

SETTLEMENT AGREEMENT

I. Definitions

- A. The “Action” shall refer to the lawsuit *Favela Avendaño v. Bostock*, No. 20-cv-700 (W.D. Wash.).
- B. “Plaintiffs” or “Class Members” shall mean “All individuals detained at the [NWIPC] who are age 55 years or older or who have medical conditions that place them at heightened risk of severe illness or death from COVID-19 as determined by Centers for Disease Control and Prevention guidelines.” Dkt. No. 245 at 3.
- C. “CDC Guidance” means guidance, policies, recommendations, and other documents by the U.S. Centers for Disease Control and Prevention (CDC) related to COVID-19 and applicable to correctional, detention, and other congregate settings or the people in them, including but not limited to, the CDC’s “Guidance on Prevention and Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” as updated.
- D. “Consistent with CDC Guidance and the PRR” or “So long as consistent with CDC guidance and the PRR,” means that, at a minimum, Defendants will adhere to guidelines provided by each of these sources of COVID-19 protocols.
- E. “Court” means the U.S. District Court for the Western District of Washington.
- F. “Close contact” means the definition of that term as defined by the CDC. Currently, close contact is defined as being “less than 6 feet away from an infected person (laboratory-confirmed or a clinical diagnosis) for a cumulative total of 15 minutes or more over a 24-hour period.” Should the CDC modify its definition of this term, the definition of this term for purposes of this Agreement will conform to any such modification. For purposes of this Agreement, someone detained within the same cell, or housing unit (if the contact is in an open bay unit or a celled unit where detainees interact in common spaces on a daily basis) as an infected person is a “close contact” of the infected person.
- G. “Detainee” or “Detainees” shall mean any person detained at the Northwest ICE Processing Center in Tacoma, Washington.
- H. “Facility” shall mean the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington.
- I. “Defendants” shall mean all Defendants in this case, including both the Federal Defendants and the Defendant Facility Administrator.
- J. “Federal Defendants” shall mean the ICE Field Office Director in their official capacity, the Director of ICE in their official capacity, and ICE as an agency.

- K. “Defendant Facility Administrator” shall mean The GEO Group, Inc. Facility Administrator assigned to the Northwest ICE Processing Center.
- L. “GEO Staff” shall refer to employees and contractors of The GEO Group, Inc. and who are managed and/or directed by the Defendant Facility Administrator.
- M. “ICE Staff” shall refer to employees and contractors of ICE who work at the Facility.
- N. “EOIR Staff” shall refer to employees and contractors of the Executive Office for Immigration Review.
- O. “Pandemic Response Requirements” (PRR) shall mean the operative version of ICE’s COVID-19 Pandemic Response Requirements document that sets forth expectations and assists ICE detention facility operators in sustaining detention operations while mitigating risk to the safety and wellbeing of detainees, staff, contractors, visitors, and stakeholders due to COVID-19.
- P. “IHSC interim medical guidance” shall mean medical guidance issued by the ICE Health Service Corps (IHSC) when medical and public health issues require rapid changes and notifications faster than a new PRR version can be developed and approved. Per the terms of this settlement, all IHSC interim medical guidance will be binding at the Facility.

II. Purpose of the Settlement Agreement

The Parties acknowledge and agree that this Agreement shall constitute a full, fair, and complete settlement of *Favela Avendaño v. Bostock*, No. 20-cv-700 (W.D. Wash.).

III. COVID-19 Protocols at the Facility

A. ICE’s Pandemic Response Requirements (“PRR”)

1. Defendants shall abide by the most current version of the ICE PRR, as modified by any IHSC interim medical guidance, and implement its terms at the Facility.
2. The Parties anticipate that ICE may continue to update its PRR consistent with CDC guidance, including by issuing IHSC interim medical guidance prior to the release of a new PRR.
3. Defendants do not need to consult with Plaintiffs prior to updating the PRR or issuing an IHSC interim medical guidance.
4. Federal Defendants agree to notify Plaintiffs’ counsel when an updated PRR or IHSC interim medical guidance is issued and to provide any Facility-specific policy documents, if created, that implement that guidance.

5. Defendants agree to abide by the dispute resolution process in section VIII to address any concerns that Plaintiffs have regarding implementation of a new PRR or binding IHSC interim medical guidance. Plaintiffs recognize, however, that the contents of any PRR or IHSC interim medical guidance are not subject to amendment by outside parties.

