

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

CHRISTIAN ALBERTO SANTOS GARCIA, <i>et al.</i> ,)	
)	
)	
Plaintiffs,)	
v.)	No. 1:20-cv-821-LMB-JFA
)	
ALEJANDRO MAYORKAS, <i>et al.</i> ,)	
)	
Defendants.)	

**SETTLEMENT AGREEMENT REGARDING COUNTS I-II (INJUNCTIVE CLAIMS)
OF PLAINTIFFS’ SECOND AMENDED COMPLAINT**

This Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs Christian Alberto Santos Garcia, Marco Antonio Miranda Sanchez, and Shawn Houslin (“Plaintiffs”) and Defendants Alejandro Mayorkas, U.S. Immigration and Customs Enforcement (“ICE”), Tae D. Johnson, Shawn Byers, and the United States of America (collectively, the “Parties”), by and through their counsel. The Parties enter into this Agreement as of the date it is executed by all Parties, and it is effective as of the date executed.

RECITALS

WHEREAS:

On July 21, 2020, certain plaintiffs filed in the United States District Court for the Eastern District of Virginia (“Court”) a complaint for injunctive and declaratory relief against Defendants and private defendants Immigration Centers of America – Farmville, LLC, Jeffery Crawford, and Armor Correctional Health Services, Inc. (collectively “Private Defendants”) regarding the outbreak of the COVID-19 virus at the Farmville Detention Center (“FDC”). On July 23, 2020, the plaintiffs filed a motion for preliminary injunction.

On August 11, 2020, the Court granted the plaintiffs' motion in part, denied it in part, and held it in abeyance in part, ordering that Defendants were enjoined from: retaliating against the plaintiffs for having filed this civil action; transferring any plaintiff out of FDC without the consent of plaintiff and his counsel; and transferring any detainees into FDC until further Order of this Court.

On September 9, 2021, the plaintiffs and Private Defendants jointly stipulated to the dismissal of claims against the Private Defendants following the settlement of those claims.

On December 6, 2021, Plaintiffs filed a Second Amended Complaint in this Action against Defendants bringing claims for injunctive, declaratory, and damages relief. Counts I-II of the Second Amended Complaint sought injunctive and declaratory relief under the Due Process Clause of the Fifth Amendment and the Administrative Procedure Act ("APA") while Counts III-V sought damages under the Federal Tort Claims Act. Defendants subsequently moved to dismiss the entirety of Plaintiffs' Second Amended Complaint.

On February 25, 2022, the Court granted Defendants' motion to dismiss in part and denied it in part, allowing Plaintiffs' claims for injunctive and declaratory relief to proceed.

The Parties have concluded that further litigation would be protracted and expensive for all Parties. The Parties believe this Agreement is a fair, adequate, and reasonable settlement of Counts I-II of this civil action and have arrived at this Agreement after extensive arms-length negotiations. Furthermore, this Agreement is in the public interest, as it avoids further diversion of private and governmental resources to adversarial action and helps mitigate risks associated with the spread of COVID-19. After taking into account these factors, as well as the risks of further litigation, the Parties agreed to settle in the manner and upon the terms set forth in this Agreement.

NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Parties, through their respective attorneys, that this Agreement constitutes a full, fair, and complete settlement of Counts I-II of the Action, upon and subject to the following terms and conditions:

1. COVID-19 Safety Protocols.

A. Applicable CDC and Other Guidance:

i. Unless otherwise required under the terms of this agreement, the Parties agree that Defendants shall operate FDC consistent with U.S. Centers for Disease Control and Prevention (CDC) Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (hereinafter “CDC Detention Guidance”) and ICE’s Pandemic Response Requirements (hereinafter “PRR”) and any updates to those documents. In referring to the CDC Detention Guidance, the Parties refer to the guidance document itself and any other guidance the CDC Detention Guidance requires FDC to adopt including, but not limited to: external guidance issued by the CDC, such as the CDC Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19), and external guidance containing definitions or explanations of relevant terms, such as “symptoms of COVID-19” or “close contacts.”

