

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ANTONY JOSE CANELA RODRIGUEZ,

Plaintiff,

vs.

CHAD F. WOLF, Acting Secretary, Department of
Homeland Security;
TONY H. PHAM, Deputy Director and Senior Official
Performing the Duties of the Director of U.S.
Immigration and Customs Enforcement;
TODD LYONS, Acting Field Office Director, U.S.
Immigration and Customs Enforcement Boston Field
Office.

Defendants

Case No. _____

**PLAINTIFF’S COMPLAINT FOR PERMANENT INJUNCTIVE
AND DECLARATORY RELIEF**

Plaintiff, Antony Jose Canela Rodriguez (“Plaintiff”), by his undersigned attorneys, brings this complaint for declaratory and injunctive relief against Defendants CHAD F. WOLF, TONY H. PHAM, and TODD LYONS, acting in their official capacities (collectively referred to as “Defendants”).

In support of this complaint, Plaintiff states as follows:

NATURE OF THIS ACTION

1. This case challenges the practice by U.S. Immigration and Customs Enforcement (“ICE”) of transferring immigration detainees housed at the Cumberland County Jail in Portland, ME (“CCJ”) to facilities in Louisiana, Texas, and other southern states, where COVID-19 is

running rampant. Under this practice, ICE arrests people in Maine and nearby states, houses them for several days at CCJ, and then inexplicably transports them (via numerous intermediate stops) to detention facilities in southern states. This practice separates New England detainees from their homes, their families, and their lawyers, and attempts to strip them of various procedural protections enforced by the federal courts in the First Circuit. And it needlessly creates conditions of extreme risk for exposure to COVID-19, a potentially deadly virus for which there is no known cure. As applied to Plaintiff, who is diagnosed with asthma and at imminent risk of being subjected to this practice, it is unconstitutional.

2. Prison and jail facilities have seen some of the worst outcomes from the deadly COVID-19 virus, and these dangers are multiplied by ICE's practice of transferring ICE detainees from CCJ to points in the southern most U.S. states. ICE knows about these risks of inter-facility transfer during the COVID-19 pandemic, yet has apparently initiated a new program of systemic transfers to and from CCJ in recent months, in an apparent effort to evade protections granted by federal courts in New England and COVID-related class actions ongoing on New England detention facilities.

3. ICE's forum shopping creates unnecessary and unacceptable risks to detainee safety, including the risk that detainees will be exposed to, and infected with, COVID-19. ICE transports detainees on crowded and unsanitary buses, vans, and planes, on which mask-wearing is inconsistent and ventilation is poor. During the transfer, ICE frequently picks up detainees from other facilities, some of which have had outbreaks from COVID-19. Exposure to even a single closed congregate facility is dangerous, and ICE's travel itinerary often transports detainees through two or more facilities—each of which exposes the detainee to new staff, new detainees, new settings, and increased COVID-19 risks. The ICE detention centers themselves increase the

detainees' risk of contracting the COVID-19 virus, forcing them into crowded and unsanitary units in which physical distancing is impossible, and detainees are not provided with the most basic cleaning supplies. These practices violate the Plaintiff's Fifth Amendment right to reasonable safety in ICE's custody, and to be free from deliberate indifference by their custodians.

4. Similar inter-facility transfers by ICE have led to several high-profile outbreaks, including an outbreak of almost 90% of detainees at a facility in Farmville, Virginia. Even in lower profile examples, ICE transfer from New England to the southern states has led to infection with COVID-19.

5. ICE's practice of inter-facility transfers also disrupts people's lifelines to attorneys, family, and community. By transferring ICE detainees to multiple facilities around the country, where phone access is limited or nonexistent, ICE makes these detainees even more vulnerable and inaccessible.