B. Transfers:

1. For the duration of this Agreement, Federal Defendants shall request that, for any transfers originated from outside ICE, including Customs and Border Protection, that the non-ICE custodial entity test detainees for COVID-19 prior to transfer to NWIPC and Federal Defendants will test detainees at intake. For transfers of ICE detainees between facilities, transfers and transport shall be conducted consistent with CDC guidance and the PRR.
2. Section III.B.1 does not apply to instances where a single detainee is transported in a single vehicle. Single individuals transported in this way will be isolated from other detainees within New Intake Monitoring units (NIMs) during the NIMs monitoring period.

C. Protocols at the Facility: So long as consistent with CDC guidance and the PRR, Defendants shall have the following protocols in place at the Facility. Defendants may seek modifications of the protocols as provided in the dispute resolution process in section VIII. These protocols include:

1. Verbal and temperature screenings:
 - i. Defendants shall conduct verbal and temperature screening checks, when required by the PRR, of all visitors to the Facility, including attorneys and court visitors, and prohibit individuals who positively report COVID-19 symptoms or close contacts to a COVID-19 positive case from entering the Facility.
 - ii. Defendants shall conduct verbal and temperature screening checks of all staff for GEO, ICE, and EOIR, when required by the PRR, before they enter the Facility and prohibit individuals who positively report symptoms from entering the Facility.
2. Intake and accompanying testing and quarantine procedures:
 - i. Federal Defendants shall conduct temperature and verbal prescreening checks of all new detainees arriving at the Facility prior to entrance, so long as consistent with CDC guidance and the PRR.
 - ii. Defendants shall provide instructional flyers detailing proper handwashing techniques and the importance of covering coughs to

each detainee, as well as information on how to access medical care at the Facility.

- iii. Defendants shall place instructional posters in at least English and Spanish detailing proper handwashing techniques and the importance of covering coughs in each housing unit at the Facility.
- iv. Any new intake detainee displaying or reporting symptoms of COVID-19 will be instructed to wear a face mask, isolated, and referred to the medical unit for further evaluation, so long as consistent with CDC guidance and the PRR.
- v. Unless different procedures are consistent with CDC guidance and the PRR, Defendants shall place incoming detainees who do not meet requirements for COVID-19 isolation or monitoring in separate, designated housing units for 10 days or other timeframe set forth by CDC guidance and the PRR, for medical monitoring of signs or symptoms of COVID-19 (“NIMS” units). These detainees will be monitored by medical staff during this observation period.
- vi. Unless different procedures are consistent with CDC guidance and the PRR, NIMS units shall have separate cells to the extent possible (as outlined in section III.C.2.x, below), and the number of detainees housed in each cell shall not exceed the maximum occupancy for that cell. Unless consistent with CDC guidance and the PRR, detainees admitted on separate dates to the Facility shall not be housed together in the same cell. Detainees shall not be permitted to commingle with those outside their individual cell during the observation period specified above unless consistent with CDC guidance and the PRR. At the end of the observation period specified above, detainees who do not display signs or symptoms of COVID-19 and, if tested, have not tested positive may be released to other housing units in the general population of the Facility.
- vii. Federal Defendants shall administer a polymerase chain reaction (PCR) test upon intake to detainees who consent. Detainees who consent to testing are not housed in the same cells in the NIMS unit as those who decline to consent to testing. Any detainee who tests positive for COVID-19 will be transferred to the Medical Housing Unit for continued monitoring, or otherwise isolated following CDC Guidance and the PRR. Detainees who test positive on a PCR test within 3 months of an original positive COVID-19 test will be treated consistent with CDC guidance.
- viii. Federal Defendants shall administer a second polymerase chain reaction (PCR) to detainees who consent in the NIMS unit during day 7 of the 10-day observation period if required by CDC guidance.

- ix. A detainee's quarantine period, as required by CDC guidance or the PRR, will be restarted in the event they were in close contact to a COVID-19 positive individual during the quarantine period and medical personnel determine that extension of the quarantine period is necessary.
 - x. So long as consistent with CDC guidance and the PRR, Defendants shall use as a first priority celled units with one occupant to quarantine detainees. If such units are unavailable, Defendants shall use celled units with as few detainees as possible in each cell to quarantine detainees. Defendants shall restrict use of open-bay units to quarantine detainees to those detainees of similar COVID-19 status and shall use such units as a last resort, after having exhausted all other options.
3. Other case-by-case testing procedures:
- i. Subject to section III.C.13 regarding the availability of tests, Federal Defendants shall test any Facility detainee prior to inter-facility transfer. "Inter-facility transfer" shall mean reassignment prior to release/book-out from the Facility, and prior to removal or transfer via ICE Air.
 - ii. Federal Defendants shall conduct additional testing for Class Members. This includes testing upon intake to an ICE facility; testing as directed by medical personnel based on CDC requirements and the PRR, or clinical presentation of COVID-19 related symptoms; testing upon release as dictated by the requirements of the receiving country of record or other transfer/removal/release requirements; and testing upon release to the community or transfer to another detention facility.
4. Enhanced cleaning procedures:
- i. Defendants shall adhere to the CDC Guidance and PRR for cleaning and disinfection.
 - ii. Defendants shall comply with the cleaning and disinfecting practices set forth in the PRR or IHSC interim medical guidance.
5. Masks:
- i. Defendants shall comply with CDC guidance, the PRR, federal, state, and local face mask protocols and remain current and compliant as such protocols evolve.