B. Facility Density and Housing:

i. The Parties agree that all occupied dormitories at FDC shall be capped to thirty (30) detainees. There shall be three dormitories that are left unoccupied, unless they are needed for purposes of quarantine or medical isolation procedures as

required by the CDC Detention Guidance. FDC shall hold no more than one hundred and eighty (180) detainees at any time. The Parties further agree to the following specific dormitory population caps by dormitory at FDC:

Dorm Number	Population Limit
Dorm 1	30
Dorm 2	0
Dorm 3	0
Dorm 4	30
Dorm 5	30
Dorm 6	0
Dorm 7	30
Dorm 8	30
Dorm 9	30
Total:	180

C. Restrictions on Transfers:

i. The Parties agree that Defendants will only transfer detainees to FDC from the detainee population at Caroline Detention Facility (“CDF”) where such detainees are up-to-date on their vaccinations for COVID-19 as defined by the CDC Detention Guidance and PRR, where such detainees are not exhibiting symptoms of COVID-19, where FDC has records of the detainees’ vaccination for COVID-19, and where such detainees have tested negative for COVID-19 through a rapid antigen test. The Parties agree that Defendants shall not transfer or accept any detainee into FDC other than from CDF as set forth herein.

- ii. The Parties agree that Defendants will require that transferred detainees test negative for COVID-19 within 48 hours prior to transfer from CDF to FDC unless guidance issued by the CDC or found within the PRR recommends a more limited time period for testing prior to transfer. This includes not transferring any individuals whose test results are inconclusive, spoiled, or awaiting results.
- iii. The Parties agree that Defendants will require that transferred detainees from CDF to FDC be tested for COVID-19 by rapid antigen test within 12 hours of their arrival at FDC but that this time period may be extended to 24 hours if facility collection logistics require additional time.
- iv. The Parties agree that, consistent with the PRR, new arrivals from CDF to FDC who test positive for COVID-19 upon arrival are to be isolated and released from isolation consistent with the CDC Detention Guidance and PRR's provisions on quarantines for positive cases of COVID-19.
- v. The Parties agree that Defendants will block transfers of detainees from CDF to FDC if there is an outbreak at either facility, with the term "outbreak" defined as three positive cases among detainees or staff within the previous seven days at either CDF or FDC. The Parties further agree that, in such a case, transfers from CDF to FDC will be paused until there are no new COVID-19 cases at CDF or FDC, among detainees or staff, for a period of 14 days.
- vi. The Parties agree that any detainees transferred from CDF to FDC must have undergone ten days of quarantining, or any other term consistent with CDC Detention Guidance and the PRR's provisions, at CDF upon their intake at CDF and will not be transferred to FDC during that quarantine period.

vii. The Parties agree that detainees transferred from CDF to FDC will be provided with timely initial comprehensive medical assessments at FDC as mandated by ICE's Performance-Based National Detention Standards ("PBNDS").

D. Testing of Detainees and Staff:

- i. The Parties agree that FDC staff will promptly test for COVID-19 by rapid antigen test: (1) detainees and staff who display any symptoms of COVID-19; (2) detainees and staff who are in close contact with a person who has tested positive for COVID-19; and (3) detainees and staff who request a test.
- ii. The Parties agree that, barring emergencies, test results from these rapid antigen tests will be provided to detainees within 24 hours after results are received by FDC and will be provided in a language understood by the detainee.

E. Vaccination of Detainees and Staff:

- i. The Parties agree that Defendants will follow the CDC Detention Guidance and PRR for the requirements applicable to any visitors entering FDC.
- ii. The Parties agree that, subject to change in federal law, including any executive order rescinding or otherwise contravening Executive Order 14043, "Requiring Coronavirus Disease 2019 Vaccination for Federal Employees" September 9, 2021, or an order by court of competent jurisdiction enjoining the same, federal employees, including ICE staff, at FDC will be fully vaccinated against COVID-19 other than in limited circumstances where the law requires an exception such as employees who communicate to ICE that they are not vaccinated against

COVID-19 because of a disability or because of a sincerely held religious belief, practice, or observance.

iii. The Parties agree that FDC staff who are unvaccinated will be tested every three days and that Defendants will track the vaccination status of FDC staff as well as any positive COVID-19 test result among FDC staff.

iv. The Parties agree that Defendants will provide educational materials, approved by the ICE Health Service Corps, in English and Spanish regarding the COVID-19 vaccine at FDC. The Parties further agree that, once a month, FDC staff will provide verbal, in-person presentations by medical staff with interpretation, and these presentations will include answering any questions from detainees regarding COVID-19 and that these presentations will be separate from times that medical staff administer the COVID-19 vaccine to detainees.

v. The Parties agree that Defendants will provide and administer COVID-19 vaccines for detainees at FDC upon request, without regard to whether such detainees may have previously declined such vaccine.

vi. The Parties agree that Defendants will provide Plaintiff Houslin with his vaccine card and proof of vaccination once he leaves FDC through either release or removal.