6. Detainees who have been transferred as a result of Defendants' policies have reported unsafe and unsanitary conditions both while in transit and at their new detention centers. These conditions include, but are not limited to, being crowded into small vans and planes; inconsistent use of masks in these small vehicles, particularly when detainees are eating; limited access to soap and water as well as necessary cleaning products; shared common areas, including bathrooms, that are sometimes covered in blood, urine, and filth; and frequent movement between small cells near other detainees and members of the local population, some of whom exhibit COVID-19 symptoms.

7. Based on the significant risks of contracting COVID-19 both during transfer and at ICE detention facilities, transferring Plaintiff would be objectively unreasonable and deliberately indifferent to his health and safety, in violation of his Fifth Amendment rights.

8. Plaintiff is all but guaranteed to be transferred in the very early hours of Tuesday morning. According to data gathered in recent months, ICE transfers detainees out of CCJ after an average period of 3.5 days—and transfers some people even more quickly. Based on this pattern, the Plaintiff (who arrived in CCJ on October 21, 2020) would be on track for transfer over the upcoming weekend. However, according to the Chief of the Civil Division of the United States Attorney’s Office for the District of Maine, ICE has confirmed that no transfers out of CCJ are planned prior to Tuesday.

9. Accordingly, unless this Court enjoins the transfer by the end of the day on Monday, October 26, 2020, Plaintiff will imminently be forced into these unsafe conditions, greatly increasing his risk of exposure to COVID-19 and the corresponding risk to his health.

THE PARTIES

10. Plaintiff Antony Jose Canela Rodriguez is a Lawful Permanent Resident currently being held by ICE in CCJ. He lives in Rhode Island with his family, including his wife and daughter, who are both U.S. citizens.

11. Defendant Chad F. Wolf is purportedly the Acting Secretary of DHS. He is named in his official capacity. Defendant Wolf is responsible for DHS policies, practices, and procedures, including those relating to detention of noncitizens.

12. Defendant Tony H. Pham is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. He is named in his official capacity. Defendant Pham is responsible for ICE’s policies, practices, and procedures, including those relating to the detention of noncitizens.

13. Defendant Todd Lyons is named in his official capacity as the Acting Boston Field Office Director for ICE. In this capacity, he has responsibility over the detention and removal of

noncitizens within the Boston Region, which includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Defendant Lyons is the ICE official responsible for Mr. Canela Rodriguez's detention and the decision to transfer him.

JURISDICTION AND VENUE

14. Jurisdiction over the subject matter of this civil action is conferred on this Court by 28 U.S.C. § 1331, as a civil action arising under the Constitution, laws, or treaties of the United States.

15. The Court also has jurisdiction by virtue of 28 U.S.C. §§ 2201, 2202, as a civil action seeking, in addition to other remedies, a declaratory judgment.

16. Venue lies properly in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this claim occurred in this District.

17. Under Local Rule 3(b), this action is properly filed in the Portland Division of this Court because a substantial part of the events giving rise to Plaintiffs' claims for relief occurred in Cumberland County.

FACTUAL AND LEGAL ALLEGATIONS

The COVID-19 Pandemic

18. The novel coronavirus responsible for the illness COVID-19 has caused a global pandemic and its risk and devastating effects cannot be overstated. As of October 18, 2020, there are more than forty million confirmed cases worldwide of COVID-19, with over eight million cases in the United States alone.¹ As of October 15, 2020, COVID-19 has killed at least 216,025 people in the United States in the roughly eight months since the pandemic began.²

¹ WORLD HEALTH ORG., *Coronavirus disease (COVID-19) Weekly Epidemiological Update* (Oct. 5, 2020), <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20201020-weekly-epi-update-10.pdf>.