- ii. Unless federal or state guidance requires otherwise, Defendants shall provide new face masks at least three days per week for detainees to accept.
 - iii. Defendants shall make available written and pictorial instructions on how to wear masks. Detainees shall be instructed to ask if they need a replacement mask and Defendants shall provide one.
 - iv. When required by the PRR or federal or state guidance, Defendants shall require any non-detained person who enters the Facility to wear masks in the following situations:
 - a. When the individual is within six feet of detainees;
 - b. When entering the Facility and while in common areas, except while actively eating or drinking, or while as the sole occupant of an individual office, cubicle, or similar enclosure.
 - v. Defendants shall wear CDC-recommended personal protective equipment (PPE) as appropriate for their level of contact with the individual under medical isolation for all staff entering the NIMS units and any quarantine room, cell, or housing unit or any other situation where staff anticipate close contact with infectious aerosols or droplets with COVID-19.
 - vi. Defendants shall provide masks to staff and detainees at no cost to the employee or detainee.
6. Unless a court order or the PRR otherwise requires a more expeditious timeline, Federal Defendants shall use the following procedures for identifying Class Members:
- i. Federal Defendants shall evaluate all new detainees within five days of intake to determine if they are class members.
 - ii. Federal Defendants shall refer to ERO anyone identified as a class member within one business day of identification.
7. Unless a court order or the PRR otherwise requires more frequent screening, Federal Defendants shall use the following procedures for daily screenings of Class Members:
- i. Federal Defendants shall conduct temperature and verbal screening of consenting Class Members for COVID-19 during sick call.
 - ii. Federal Defendants will document the results of these screenings.

8. Custody redeterminations of Class Members: Following PRR standards or other ICE policy guidance (unless an applicable court order requires otherwise), ERO may conduct a custody reassessment to determine whether release is appropriate for anyone identified pursuant to the procedure detailed in section III.C.6. This provision does not apply to class members who are subject to mandatory detention.
9. Isolation of COVID-19 positive individuals.
 - i. Defendants shall assign Class Members who test positive for COVID-19 to the medical housing unit, or another appropriate placement as permitted by CDC guidance (to include hospitalization outside the facility). Detainees who test positive on a PCR test within 3 months of an original positive COVID-19 test will be treated consistent with CDC Guidance and the PRR. A detainee who is still considered to be infectious may be released from custody in accordance with guidance.
 - ii. Defendants shall assign detainees who are COVID-19 positive or presumptive positive to the medical housing unit.
 - iii. If the medical housing unit is fully occupied, COVID-19 positive or presumptive positive detainees should be housed in medical overflow units.
 - iv. Defendants shall quarantine any cell or housing unit (if the contact is in an open bay unit or a celled unit where detainees interact in common spaces on a daily basis) where one or more detainee(s) has had close contact with a COVID-19 positive individual.
10. Diagnostic testing:
 - i. Subject to section III.C.13 regarding the availability of tests, Federal Defendants shall engage in offering periodic testing of a sample of detainees at the Facility to monitor for possible outbreaks of COVID-19.
 - ii. Federal Defendants shall perform such testing in accordance with CDC Guidance.
 - iii. To encourage such testing, Federal Defendants shall explain the reason for such testing to detainees, including where positive cases have occurred in general population units.

11. Testing Results:

- i. In all cases of testing a detainee's test results shall be provided to the tested detainee within 24 hours after receiving all test results for detainees in the housing unit tested at the same time.
- ii. If an individual in a housing unit tests positive, Federal Defendants shall inform the detainees in that housing unit of the positive test result within 24 hours of Federal Defendants' receipt of test results. Nothing in this section shall require Defendants to reveal the identity of the positive detainee, only the fact of a positive test.

12. Outbreak Protocols: In the event of an outbreak at the Facility, ICE will follow the protocols described by CDC guidance and the PRR in addition to the below. An "outbreak" shall be defined, solely within the confines of this Agreement, as more than three positive COVID-19 detainees within seven days housed within the general population at the Facility.

