Care in April 2020.

Capacity and Population Statistics	Quantity
ICE Detainee Bed Capacity <sup>2</sup>	30
Average ICE Detainee Population <sup>3</sup>	█
Male Detainee Population (as of April 12, 2021)	█
Female Detainee Population (as of April 12, 2021)	0

During its last inspection, in Fiscal Year (FY) 2020, ODO found 13 deficiencies in the following areas: Environmental Health and Safety (1); Admission and Release (2); Custody Classification System (2); Funds and Personal Property (1); Special Management Units (2); Use of Force and Restraints (2); Medical Care (1); Personal Hygiene (1); and Grievance System (1).

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<sup>1</sup> This facility holds male and female detainees with low, medium-low, medium-high, and high-security classification levels for periods longer than 72 hours.

<sup>2</sup> Data Source: ERO Facility List Report as of April 12, 2021.

<sup>3</sup> *Ibid.*

## COMPLIANCE INSPECTION PROCESS

ODO conducts oversight inspections of ICE detention facilities with an average daily population greater than ten, and where detainees are housed for longer than 72 hours, to assess compliance with ICE national detention standards. These inspections focus solely on facility compliance with detention standards that directly affect detainee life, health, safety, and/or well-being.<sup>4</sup>

ODO identifies violations of ICE detention standards, ICE policies, or operational procedures as “deficiencies.” ODO also highlights instances in which the facility resolves deficiencies prior to completion of the ODO inspection. Where applicable, these corrective actions are annotated with “C” under the *Compliance Inspection Findings* section of this report.

Upon completion of each inspection, ODO conducts a closeout briefing with facility and local ERO officials to discuss preliminary findings. A summary of these findings is shared with ERO management officials. Thereafter, ODO provides ICE leadership with a final compliance inspection report to: (i) assist ERO in developing and initiating corrective action plans; and (ii) provide senior executives with an independent assessment of facility operations. ODO’s findings inform ICE executive management in their decision-making to better allocate resources across the agency’s entire detention inventory.

ODO was unable to conduct an on-site inspection of this facility, as a result of the COVID-19 pandemic, and instead, conducted a remote inspection of the facility. During this remote inspection, ODO interviewed facility staff, ERO field office staff, and detainees, reviewed files and detention records, and was able to assess compliance for at least 90 percent or more of the ICE national detention standards reviewed during the inspection.

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<sup>4</sup> ODO reviews the facility’s compliance with selected standards in their entirety.

## FINDINGS BY PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2008 MAJOR CATEGORIES

PBNDS 2008 Standards Inspected <sup>5</sup>	Deficiencies
<b>Part 1 – Safety</b>	
Emergency Plans	0
Environmental Health and Safety	1
<b>Sub-Total</b>	<b>1</b>
<b>Part 2 – Security</b>	
Admission and Release	0
Classification System	0
Facility Security and Control	3
Funds and Personal Property	0
Population Counts	0
Sexual Abuse and Assault Prevention and Intervention	0
Special Management Units	10
Staff-Detainee Communication	2
Use of Force and Restraints	1
<b>Sub-Total</b>	<b>16</b>
<b>Part 4 – Care</b>	
Food Service	0
Hunger Strikes	0
Medical Care	0
Suicide Prevention and Intervention	0
<b>Sub-Total</b>	<b>0</b>
<b>Part 5 – Activities</b>	
Religious Practices	0
Telephone Access	0
<b>Sub-Total</b>	<b>0</b>
<b>Part 6 – Justice</b>	
Grievance Systems	2
Law Libraries and Legal Material	0
<b>Sub-Total</b>	<b>2</b>
<b>Other Standards Reviewed</b>	
Federal Performance-Based Detention Standards (FPBDS), Section A.7 Detainees with Disabilities	0
<b>Sub-Total</b>	<b>0</b>
<b>Total Deficiencies</b>	<b>19</b>

<sup>5</sup> For greater detail on ODO's findings, see the *Compliance Inspection Findings* section of this report.

## DETAINEE RELATIONS

ODO interviewed four detainees, who each voluntarily agreed to participate. The remaining three detainees declined to interview with ODO. None of the detainees made allegations of discrimination, mistreatment, or abuse. Most detainees reported satisfaction with facility services except for the concerns listed below. ODO conducted detainee interviews via video teleconference.

*Food Service:* All of the detainees interviewed stated the food menu was repetitive, and three out of four detainees stated the facility staff consistently did not cook the food completely.