² <https://www.cdc.gov/mmwr/volumes/69/wr/mm6942e2.htm>

19. According to the World Health Organization, the most common symptoms of COVID-19 are fever, tiredness, and a dry cough.³ Other symptoms include aches and pains, nasal congestion, headache, conjunctivitis, sore throat, diarrhea, loss of taste or smell, or a rash on skin or discoloration of fingers or toes.⁴

20. Complications of COVID-19 include pneumonia, respiratory failure, acute respiratory distress syndrome (ARDS), acute cardiac injury, acute liver injury, acute kidney injury, clotting disorders, thromboembolic events, multiple organ failure, and death

21. Older adults and people with certain pre-existing medical conditions such as cancer, diabetes, and heart conditions are at an increased risk of suffering severe symptoms and more serious complications from COVID-19.⁵ Other conditions that might place people at increased risk of serious illness or death include (but are not limited to) moderate to severe asthma, liver disease, and being overweight.

22. There is no vaccine against COVID-19 currently available in the United States,⁶ nor is there any known scientifically accepted medication to prevent or cure infection from the virus. The more effective way to protect people from serious health outcomes, including death, is to prevent people from being infected with COVID-19.⁷

³ WORLD HEALTH ORG., *Coronavirus Symptoms*, https://www.who.int/health-topics/coronavirus#tab=tab_3 (last visited Oct. 6, 2020).

⁴ *Id.*

⁵ U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, *COVID-19: Symptoms of Coronavirus*, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last updated May 13, 2020).

⁶ U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, *COVID-19: How to Protect Yourself & Others*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last updated Sept. 11, 2020).

⁷ *Id.*

23. Thus, the most effective measures to prevent infection include social distancing; vigilant hygiene, including frequently washing hands with soap and water and frequently disinfecting commonly touched areas; and wearing a mask when around others.⁸

24. In addition, those who are symptomatic, or who have come into contact with those who have the virus, are advised to self-quarantine, removing themselves entirely from physical contact with others so as to prevent spread of the virus for a period of up to fourteen days.⁹

25. The Center for Disease Control (“CDC”) has also recognized the increasing evidence that COVID-19 can spread through asymptomatic transmission (in which an infected person displays no symptoms) or presymptomatic transmission (in which an infected person is not yet displaying symptoms, but is still able to transmit the virus).¹⁰

ICE’s Systematic Transfer of Detainees from CCJ

26. The federal government has contracts with various state and local jails and prisons to house federal detainees, including people who are arrested by ICE to undergo removal proceedings or who are subject to a final order of removal. Unless these immigrant detainees are granted bond or ICE otherwise stipulates to their release, they may be detained by ICE throughout the duration of removal proceedings in the immigration court system. ICE detainees are often held for weeks, months and many are held for multiple years as their cases move through the

⁸ *Id.*

⁹ U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, *COVID-19: When to Quarantine*, <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html> (last updated Sept. 10, 2020).

¹⁰ U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, *COVID-19: Social Distancing*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last updated July 15, 2020).

immigration court system.¹¹ The Boston immigration court is responsible for reviewing removal cases for people in Maine, New Hampshire, Massachusetts, Rhode Island, and Vermont.

27. The federal government has contracts to hold immigration detainees in multiple facilities in New England, including Strafford County Corrections in New Hampshire, Wyatt Detention Facility in Rhode Island, Plymouth County Correctional Facility in Massachusetts, Bristol County Detention Center in Massachusetts, Franklin County House of Corrections in Massachusetts, and the Cumberland County Jail in Maine.

28. Historically, ICE has used CCJ only to house people who have been arrested in Maine. These individuals would then be transferred to other facilities in New England, for ongoing removal proceedings.

29. Since June 2020, however, ICE has substantially changed its operations by increasing transfers to CCJ from elsewhere in New England, and transferring detainees from CCJ to facilities located in the southern U.S. states. Destination states in the south include Louisiana, Alabama, and Texas, which present much higher community rates of COVID-19 than Maine.

30. Indeed, ICE has reported “regional clusters” of COVID-19 across “multiple facilities in Louisiana, Georgia, Arizona, and Texas.”¹² “As of October 22, [there were] reported regional clusters of COVID-19 in Louisiana (with 189 active cases of COVID-19 reported across seven facilities); Arizona (with 62 active [cases] of COVID-19 reported across four facilities); Georgia (with 49 active cases of COVID-19 across four facilities); and Texas (with 124 active

¹¹ FREEDOM FOR IMMIGRANTS, *Detention by the Numbers*, <https://www.freedomforimmigrants.org/detention-statistics> (last visited Oct. 23, 2020).