- i. Federal Defendants may reassess for release all Class Members who were in any housing unit where a positive COVID-19 detainee giving rise to the outbreak is housed. This provision does not apply to class members who are subject to mandatory detention.
- ii. Federal Defendants will coordinate with local public health authorities to assess the response to the outbreak, to ensure released detainees are informed about opportunities for housing, including housing or quarantine sites provided by local public health authorities, and to ensure policies are in place for the safe release of detainees who are COVID-19 positive.
- iii. Federal Defendants shall employ the isolation and quarantine practices identified above in Section III.C.9 as required during the course of an outbreak.

13. Testing Supplies: Provided that supplies are available, Federal Defendants shall ensure a supply of COVID-19 tests for detainees sufficient to carry out the terms of this agreement. Federal Defendants shall make reasonable efforts to secure and maintain a supply of COVID-19 tests for detainees at the Facility sufficient to carry out this agreement

- i. In the event that the Federal Defendants no longer have a sufficient supply of COVID-19 tests, Federal Defendants shall immediately make reasonable efforts to obtain an alternative provider of such test, such as a local health authority.

- ii. As soon as the Federal Defendants know that they are unable to procure a supply of COVID-19 tests that allows them to satisfy the terms of this agreement, Federal Defendants shall inform Plaintiffs' counsel and the Court within one business day.
- iii. Federal Defendants will further inform Plaintiffs' counsel of what efforts have been made to find an alternative provider of tests as required in section III.C.13.i.
- iv. Federal Defendants may fail to comply with the terms of this section that require a testing supply only if they have strictly complied with the provisions of the preceding two paragraphs. In this event, Plaintiffs may seek further relief from the Court to mitigate the potential harm to Class Members due to the lack of testing supply.

14. Ventilation

- i. The Facility Administrator shall disclose to the Federal Defendants and Counsel for Class Members air exchange rates when tested for compliance with standards applicable to the facility.
- ii. The Facility Administrator shall ensure that all air filters utilized in the facility's Heating, Ventilation, and Air Conditioning system have a rating of Minimum Efficiency Reporting Value (MERV) 13 or higher, and shall be properly sized. All air filters shall be replaced before the end of the filters' recommended service life.
- iii. The Facility Administrator shall ensure that all restroom exhaust fans are functional and fully operational.

IV. COVID-19 Therapeutic Drugs: Defendants shall, consistent with most current CDC and clinical guidance, timely offer detainees diagnosed with COVID-19 a full course of treatment, including medication, to treat COVID-19, subject to them meeting clinical criteria for such treatment.

V. Vaccines

A. Administration of Vaccines to Detainees:

- 1. Subject to section V.A.2 below regarding the supply of vaccines, and so long as consistent with CDC guidance and the PRR, Defendants shall offer a COVID-19 vaccine to all unvaccinated or not fully vaccinated detainees at the Facility, in line with the medical exceptions noted below at Section V.C, and shall administer a COVID-19 vaccine to every detainee who consents to receive one. Federal Defendants will screen for current vaccination status prior to administering a vaccine. This agreement specifies timelines for providing vaccines below in section V.B.

2. The Federal Defendants shall be the primary provider of COVID-19 vaccinations to detainees. They shall make reasonable efforts to secure and maintain a supply of COVID-19 vaccines at the Facility sufficient to carry out this agreement.
 - i. In the event that the Federal Defendants no longer have a sufficient supply of COVID-19 vaccines, Federal Defendants shall immediately make reasonable efforts to obtain an alternative provider of such vaccines, such as a local health authority.
 - ii. As soon as the Federal Defendants know that they are unable to procure a supply of COVID-19 vaccines that allows them to satisfy the terms of this agreement, Federal Defendants shall inform Plaintiffs' counsel and the Court within one business day.
 - iii. Federal Defendants will further inform Plaintiffs' counsel of what efforts have been made to find an alternative provider of vaccines as required in section V.A.2.i.
 - iv. Federal Defendants may fail to comply with the terms of this section that require a vaccine supply only if they have strictly complied with the provisions of the preceding two paragraphs. In this event, Plaintiffs may seek further relief from the Court to mitigate the potential harm to Class Members due to the lack of vaccine supply.
3. In implementing this section, the Federal Defendants shall administer a COVID-19 vaccine that has been given emergency use authorization by the Food & Drug Administration (FDA) or a COVID-19 vaccine that has received full approval from the FDA.
4. Consistent with CDC guidance and the PRR, Federal Defendants shall offer and administer COVID-19 vaccine booster shots to consenting detainees as recommended by the CDC and subject to section V.A.2 above concerning the supply of vaccines. "Booster shots" refers to COVID-19 vaccines that are not part of an initial one- or two-dose vaccination regimen.