- Action Taken: ODO interviewed the food services director (FSD) and reviewed the 35-day food menu for BCDC, nutritional information, and photos of food prepared. ODO found diversity in the 35-day menu cycle because it contained an ample variety of menu items and meals prepared for the detainee population. A registered dietician reviewed and approved all food menus, indicating the meals met or exceeded recommended nutrient requirements. The FSD informed ODO that meals were fully cooked and palatable; however, increased oversight of finished food products and further training for food service workers will be provided to reinforce the importance of ensuring that all menu items are cooked to standard and taste-tested. Since this was a remote contingency inspection, ODO was unable to taste-test items as served from the menu. The FSD informed detainees to report any issues regarding food or food preparation to facility staff who will take immediate and appropriate corrective action.

*Medical Care:* One detainee stated his left shoulder was in pain for the last 6 months, and medical staff had not provided care other than pain medication.

- Action Taken: ODO requested information from the health services administrator (HSA) who conducted a medical record review and found that on May 16, 2020, the detainee complained that he fell on his left chest area while walking upstairs as he was being escorted to his cell from the shower in the special management unit (SMU). The nurse examined the detainee after the fall and found no noticeable injuries; however, the detainee said he had minor pain in the rib area but reported to the nurse that he felt fine. On May 26, 2020, the detainee complained of pain in his left ankle from the reported fall on May 16, 2020. On June 1, 2020, medical staff performed an x-ray of his left ankle and found no fracture. On September 14 and September 16, 2020, the nurse practitioner (NP) evaluated the detainee for a complaint of left shoulder pain. The NP prescribed pain medication (Motrin) and a thromboembolism-deterrent sleeve and advised the detainee to decrease intensity of his exercise routine. On September 28, 2020, medical staff performed an x-ray of his left shoulder and found no fractures. Medical staff continued to manage his shoulder discomfort and instructed the detainee to report any significant changes in his condition should they occur.

*Medical Care:* One detainee stated he had COVID-19, and facility staff housed him in a SMU cell instead of the medical unit.

- Action Taken: ODO requested information from the HSA who conducted a medical record review and found that the medical staff placed the detainee in medical isolation



on February 4, 2021, due to the detainee reporting COVID-19 symptoms. On February 5, 2021, medical staff tested the detainee for COVID-19 and received a positive test result on February 7, 2021. Since the facility had limited isolation housing, the facility physician and security staff collaborated on whether to house the detainee in a medical unit or an SMU, based on the detainee's severity of symptoms. Medical staff evaluated the detainee twice daily while in isolation. He tested negative for COVID-19 on February 18, 2021, and the physician released the detainee from isolation on February 22, 2021. A subsequent follow-up COVID-19 test, dated March 9, 2021, was negative.

## COMPLIANCE INSPECTION FINDINGS

### SAFETY

#### ENVIRONMENTAL HEALTH AND SAFETY (EHS)

ODO reviewed the emergency generator test logs and found the [REDACTED] generator tests did not include a check of amperage output (**Deficiency EHS-28<sup>6</sup>**).

### SECURITY

#### FACILITY SECURITY AND CONTROL (FSC)

ODO found the facility's visitor logbook did not identify the person or department visited nor unusual requests (**Deficiency FSC-18<sup>7</sup>**).

*Corrective Action:* Prior to completion of the inspection, the facility completed corrective action by creating a new visitor log that included all the required information and issuing a memo to the staff to begin immediate use of the new visitor log (**C-1**).

ODO reviewed the facility's visitor logbook and found the post officer did not record the person nor department visited nor unusual requests into the visitor log, as required (**Deficiency FSC-31<sup>8</sup>**).

ODO reviewed the cell and area search logs and found the facility staff did not record the time facility staff conducted searches (**Deficiency FSC-109<sup>9</sup>**).

*Corrective Action:* Prior to completion of the inspection, the facility completed corrective action by creating a cell and area search log that contained a column for the time facility staff conducted the search and issued a memo instructing facility staff to use the new log

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<sup>6</sup> "Among other things, the technicians shall check starting battery voltage, generator voltage and amperage output." See ICE PBNDS 2008, Standard, Environmental Health and Safety, Section (V)(F).

<sup>7</sup> "Every entry in the logbook shall identify the person or department visited; date and time of visitor's arrival; purpose of visit; unusual requests; and time of departure." See ICE PBNDS 2008, Standard, Facility Security and Control, Section (V)(C)(1)(b)(2).