¹² FREEDOM FOR IMMIGRANTS, *COVID-19 IN IMMIGRATION DETENTION, Monthly Analysis & Update*, at 2 (Oct. 22, 2020), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5f91e271f4433c22bbc4bc26/1603396210077/COVID-19+October+22+FINAL.pdf>.

cases of COVID-19 reported across 23 facilities).”¹³ In other words, under its new practice, ICE transports people from a region with comparatively low COVID-19 risk, to regions and facilities with known outbreaks of COVID-19.

31. In addition, ICE detention centers themselves place detainees at a significant risk of contracting COVID-19. As of August 28, 2020, there have been 5,300 confirmed cases of COVID-19 in U.S. immigration detention facilities.¹⁴

32. Upon information and belief, ICE adopted its new practices to evade procedural protections granted by federal courts in New England. During the pandemic, courts across New England have scrutinized ICE’s detention conditions and, in some cases, ordered bail hearings or other relief to protect detainees.¹⁵ Another recent decision granted additional procedural protections for certain detainees subject to the jurisdiction of the Boston immigration court, covering Maine, New Hampshire, Massachusetts, Rhode Island, and Vermont.¹⁶ Once these protections reached a critical mass by June 2020, ICE started a new practice that seeks to evade

¹³ *Id.*

¹⁴ AMNESTY INT’L, *Update to Amnesty International Report on COVID-19 in U.S. Immigration Detention* (Sept. 1, 2020), <https://www.amnestyusa.org/reports/update-to-amnesty-international-report-on-covid-19-in-us-immigration-detention-august-2020/>.

¹⁵ See, e.g., *Yanes v. Martin*, No. 120CV00216MSMPAS, 2020 WL 3047515 (D.R.I. June 2, 2020) (in a class habeas action by ICE detainees in Wyatt Detention Facility in Rhode Island, ordering individualized bail hearings for ICE detainees); see also *da Silva Medeiros v. Martin*, No. CV 20-178 WES, 2020 WL 2104897, at *1 (D.R.I. May 1, 2020) (in habeas corpus petitions on behalf of medically vulnerable ICE detainees, granting relief enjoining ICE from transferring petitioners outside the Court’s jurisdiction throughout the action and granting their immediate release); *Gomes v. US Dep’t of Homeland Sec., Acting Sec’y*, No. 20-CV-453-LM, 2020 WL 2514541 (D.N.H. May 14, 2020) (in emergency habeas petition, holding that detainees whose age or health conditions placed them at high risk for serious illness or death from exposure to COVID-19 were entitled to bail hearings); *Quadrelli v. Moniz*, No. 20-CV-10685-ADB, 2020 WL 3051778 (D. Mass. June 8, 2020) (granting class certification for a habeas corpus petition by ICE detainees in a certain unit of the Plymouth County Correctional Facility); *Savino v. Souza*, -- F. Supp. 3d --, 2020 WL 2404923 (D. Mass. May 12, 2020) (requiring universal testing of ICE detainees, prohibiting new immigration detention in Bristol County House of Correction, and prohibiting transfer out of Bristol County until individuals are tested).