B. Timeline for Administering Vaccines to Detainees:

1. Pursuant to section V.A.1 above, and subject to section V.A.2 above concerning the supply of tests, so long as consistent with CDC guidance and the PRR, Federal Defendants shall provide a polymerase chain reaction (PCR) test upon intake (an "intake PCR test") to every detainee transferred to the Facility who consents to be tested. As soon as practicable after, but at most within 48 hours of receiving a negative test result for an intake PCR test, Federal Defendants shall offer, and if a detainee consents, administer a COVID-19 vaccine or the initial dose of a two-dose COVID-19 vaccine to that detainee subject to section V.A.2

above concerning the supply of vaccines, and subject to the medical exceptions noted below at section V.C.

2. Federal Defendants will inform detainees that declining to receive a PCR test will delay the ability to receive a vaccine. In the event that a detainee still declines to receive a PCR intake test and the detainee remains asymptomatic, Federal Defendants shall offer, and if the detainee consents, administer a vaccine near the end of a detainee's time in the New Intake Monitoring unit and prior to transfer to the general population.
3. Initial vaccine regimen. If a detainee has previously received one dose of a two-dose COVID-19 regimen fully approved or approved for emergency use by the FDA, Federal Defendants shall make reasonable efforts to provide a second dose of the two-dose regimen within the timeframe recommended for a second dose by the FDA and/or CDC. Federal Defendants may seek to have this vaccine administered by an outside provider or authority, such as the local county health board.
4. Booster doses. Subject to section V.A.2 above regarding the supply of vaccines, Federal Defendants shall offer and administer booster shots upon eligibility as recommended by the FDA and/or CDC, including by providing booster shots according to the timelines and types of booster shots as recommended in clinical guidance issued by the FDA and/or CDC.
5. Federal Defendants shall post in a public space in each general population unit a notice that any detainee who wishes to be vaccinated may request a vaccine appointment to receive a vaccination. Federal Defendants shall provide such a visit at the next scheduled vaccination for the detainee's unit and administer a vaccine if the detainee so requests, subject to section V.A.2 above regarding the supply of vaccines. Federal Defendants shall conduct such visits on a weekly basis, and may schedule more frequent vaccination opportunities at their discretion.
6. Defendants shall provide this notice in the English, Spanish, French, Creole, Portuguese, Mandarin, and Punjabi languages.

C. Exception to the Requirement to Administer Vaccines within Certain Timeframes:

1. Federal Defendants may choose not to administer a vaccine within the timeframes outlined in section V.B or at all in individual cases if vaccination is medically contraindicated. Vaccination is medically contraindicated if (1) an individual is actively displaying COVID-19 symptoms, (2) an individual has tested positive for COVID-19 and has

not completed the required quarantine period, (3) an individual has had a severe allergic reaction (e.g., anaphylaxis) after a previous dose or to a component of the COVID-19 vaccine, or (4) an individual has had an immediate allergic reaction of any severity to a previous dose or known (diagnosed) allergy to a component of the administered vaccine, or (5) an individual has another medical contraindication identified by the CDC.

2. However, if one type of COVID-19 vaccine is medically contraindicated for a detainee but another type of COVID-19 vaccine is not, Federal Defendants shall offer the medically appropriate vaccine as soon as possible, subject to section V.A.2 above concerning the supply of vaccines.

D. Vaccine Education for Detainees

1. Defendants shall provide comprehensive vaccine education for new detainees at the Facility. This education shall include the following:
 - i. translated, written materials provided by the vaccine manufacturer in a language understood by the detainee;
 - ii. written materials suggested by Plaintiffs' counsel and approved by the Federal Defendants in the detainee's native language insofar as materials in the native language are available;
 - iii. presentations by medical staff in English and Spanish; and
 - iv. one-on-one counseling opportunities with interpretation access for all.
2. In addition, for detainees in the general population, Federal Defendants shall continue to make available one-on-one counseling with interpretation access to all detainees who initially refused a vaccine. Defendants shall post notice about the availability of such counseling and explain it is available by signing up to visit the medical clinic at the Facility. Defendants shall provide this notice in the English, Spanish, French, Creole, Portuguese, Mandarin, and Punjabi languages.
3. Every two weeks, Defendants shall play video provided by Plaintiffs' counsel and approved by the Federal Defendants from a third-party medical provider to explain the benefits of COVID-19 vaccination. This video shall be played in all the general population units.
4. If the CDC and/or FDA recommends a vaccine booster shot in addition to the vaccination regimen that a detainee has already received, Federal Defendants shall provide comprehensive education to detainees about the benefits of receiving a booster shot through written materials

(including materials recommended by Plaintiffs' counsel and approved by the Federal Defendants), "town hall" presentations, and one-on-one counseling with interpretation access.