F. Infection Prevention:

i. The Parties agree that in line with the CDC Detention Guidance and PRR Defendants will identify all civil immigration detainees at FDC vulnerable to serious illness or death because of COVID-19 infection, and will use this

information when making custody, housing, quarantine, and vaccination determinations.

ii. The Parties agree that Defendants will assess Plaintiff Houslin at FDC as to what type of FDA-approved COVID-19 treatment would be appropriate for him should he contract COVID-19 during his detention.

iii. The Parties agree that FDC staff will conduct daily temperature and COVID-19 symptom checks for all detainees at FDC consistent with the CDC Detention Guidance and PRR.

iv. The Parties agree that, consistent with the CDC Detention Guidance and PRR, FDC staff will be screened daily with on-site temperature and screening questions upon entry to FDC and that staff who are symptomatic will be directed to take a COVID-19 test and quarantine at home until negative COVID-19 test results are received.

v. The Parties agree that ICE will ensure that FDC posts signage, approved by the ICE Health Service Corps, on COVID-19 infection prevention and COVID-19 vaccines in both English and Spanish.

vi. The Parties agree that Defendants will otherwise follow infection prevention measures set out in the CDC Detention Guidance and PRR.

G. Outbreak Plan:

i. The Parties agree that, in the event of an outbreak at FDC, Defendants shall implement enhanced prevention strategies, as outlined in the CDC Detention Guidance and PRR, at FDC. The Parties further agree that, in the event of an outbreak, FDC will routinely screen and conduct weekly testing of staff and

detainees for COVID-19 until there are no new positive COVID-19 cases identified for a period of 14 days at FDC.

2. Reporting.

A. Seventy-Two (72) Hours Reporting: Within 72 hours of ICE personnel obtaining actual knowledge of the reportable events listed in this paragraph, Defendants shall provide the following information to the Court and to Plaintiffs:

- i. A positive COVID-19 diagnosis of any detainee;
- ii. A detainee's hospitalization because of the detainee's COVID-19 diagnosis or because of symptoms of diagnosed COVID-19; or
- iii. A detainee's death because of the detainee's COVID-19 diagnosis or because of symptoms of diagnosed COVID-19.

B. Bi-Weekly Reporting: Every two weeks (14 days) starting from the full execution of the Agreement and the entry of the Proposed Order (Attachment B), Defendants shall provide a report to the Court and to Plaintiffs stating the total detainee population by dormitory in FDC.

C. Monthly Reporting: On the first day of each month following the full execution of the Agreement and the entry of the Proposed Order (Attachment B), ICE shall provide a report to the Court and to Plaintiffs regarding:

- i. The vaccination status of detainees and staff at FDC, including how many of these individuals are vaccinated as total numbers;
- ii. The population of the medical isolation units at FDC; and
- iii. Any transfers of more than ten (10) detainees since the prior monthly report.

D. Method of Reporting: The Parties agree that the reporting obligations described above are discharged by filing reports through CM/ECF. In the event that the bi-weekly

reporting or monthly reporting obligations described in this section fall on a weekend or federal holiday, the reporting obligation shall be discharged on the next business day.

E. Notice of the Agreement

- i. The Parties agree that, upon a detainee's arrival to FDC, the detainee will be provided with a copy of the attached notice (Attachment A, Notice) in both English and Spanish advising the detainee of this Agreement and providing Plaintiffs' counsel's contact information. Defendants will work with FDC to ensure that detainees have reasonable ability to leave a voicemail and will work with FDC to arrange for return phone calls by detainees to Plaintiffs' counsel at Plaintiffs' counsel's request.
- ii. The Parties agree that copies of Attachment A will be displayed in FDC in both English and Spanish.
- iii. The Parties agree that detainees may request a copy of this Agreement in both English and Spanish from FDC staff, who will provide it to detainees upon any such request.

3. Other.

A. Pepper Spray: The Parties agree to the following regarding the use of pepper spray in FDC:

Except in extraordinary circumstances, staff shall consult medical staff before using pepper spray unless escalating tension makes such action unavoidable.

When possible, medical staff shall review the detainee's medical file for a disease or condition that an intermediate force weapon could seriously exacerbate, including, but not limited to, COVID-19, asthma, emphysema, bronchitis,

tuberculosis, obstructive pulmonary disease, angina pectoris, cardiac myopathy or congestive heart failure. If medical staff indicate that a detainee has a disease or condition that an intermediate force weapon could seriously exacerbate, then staff shall not use pepper spray except in extraordinary circumstances. There shall be a presumption that a detainee with confirmed COVID-19 has such a disease or condition. In the event that pepper spray is used in a circumstance where an individual with confirmed COVID-19 is present, Defendants shall provide Plaintiffs' counsel with notice of the event within 72 hours and, subject to the protective order in this case, any available surveillance video as soon as practicable. Detainees subjected to use of pepper spray shall be seen by medical staff as soon as possible. If the use of pepper spray results in an injury or claim of injury, medical evaluation shall be obtained and appropriate care provided.