¹⁶ *Brito v. Barr*, 415 F. Supp. 3d 258, 263 (D. Mass. 2019).

these protections, by transporting detainees to CCJ for a matter of days, and then rapidly transferring them to points south.¹⁷

33. The decisions to transfer detainees from CCJ are made solely by ICE officials and not CCJ personnel.

34. ICE has increased these transfers, “despite the Department of Homeland Security’s own admission that transfers have caused the virus to spread.”¹⁸ Indeed, for months, ICE’s systematic transfer of immigration detainees has led to the spread of COVID-19 at detention centers throughout the country.¹⁹

35. ICE officials themselves have made statements and published guidance admitting the increased risk that detainees face in being exposed to COVID-19 when they are transferred to other detention facilities. For example, in guidance last updated on September 4, 2020, ICE instructs that “[w]here possible,” ICE officials must “limit transfers of ICE detainees and non-ICE detained populations to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, to facilitate release or removal, or to prevent overcrowding.”²⁰

36. At CCJ, where Plaintiff currently is being detained, most ICE detainees are transferred to other ICE detention facilities within a matter of days.

¹⁷ To be clear, counsel do not agree that transporting these detainees out of New England necessarily deprives them of the protections arising from such litigation, or strips them of membership in any class they may have joined. For present purposes, it is enough to say that ICE appears to have no purpose in effectuating these transfers other than attempting to evade such protections or frustrate their application.

¹⁸ FREEDOM FOR IMMIGRANTS, *COVID-19 IN IMMIGRATION DETENTION, Monthly Analysis & Update*, at 2 (Oct. 22, 2020), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5f91e271f4433c22bbc4bc26/1603396210077/COVID-19+October+22+FINAL.pdf>.

¹⁹ *Id.*

²⁰ U.S. IMMIGRATION & CUSTOMS ENF’T, *COVID-19 Pandemic Response Requirements*, at 19 (Sept. 4, 2020), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

37. Most of the ICE detainees who have been held at CCJ since June 10, 2020, have arrived in CCJ on a Thursday, Friday, or Saturday.

38. ICE detainees spend an average of only 3.5 days at CCJ.

39. Most detainees are transferred out of CCJ between the hours of 2:00 a.m. and 4:00 a.m.

40. These detainees are transferred to ICE detention centers outside of Maine, with some confirmed to have been transferred to Louisiana and other southern states with high rates of COVID-19.

41. Closed congregate settings like jail facilities are inherently risky, but transfer between multiple facilities, to locations with greater rates of COVID-19, dramatically increases that risk.²¹ Unlike the destination locations discussed above, Maine has one of the lowest incidence rates of COVID-19 in the entire country, making it significantly safer for detainees who are already in Maine, to remain in Maine.

42. In sum, transferring Plaintiff from CCJ is not only unnecessary and unreasonable, but also places him at a substantially greater risk of contracting COVID-19.

The Risks of COVID-19 During Transfer and at Destination Facilities

43. The following allegations are made upon information and belief based on the experiences of several detainees who were transferred from states in the northeast to ICE facilities in southern states pursuant to Defendants' policies.

44. When detainees are transferred to an ICE detention facility, they are crowded into a plane or vans with numerous other detainees, some of whom who are picked up from several

²¹ See AMNESTY INT'L, *Update to Amnesty International Report on COVID-19 in U.S. Immigration Detention* (Sept. 1, 2020), <https://www.amnestyusa.org/reports/update-to-amnesty-international-report-on-covid-19-in-us-immigration-detention-august-2020/>.

different locations during the trip. Detainees are handcuffed and have their ankles tied together during travel in planes and buses. The planes are so crowded that the detainees do not have enough room to “socially distance” or to avoid contact with other detainees and ICE personnel. One recently transferred detainee reported that throughout his transport from Maine to Louisiana, every seat on the plane was full, making any social distancing impossible.

45. Masking is inconsistent, particularly during meal times on the plane or van, despite the crowded setting.

46. The vans and planes used for transport are often unsanitary. One detainee reported that, on his flight, everyone had to share a single bathroom, which was dirty and covered with urine; there was no sink for detainees to wash their hands with water and soap. Another detainee reported that the toilet in the van was covered in urine and filth and liquid from the toilet spilled out onto the floor of the van as it moved.