5. If (1) a detainee has not received a recommended booster shot, and (2) that detainee is released before receiving that booster shot, Federal Defendants shall provide written educational materials to the detainee upon release regarding the importance and timeline of receiving the booster shot. Plaintiffs will recommend educational materials to be approved by the Federal Defendants prior to distribution.
6. Federal Defendants shall provide detainees who receive any COVID-19 vaccine with appropriate documentation of vaccination and shall not charge for vaccination or documentation. If a detainee is released from the Facility before the subsequent dose(s) of a multi-dose vaccine is due, Federal Defendants shall provide documentation to the detainee of the date when the subsequent dose(s) is due.
7. Federal Defendants will not continue to hold in custody someone otherwise eligible for release simply to provide the second dose of a two-dose vaccination series, or a booster shot. Federal Defendants shall advise a detainee in this situation of the date they became eligible for a second dose upon release.

E. Vaccination Requirements for ICE and Facility Staff

1. Absent a court order from a court of competent jurisdiction, Federal Defendants shall implement and abide by the President's Executive Order on *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*, any guidelines implementing that order, and any subsequent modification to the order.
2. Absent a court order from a court of competent jurisdiction, Federal Defendants shall implement and abide by Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*, any guidelines implementing that order, and any subsequent modification to the order.
3. Subject to future changes to federal policies concerning the testing of federal employees and contractors, Defendants shall make best efforts to ensure that all unvaccinated staff who interact with individuals in custody are tested for COVID-19 before entering the Facility at least once every seven days.

VI. Reporting Requirements

- A. Within one business day, Federal Defendants shall report to Plaintiffs' counsel that a current detainee has been hospitalized or has died due to COVID-19,

including when that detainee has tested positive for, has been diagnosed with, or has a suspected case of COVID-19.

B. Definitions:

- i. "Hospitalization" shall include any instance in which a detainee is sent to the hospital for further tests or monitoring because of COVID-19 symptoms and does not require formal admission to the hospital. This reporting requirement does not apply to cases medically unrelated to COVID-19.
 - ii. "Suspected case" shall be defined by reference to the CDC's clinical criteria to diagnose non-laboratory-confirmed COVID-19 cases.
2. The reporting requirement section VI.A shall apply to any detainee currently in Defendants' legal custody, or any detainee who is released from custody while hospitalized.
 3. If the detainee who is hospitalized or dies is a Class Member, Federal Defendants shall inform class counsel of the Class Member's last known contact information if the Class Member has been released before reporting under this section.

C. Once a week, Federal Defendants shall report the following to Plaintiffs' counsel:

1. that any individual physically present or who was physically present at the Facility tests positive for or is otherwise diagnosed with COVID-19;
2. the total detainee population on the date of the report;
3. the current operational status of the facility pursuant to the PRR's color-coded designations (green, yellow, red) or pursuant to any subsequent PRR operational status designation formula, unless Federal Defendants otherwise make this information publicly available.

D. Once a month, Federal Defendants shall report the following to Plaintiffs' counsel:

1. Any transfers over 50 people;
2. The total population of the New Intake Monitoring unit on the Wednesday of each week for the prior month;
3. the monthly and total number of custody determinations at NWIPC pursuant to this Settlement Agreement, and resultant releases;
4. the vaccination status of Class Members (including the dates vaccines were administered and the types of vaccines administered);

5. aggregate vaccination data for detainees (number of detainees vaccinated and percentage as total of current detainee population);
 6. aggregate vaccination data for ICE and GEO staff who work at the Facility, if available (number of persons vaccinated for each staff category (ICE or GEO) and percentage as total of that staff category).
- E. Within two weeks of the effective date of this Agreement, Federal Defendants will provide Plaintiffs' counsel a list of all Class Members currently detained at the Facility to include each Class Members' name, A-number, date of birth, identified risk factors for COVID-19, type of COVID-19 vaccine administered (if the detainee accepted the vaccine), the date(s) a COVID-19 vaccine was administered (including any booster shots), date of custody redetermination, outcome of the custody redetermination, and reason for denial of release from custody.
1. Every week thereafter for the duration of this Agreement, Federal Defendants will provide Plaintiffs' counsel a list of any new Class Members at the Facility with the same information indicated in section VI.E.
 2. Nothing in this provision shall be construed as to require Federal Defendants to provide any Forms 1286 or 831, or similar documents considering Class Members' custody redetermination.
 3. If the date for the list provided in section VI.E.1 falls on a federal holiday, Federal Defendants may provide the update on the next business day.