<sup>8</sup> "The post officer shall record every official visitor's arrivals and departures in the visitor logbook, providing the person or department visited; date and time of visitor's arrival; purpose of visit; unusual requests; and time of departure." See ICE PBNDS 2008, Standard, Facility Security and Control, Section (V)(C)(1)(d).

<sup>9</sup> "Each housing unit, including the SMU, shall document cell and area searches in a search log that registers the date, time, and findings, including location(s) where contraband found, type(s) of contraband, and the searching officers' names." See ICE PBNDS 2008, Standard, Facility Security and Control, Section (V)(F)(3)(b).

immediately (C-2).

## **SPECIAL MANAGEMENT UNITS (SMU)**

ODO reviewed 10 detainee detention files and found 5 out of 10 files did not contain documentation detainees were offered to shave and shower at least 3 times weekly and receive other basic services such as laundry, hair care, barbering, clothing, bedding, and linen equivalent to general population detainees and consistent with safety and security of the facility (**Deficiency SMU-34<sup>10</sup>**).

ODO reviewed 10 detainee detention files and found 10 out of 10 files did not contain a disciplinary segregation order indicating the time and date of release from segregation (**Deficiency SMU-137<sup>11</sup>**).

ODO reviewed 10 detainee detention files and found 5 out of 10 files did not contain SMU record forms and 10 out of 10 files did not contain disciplinary segregation orders, as required (**Deficiency SMU-144<sup>12</sup>**).

ODO reviewed 10 detainee detention files and found 5 out of 10 files did not contain a permanent log to record activities concerning the SMU detainees, such as meals served, recreational time, and visitors (**Deficiency SMU-147<sup>13</sup>**).

ODO reviewed 10 detainee detention files and found in 5 out of 10 files, facility staff did not immediately, upon a detainee's placement in the SMU, prepare a Special Management Housing Unit Record (Form I-888), or equivalent, as required (**Deficiency SMU-151<sup>14</sup>**).

ODO reviewed 10 detainee detention files and found 5 out of 10 files did not contain a Form I-888 or equivalent, as required for IGSA facilities (**Deficiency SMU-152<sup>15</sup>**).

ODO reviewed 10 detainee detention files and found in 5 out of 10 files, SMU officers did not print their name or sign the record, nor record whether the detainee ate, showered, recreated, or took any medication, and any other additional information, such as whether the detainee had a

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<sup>10</sup> "In accordance with the Detention Standard on Personal Hygiene, detainees in SMUs may shave and shower at least three times weekly and receive other basic services such as laundry, hair care, barbering, clothing, bedding, and linen equivalent to general population detainees and consistent with safety and security of the facility." See ICE PBNDS 2008, Standard, Special Management Units, Section (V)(B)(11).

<sup>11</sup> "When the detainee is released from the SMU, the releasing officer shall indicate date and time of release on the Disciplinary Segregation Order, then forward the completed order to the chief of security for insertion into the detainee's detention file." See ICE PBNDS 2008, Standard, Special Management Units, Section (V)(D)(2)(b).

<sup>12</sup> "All review documents shall be placed in the detainee's detention file." See ICE PBNDS 2008, Standard, Special Management Units, Section (V)(D)(3)(b).

<sup>13</sup> "A permanent log shall be maintained in the SMU to record all activities concerning the SMU detainees, such as the meals served, recreational time, and visitors." See ICE PBNDS 2008, Standard, Special Management Units, Section (V)(E)(1).

<sup>14</sup> "Special Management Housing Unit Record, (Form I-888) or equivalent shall be prepared immediately upon a detainee's placement in the SMU." See ICE PBNDS 2008, Standard, Special Management Units, Section (V)(E)(3).

<sup>15</sup> "CDFs and IGSA facilities shall use the Form I-888 or comparable form for this purpose as well." See ICE PBNDS 2008, Standard, Special Management Units, Section (V)(E)(3).

medical condition, or had exhibited suicidal/assaultive behavior (**Deficiency SMU-153**<sup>16</sup>).

ODO reviewed 10 detainee detention files and found 5 out of 10 files did not have documentation the facility's medical officer visited the detainees in the SMU (**Deficiency SMU-154**<sup>17</sup>).

ODO reviewed 10 detainee detention files and found in 5 out of 10 files, the SMU officers did not initial the record after medical staff personnel completed their visits (**Deficiency SMU-155**<sup>18</sup>).

ODO reviewed 10 detainee detention files and found in 5 out of 10 files, facility staff did not create a new Form I-888 for each week the facility housed the detainees in the SMU (**Deficiency SMU-156**<sup>19</sup>).