47. Detainees are often transported through one or more facilities, before reaching their destination. The facilities along the way, and at the destination, are often crowded and expose detainees to new people and heightened risk at every stage of the journey. Some detainees report that facilities house detainees in the same holding cell as people recently arrested on criminal charges, presenting further risk of exposure to COVID-19. Sometimes guards do not wear masks, claiming they are not sick.

48. The transfer facilities are often unsanitary. One detainee even reported that a holding cell in which he was held was had blood, feces, and mucus smeared on the walls with little attempt by any officers to sanitize the cell or provide cleaning supplies. Another reported being housed in a unit covered in garbage and with no attempts by officers to sanitize the unit.

49. Detainees are moved around to different cells and exposed to new cellmates, some of whom have had close and prolonged contact with detainees exhibiting COVID-19 symptoms.

50. Defendants are aware of these unsanitary and unsafe conditions that occur during transportation of detainees and at the detention facilities themselves, and yet they knowingly continue to systematically transfer detainees.

Plaintiff's Background and History of Immigration Detention

51. Plaintiff is a United States Lawful Permanent Resident, who is diagnosed with asthma. When he has an asthma attack, he cannot breathe, and needs a nebulizer treatment to breathe again. He has also been diagnosed with a heart murmur.

52. Before arriving in CCJ, Plaintiff was incarcerated in Rhode Island for eight or nine months. Every couple of weeks, he was tested for COVID-19. He has never tested positive for COVID-19.

53. On Wednesday, October 21, 2020, Plaintiff was transported to Portland, Maine. ICE transported him in an SUV, and told him he had to go to Maine for his immigration case. Once he arrived, they put him in quarantine and he was tested for COVID-19. He has not been informed that he tested positive, so he assumes that he tested negative for COVID-19.

54. Plaintiff is afraid that he could be exposed to COVID-19 if ICE transfers him to a different facility (or facilities) in the south.

FIRST CAUSE OF ACTION
(Violation of Fifth Amendment Right to Reasonable Safety)

55. Plaintiff repeats and incorporates by reference the preceding paragraphs as if fully set forth herein.

56. The Due Process Clause of the Fifth Amendment guarantees persons in civil immigration detention the right to reasonable health and safety, and requires that the government have a constitutionally adequate purpose for continued detention.

57. The planned transfer of Plaintiff to an ICE detention facility would significantly and unnecessarily increase his risk of contracting COVID-19 because these transfers involve long-term and unhygienic travel in close proximity with other inmates, many of whom are from states with higher incidence rates of COVID-19.

58. Defendants have not, and could not possibly, implement the social distancing measures and adequate hygiene practices at ICE detention centers recommended by the CDC to prevent the spread of COVID-19, leaving Plaintiff with a significantly higher risk of contracting COVID-19 at these facilities.

59. By transferring Plaintiff, Defendants would violate Plaintiff's due process rights by exposing him to life-threatening conditions for no legitimate reason.

60. Defendants' actions in transferring Plaintiff would be objectively unreasonable and deliberately indifferent, in violation of his Fifth Amendment rights, by unreasonably exposing him to the risks of COVID-19.

61. Plaintiff is accordingly entitled to equitable relief, including a declaratory judgment pursuant to 28 U.S.C. § 2201(a) and an injunction pursuant to 28 U.S.C. § 2202, to prevent these harms.

WHEREFORE, Plaintiff prays for relief as follows:

- a. Enter a judgment under 28 U.S.C. §§ 2201(a) and 2202 declaring that the transfer and continued detention of Plaintiff at another ICE detention facility would be a

violation of his Due Process Rights under the Fifth Amendment given the heightened risk he would face of exposure to COVID-19;

- b. Enter a preliminary and permanent injunction enjoining Defendants in their official capacities from acting under color of law to transfer Plaintiff to an ICE detention facility, as such transfer would violate Plaintiff's Due Process Rights under the Fifth Amendment;
- c. Award such other and further relief as the Court deems just and proper.

DATED: October 23, 2020

/s/ Sara A. Murphy

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