VII. Duration of Agreement

- A. This Agreement shall expire and the entirety of the obligations set forth within its terms shall become null and void the shorter of (1) three years from the date of the Court's Final Approval, or (2) one year after the expiration of the Presidential national emergency declaration concerning COVID-19, *see* Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, 87 Fed. Reg. 10,289 (Feb. 23, 2022), unless Final Approval occurs after the end of the Presidential national emergency declaration, in which case the Agreement shall expire one year after Final Approval.
- B. The Parties recognize that provisions of this Agreement operate as a form of prospective equitable relief. Should there come a time when a party believes that it is no longer equitable that all or part of this agreement should have prospective application, the party seeking to dissolve the agreement shall abide by the dispute resolution process identified in section VIII. In the event the dispute is submitted to the Court for resolution, the decision on such a motion shall be governed by the legal standard and case law established for relief from judgment under Rule 60(b)(5) or (6) of the Federal Rules of Civil Procedure.

VIII. Dispute Resolution Mechanism

- A. The Parties shall meet and confer in the event that (a) Plaintiffs believe there is an issue of noncompliance with the Settlement Agreement, or (b) Parties believe that a change in the Settlement Agreement is warranted at the Facility, including, but not limited to, the plans and protocols for COVID-19 safety or vaccine administration, or (c) to address disputes about the duration of this Agreement. Plaintiffs will agree to changes in the plans and protocols for COVID-19 safety at the Facility provided that CDC Guidance for correctional and detention facilities warrant such changes. The Parties agree to engage in good faith efforts to resolve these disputes about compliance or changes in plans and protocols for COVID-19 safety and vaccine administration at the Facility without further intervention from the Court.
- B. In the event the meet and confer fails to resolve the matter, the Parties agree to mediation before an assigned judge of the District Court for the Western District of Washington.
- C. If the issue cannot be resolved through the mediation, the Parties agree to then refer the dispute to the Court for resolution.
 1. This Agreement shall be governed by the standard principles of contract interpretation. To the extent there is a dispute over the meaning of the terms of this agreement, any motion to enforce its terms would be treated accordingly.
 2. Any party seeking to modify the terms of this Agreement would be required to meet the standard for relief from judgment under Rule 60(b)(5) or (6) of the Federal Rules of Civil Procedure.
- D. Plaintiffs reserve the right to seek relief on an emergency or expedited basis, or to confer contemporaneously with seeking judicial relief when there is a need for immediate action to safeguard the lives and health of detainees. Plaintiffs will notify Defendants at least 24 hours prior to seeking relief.
- E. The Parties reserve all rights to pursue discovery on compliance with this Agreement, but only to the extent that it is limited to compliance issues. Such discovery would require prior authorization from the Court.

IX. Modification of this Agreement

The Parties may mutually agree to modifications of this Agreement. Any agreed modifications will result in an amended settlement agreement submitted to the court as an entire agreement subject to court enforcement under section XV.C below. The Parties recognize that new factual circumstances and/or developments in the scientific understanding of COVID-19 may warrant the need for changes to this Agreement.

X. Effective Date

This Settlement Agreement will be effective on the date the Settlement Agreement receives final approval by the Court.

XI. Court Approval and Retention of Jurisdiction

The Parties stipulate that, as a condition of this Agreement, the United States District Court for the Western District of Washington shall retain jurisdiction over all disputes arising out of this Agreement and to enforce this Agreement according to its terms.

Subject to the terms of this Agreement, and upon the Court's approval of this Agreement pursuant to the requirements of Rule 23(e) of the Federal Rules of Civil Procedure (including, inter alia, notice to the Class and an opportunity for Class Members to submit objections), the Parties stipulate that the Court may enter an order dismissing this case with prejudice, provided that the Court expressly include in its dismissal order that it retains jurisdiction to enforce this Agreement. If this Agreement is not approved or the Court does not agree to retain jurisdiction, this Agreement shall be null and void.