4. Enforcement.

A. Retention of Jurisdiction: The Parties agree that the Court shall retain jurisdiction over this matter through the term of the Agreement.

B. Resolution Procedures: The Parties agree that if Plaintiffs believe that Defendants have violated the Agreement that the Parties will first meet and confer to attempt to resolve any issues raised by Plaintiffs. Under this process, Plaintiffs' counsel is to raise any alleged violation of the Agreement by contacting Defendants' counsel and then a meet-and-confer will be conducted at a mutually agreeable time and date. If the Parties fail to resolve their issues within seven (7) days following Plaintiffs' counsel first contact to Defendants' counsel then Plaintiffs may proceed to seek relief from the Court. If Plaintiffs proceed to seek relief from the Court, the Court may then determine, in its discretion, whether any remaining disagreements between the Parties are to be addressed

through motions practice or through Court-directed mediation. Should the Court determine that any disagreements are to be addressed by motions practice, Plaintiffs may seek fees and other expenses pursuant to the Equal Access to Justice Act (“EAJA”) for any successful enforcement motion. In the case that the parties are ordered to mediate the matter, such an order cannot, in of itself, confer prevailing party status on Plaintiffs under EAJA. Defendants reserve the right to oppose, and raise any defenses, to such motion under EAJA. Plaintiffs may not seek costs and fees related to any issues that are resolved through the initial meet and confer process.

5. Term of Agreement.

Notwithstanding any future release or removal of any or all Plaintiffs, this Settlement Agreement shall remain in effect until the earliest of the following two events occurs:

- A. Two years from the date in which the Settlement Agreement is fully executed; OR
- B. Sixty (60) calendar days after the date on which the Centers for Disease Control and Prevention (“CDC”) declares that COVID-19 no longer constitutes a public health emergency or a comparable announcement.¹

6. Costs and Fees.

- A. The Parties agree to a settlement of Plaintiffs’ attorney’s fees and other expenses under the Equal Access to Justice Act in the amount of \$185,000 and Plaintiffs’ costs under 28 U.S.C. § 1920 in the amount of \$1,500. Each Plaintiff will be allocated one

¹ The current determination that COVID-19 constitutes a public health emergency was declared on January 31, 2020 and can be found here: <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>. As illustrative for when this public health emergency will end, the determination has been renewed multiple times by the Secretary of Health and Human Services (“HHS”), including as recently as April 12, 2022: <https://aspr.hhs.gov/legal/PHE/Pages/COVID19-12Apr2022.aspx>. If this determination is not renewed by HHS, then this would constitute a comparable announcement that there is no longer a public health emergency.

third of the attorney's fees. Each Plaintiff's attorney's fees will be offset by any outstanding federal debt that the Plaintiff may have so that the amount paid will be the balance of attorney's fees agreed to remaining after subtracting the amount of the Plaintiff's outstanding federal debt. Should any Plaintiff's outstanding federal debt exceed the amount of the fees agreed upon herein, then the agreed amount will be used to offset that Plaintiff's federal debt and no fees award shall be paid to that Plaintiff. If a Plaintiff has no outstanding federal debt, then Defendants will honor any assignment of the fee award that the Plaintiff has made to counsel and make the check for fees payable to Plaintiff's counsel. However, if Plaintiff has outstanding federal debt that does not exceed the cost of the award, then Defendant will make the check payable to Plaintiff directly and deliver the check to the business address of Plaintiff's counsel. The payment of costs will be made by wire transfer following the execution of this Agreement and following receipt of required payment information from Plaintiffs' counsel.

B. Notwithstanding any EAJA fees incurred in any enforcement motions as discussed under Section 4.B of this Agreement ("Resolution Procedures"), this payment shall constitute a full and comprehensive settlement of any fees and costs Plaintiffs have incurred concerning Counts I-II of this Action, without any further litigation under EAJA.

7. No Admission of Liability.

This Agreement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of Defendants, their agents, servants, or employees, and it is specifically denied that they are liable to Plaintiffs.