### **STAFF-DETAINEE COMMUNICATION (SDC)**

ODO interviewed ERO Boston staff and found ERO Boston supervisory staff did not conduct [REDACTED] (**Deficiency SDC-9**<sup>20</sup>).

ODO interviewed ERO Boston staff and found ERO Boston staff did not document [REDACTED] contact visits as required (**Deficiency SDC-11**<sup>21</sup>).

### **USE OF FORCE AND RESTRAINTS (UOFR)**

ODO interviewed the facility's security supervisors and found the facility would not release use of force audiovisual records to the news media if authorized by ERO, in accordance with ICE/ERO procedures and rules of accountability (**Deficiency UOFR-93**<sup>22</sup>).

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<sup>16</sup> "The special housing unit officer shall immediately record:

- Whether the detainee ate, showered, recreated, and took any medication; and
- Any additional information, such as whether the detainee has a medical condition, or has exhibited suicidal/assaultive behavior.
- The officer that conducts the activity will print his/her name and sign the record." See ICE PBNDS 2008, Standard, Special Management Units, Section (V)(E)(3)(a).

<sup>17</sup> "The facility medical officer shall sign each individual's record when he or she visits a detainee in the SMU." See ICE PBNDS 2008, Standard, Special Management Units, Section (V)(E)(3)(b).

<sup>18</sup> "The housing officer shall initial the record after the medical visits are completed, but no later than the end of the shift." See ICE PBNDS 2008, Standard, Special Management Units, Section (V)(E)(3)(b).

<sup>19</sup> "A new Form I-888 must be created for each week the detainee is in the SMU." See ICE PBNDS 2008, Standard, Special Management Units, Section (V)(E)(3)(c).

<sup>20</sup> "These unannounced visits shall be conducted at [REDACTED] See ICE PBNDS 2008, Standard, Staff-Detainee Communication, Section (V)(A)(1).

<sup>21</sup> "Each facility shall develop a method to document the [REDACTED] and ICE/DRO staff shall document their visits to IGSA's." See ICE PBNDS 2008, Standard, Staff-Detainee Communication, Section (V)(A)(1).

<sup>22</sup> "Release of use-of-force audiovisual recordings to the news media may occur only if authorized by the Director of Detention and Removal Operations, in accordance with ICE/DRO procedures and rules of accountability." See ICE PBNDS 2008, Standard, Use of Force and Restraints, Section (V)(K).

## **JUSTICE**

### **GRIEVANCE SYSTEM (GS)**

ODO reviewed the facility's emergency grievance procedures and found the protocol for emergency grievance procedures did not bring the grievance matter to the immediate attention of the facility administrator (**Deficiency GS-33**<sup>23</sup>).

ODO reviewed the facility's grievance policy and found it did not require staff to notify the facility administrator nor shift supervisor of an emergency grievance if the first responding staff confirmed the legitimacy of the detainee's claim of an emergency (**Deficiency GS-35**<sup>24</sup>).

### **CONCLUSION**

During this inspection, ODO assessed the facility's compliance with 20 standards under PBNDS 2008 and found the facility in compliance with 14 of those standards. ODO found 19 deficiencies in the remaining 6 standards. ODO commends facility staff for its responsiveness during this inspection and notes there were two instances where the facility's staff initiated immediate corrective action during the inspection. ODO recommends ERO work with the facility to resolve any deficiencies that remain outstanding in accordance with contractual obligations.

<b>Compliance Inspection Results Compared</b>	<b>FY 2020 PBNDS 2008</b>	<b>FY 2021 PBNDS 2008</b>
Standards Reviewed	19	20
Deficient Standards	9	6
Overall Number of Deficiencies	13	19
Repeat Deficiencies	5	0
Areas of Concern	0	0
Corrective Actions	0	2

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<sup>23</sup> "The protocol for emergency grievance procedures shall bring the matter to the immediate attention of the facility administrator, even if it is later determined that it is not a true emergency and the grievance is subsequently routed through normal, non-emergency channels." See ICE PBNDS 2008, Standard, Grievance System, Section, (V)(C)(2).

<sup>24</sup> If the shift supervisor concurs that the grievance represents an emergency, it shall receive the immediate attention of the facility administrator." See ICE PBNDS 2011, Standard, Grievance System, Section, (V)(C)(2).

# **EXHIBIT 27**

## Garvey, Stephen

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**From:** Hart, Christopher  
**Sent:** Friday, December 17, 2021 3:49 PM  
**To:** Lorraine Rousseau  
**Cc:** Garvey, Stephen; Robert Novack  
**Subject:** RE: ACLUM/BCSO - PRR matter

Lorraine,

Thanks for your email and your time this afternoon.