XII. Attorney Fees

- A. Federal Defendants agree to pay attorneys' fees and costs to counsel for Plaintiffs in the amount of \$500,000.00 ("Attorneys' Fee Settlement Amount").
- B. Subject to the foregoing provision, Federal Defendants shall deliver the Attorneys' Fee Settlement Amount to Plaintiffs' Counsel by electronic funds transfer into Plaintiffs' Counsel's designated account. Plaintiffs' Counsel shall provide to Federal Defendants all information necessary to accomplish the electronic funds transfer into that account within five business days of the Effective Date. Plaintiffs and their Counsel acknowledge that payment of the Attorneys' Fee Settlement Amount by Federal Defendants in accordance with the wire instructions shall resolve both Defendants' entire liability risk for such amount.
- C. Named Plaintiffs represent that their claims for attorney's fees, litigation costs, and other expenses have been assigned to their counsel, and ICE accepts the assignment and waives any applicable provisions of the Anti-Assignment Act, 31 U.S.C. § 3727.
- D. This Settlement Agreement does not waive Named Plaintiffs' or their attorneys' tax liability, or any other liability owed to the United States government.
- E. Plaintiffs' Counsel is responsible fully for the allocation of and payment of the Attorneys' Fee Settlement Amount among themselves.

XIII. Additional Provisions

- A. This Agreement, the references contained in it, and any exhibits to it shall constitute the entire agreement among the Parties concerning the settlement of the Action.
- B. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.
- C. All counsel and any other person executing this Agreement and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so, and that they have the authority to take appropriate action required or permitted to be taken under the Agreement to effectuate its terms.
- D. Plaintiffs' Counsel and Defendants' Counsel agree to cooperate fully in seeking Court approval of this Agreement and to promptly agree upon and execute all such other documentation as reasonably may be required to obtain final approval by the Court of the Settlement.

XIV. Release of Claims

- A. Upon final approval of this Agreement by the Court, Plaintiffs and all Class Members waive and release Defendants from liability for all claims, demands, rights, liabilities and causes of action for declaratory or equitable relief, including injunctive relief, known or unknown, that relate to risks associated with COVID-19 inside the Facility that existed prior to the execution of this Agreement, and which were or could have been alleged in the Action based on the same common nucleus of operative facts alleged. Nothing in this subsection shall preclude Class Members from bringing a subsequent lawsuit to challenge Defendants' response to the COVID-19 pandemic following the expiration of this Agreement if Class Members believe further or continued relief is warranted, nor from Defendants raising any and all defenses in response thereto.
- B. Nothing in this Agreement shall have any preclusive effect on any damages claim by Plaintiffs or any Class Members or any claim by Plaintiffs or any Class Members concerning any individual challenges to the legal basis of their custody, now or in the future.
- C. By agreeing to this Agreement and the releases contained herein, Defendants do not waive any defenses available to any Defendant or the United States in any other pending or future action to claims that were or could have been made in the Action that arise from the same common nucleus of operative facts alleged by Plaintiffs.

- D. This Agreement is not and shall not be offered as evidence of, or deemed evidence of, any admission of liability or fault on the part of Defendants, regarding any issue of law or fact, or regarding the truth or validity of any allegation or claim raised in this action.

XV. Approval of Class Settlement

- A. Following the Parties' execution of this Agreement, Plaintiffs shall file forthwith a joint motion seeking preliminary approval of the Settlement Agreement. The motion must request the court to:

1. Preliminarily approve the Settlement Agreement as being a fair, reasonable, and adequate settlement within the meaning of Federal Rule of Civil Procedure 23 and applicable law, and consistent with due process;
2. Approve the Notice Plan set forth in section XV.B; and
3. Set the date and time of the Fairness Hearing.

- B. Notice: Notice to Class Members, attached hereto as Exhibit A, shall be translated into Spanish, French, Creole, Portuguese, Mandarin, and Punjabi. The Parties will propose to the Court that the notice shall be given to Class Members upon preliminary approval of the Classwide Settlement via the following:

Posting in the Facility.

Plaintiffs are responsible for the costs of translation of the notice described in this section.

- C. Following the Effective Date, the Parties shall forthwith jointly file the stipulated request attached hereto as Exhibit B, requesting that the Court enter this Agreement as a stipulated order and dismiss the Action with prejudice; notwithstanding such dismissal, the Court shall retain jurisdiction to interpret and enforce this Agreement for its duration as defined in section VII.A of this Agreement. The stipulated request for dismissal and judgment shall provide as follows:

The Court shall retain jurisdiction over this Agreement, and all disputes between and among the Parties arising out of the Agreement, including but not limited to interpretation and enforcement of the terms of the Agreement, except as otherwise provided in the Agreement, for a term of the shorter of three years from the date of the Court's Final Approval, or one year after the expiration of the Presidential national emergency declaration concerning COVID-19. *See* Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, 87 Fed. Reg. 10,289 (Feb. 23, 2022), unless Final Approval

occurs after the end of the Presidential national emergency declaration, in which case the Agreement shall expire one year after Final Approval.

- XVI. Scope – Facility Administrator: This Agreement may be enforced against the Facility Administrator in his official capacity.