8. Stipulation with Prejudice.

Simultaneously with the execution of this Agreement, Plaintiffs and Defendants, by their

attorneys, shall execute a Joint Stipulation of Dismissal for Injunctive Claims Only (“Stipulation”) pursuant to Fed. R. Civ. P. 41 dismissing this civil action with prejudice, conditioned on this Court’s retention of jurisdiction to enforce this Agreement. The Parties agree that the entry of the proposed order accompanying the Stipulation is a condition precedent to the effectiveness of this Agreement and the obligations of the Parties thereunder. Counsel for Plaintiffs agree to file the Stipulation with the Court within three days after the complete execution of this Agreement by the Parties. A copy of the Stipulation is attached hereto as Attachment B.

9. No Assignment.

Plaintiffs represent and warrant that they are the sole and lawful owners of all rights, title, and interests in and to every claim and other matter which Plaintiffs purport to release herein, and that he has not heretofore assigned or transferred, or purported or attempted to assign or transfer to any person or entity any claims or other matters herein released. Plaintiffs shall indemnify Defendants, their current and former employees, and any of Defendants’ predecessors or successors, whether in their official or individual capacities, against, and defend and hold harmless from, any claims arising out of or relating to any such assignment or transfer of any claims or other matters released herein.

10. Merger Clause.

This Agreement contains the entire agreement between the Parties hereto, and Plaintiffs acknowledge and agree that no promise or representation not contained in this agreement has been made to them, and they acknowledge and represent that this Agreement contains the entire understanding between the Parties and contains all terms and conditions pertaining to the compromise and settlement of the disputes referenced herein. No statement, remark, agreement,

or understanding, oral or written, that is not contained herein shall be recognized or enforced; nor does this Agreement reflect any agreed-upon purpose other than the desire of the Parties to reach a full and final conclusion of the litigation and to resolve that suit without the time and expense of further litigation.

11. Amendments.

This Agreement cannot be modified or amended except by an instrument in writing, agreed to and signed by the Parties, through counsel, nor shall any provision hereof be waived other than by a written waiver, signed by the Parties, through counsel.

12. Consultation with Counsel.

Plaintiffs and Defendants acknowledge that they have discussed this Agreement with their respective counsel, who have explained these documents to them, and that they understand all of the terms and conditions of this Agreement. Plaintiffs and Defendants further acknowledge that they have read this Agreement, understand the contents thereof, and execute this Agreement of their own free act and deed. The undersigned represent that they are fully authorized to enter into this agreement.

13. Rules of Construction.

A. This Agreement shall be considered a jointly drafted agreement and shall not be construed against any party as the drafter.

B. This Agreement shall be construed in a manner to ensure its consistency with federal law. Nothing contained in this Agreement shall impose upon Defendants any duty, obligation, or requirement, the performance of which would be inconsistent with federal statutes, rules, or regulations in effect at the time of such performance.

C. The headings in this Agreement are for the convenience of the Parties only and shall not limit, expand, modify, or aid in the interpretation or construction of this Agreement.

14. Full Authority to Sign.

Each person signing this Agreement represents and warrants that he or she has full authority to execute the Agreement on behalf of himself or herself, or on behalf of the party or entity on whose behalf he or she signs this Agreement.

15. Execution in Counterparts.

This Settlement Agreement may be executed and delivered in counterparts. Each counterpart, when executed, shall be considered one and the same instrument, which shall comprise the Settlement Agreement, which takes effect on the date of execution.

16. Place of Performance

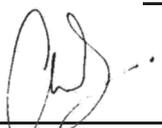
This agreement was entered into in the Commonwealth of Virginia, and the place of performance is deemed to be the Commonwealth of Virginia.

Executed this date: _____

YURI FUCHS Digitally signed by YURI FUCHS
Date: 2022.07.06 09:36:41
-04'00'

Attorney for Defendants

Executed this date: 07/05/2022



Attorney for Plaintiffs

Executed this date: _____

Shawn Houslin 06/30/2022

Plaintiff Shawn Houslin

Executed this date: _____

Plaintiff Christian Alberto Santos Garcia

Executed this date: _____

Plaintiff Marco Antonio Miranda Sanchez

Executed this date: _____

Plaintiff Shawn Houslin

Executed this date: July 1, 2022



Plaintiff Christian Alberto Santos Garcia

Executed this date: _____

Plaintiff Marco Antonio Miranda Sanchez

Executed this date: _____

Plaintiff Shawn Houslin

Executed this date: _____

Plaintiff Christian Alberto Santos Garcia

Executed this date: 06/29/2022



Plaintiff Marco Antonio Miranda Sanchez