**First**, allow me to summarize my understanding of the call that you, Mr. Novack, and Stephen and I had with you this afternoon pursuant to Rule 9C. As I mentioned, we intend to serve, pursuant to 9A, a memorandum as requested by the Court in its October 27, 2020 Order, and motion for summary judgment.

I understood from our call that you believe that all documents that BCSO (1) lodged with the court *in camera*, and (2) produced to ACLUM under seal pursuant to ACLUM's public record request in this dispute are exempt from public disclosure under the investigatory materials exemption. You also stated that you believe that the Court's October 27, 2020 Order expressly found that the investigatory materials exemption applies to all such documents, a contention we disagree with. You clarified that the DHS investigation is ongoing and that you do not believe that you have authority to release any documents to the public until that investigation concludes. You also represented that you are not aware of any request from DHS not to disclose these documents.

You further stated that you do not concede that the anti-terrorism and privacy exemptions do not apply to either the documents lodged with the Court *in camera* or to emails produced under seal to ACLUM on April 6 2021, though you would have to review all such documents to determine whether either exemption should apply to any particular document.

As I conveyed, ACLUM has consistently contended and will argue that all documents lodged with the court and emails produced to ACLUM under seal are public records subject to disclosure. The mere fact that DHS' investigation remains open is insufficient to implicate the investigatory materials exemption. Similarly, BCSO has not carried its burden to demonstrate that either the privacy or the investigatory exemption materials applies to any of the documents.

Accordingly, next week we will serve you with a motion for summary judgment and memorandum requested by the Court's October 27 Order explaining why no document that we have examined is exempt from disclosure and should be publicly disclosed (and, if not produced, produced immediately).

**Second**, you informed us that BCSO is in possession of additional emails responsive to Request 6, 8, and 10 of ACLUM's public records requests and that BCSO would review and produce these emails to ACLUM under seal by the end of next week. We look forward to receiving those documents.

**Third**, to respond to your email below, I may have been unclear: we of course intend to serve you with our combined memorandum and motion pursuant to Rule 9A and the Court's October 27, 2020 Order, as I think I indicated a few times during our call. I had understood Mr. Novack to suggest potentially wanting a courtesy copy to review prior to service, although I understood by the end of our conversation that none would be necessary. Additionally, while the Court's June 25, 2020 Order speaks for itself, it is clear that the case is not resolved, and in any event there are issues that have arisen since the June 25, 2020 Order that were squarely not before the Court (such as the appropriateness, or lack thereof, of BCSO's search for responsive documents). Further, we are not aware of any procedural reason why moving for summary judgment at this point is unwarranted. If you are aware of such authority, please bring it to my attention.

Please do not hesitate to get in touch with any questions or if you would like to discuss further.

Best,  
Chris

**Christopher Escobedo Hart** | Partner  
Pronouns: he, him, his

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**From:** Lorraine Rousseau <LORRAINEROUSSEAU@bcso-ma.org>  
**Sent:** Friday, December 17, 2021 3:13 PM  
**To:** Hart, Christopher <CHart@foleyhoag.com>  
**Cc:** Garvey, Stephen <sgarvey@foleyhoag.com>; Robert Novack <robertnovack@bcso-ma.org>  
**Subject:** RE: ACLUM/BCSO - PRR matter

**\*\*EXTERNAL\*\***

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Chris,

To follow-up on our telephone conversation, we reviewed the Court's June 3, 2020 Order and the Court's Second Order. Pursuant to the Court's first order, the Court already converted your 12(c) motion to a motion for summary judgment and considered the June 9<sup>th</sup> session a hearing on the motion for summary judgment.

Also, in the Second Order, the Court ordered Plaintiff to file a memorandum pursuant to Rule 9A identifying the specific records it argues are subject to disclosure. Providing the Sheriff's Office with a copy, more as a curtesy than as a requirement, as you suggested a few minutes ago, is not what the Court has ordered.

Upon service of Plaintiff's memorandum under Rule 9A, we will forward a response to you within the time permitted. Accordingly, while you are certainly free to file what you please, I don't suspect that the court will entertain a second motion for summary judgment. What is clear, however, is that the Plaintiff was to file its memorandum under 9A, allow the Sheriff's Office to respond, and then hold a hearing, if required.

I will also complete the email review and produce them to the Court under seal as quickly as possible.

Please feel free to contact me if you have any questions.

Thank you,  
Lorraine