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VIA Email

Adam Khalil, Adam.Khalil@usdoj.gov

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U.S. Attorney's Office for the Western District of New York
138 Delaware Avenue
Buffalo, New York 14202

Re: Applying Protections Ordered in *Jones* to All Medically Vulnerable Individuals at Batavia

Dear Mr. Khalil, Mr. Moar, and Mr. Coriell:

We write to follow up on our March 24 letter regarding conditions at the Buffalo Federal Detention Facility (“Batavia”), especially for those who are medically vulnerable under the Centers for Disease Control (“CDC”) guidelines. We ask ICE to immediately provide these individuals with the protections the court in *Jones v. Wolf* found to be constitutionally required for the medically vulnerable petitioners in that case. *See* No. 20-CV-361, 2020 WL 1809677, at *6 (W.D.N.Y. Apr. 9, 2020). We understand ICE has been implementing these protections on a case-by-case basis when the petitioners’ counsel notify it of other medically vulnerable individuals at Batavia, but such an *ad hoc* approach is insufficient because only ICE has the resources to pinpoint everyone there who fits that profile. ICE now is required by court order to identify all such individuals nationwide, and we ask only that it commit to treating those at Batavia the same way it has the *Jones* petitioners. *See* Order at 38, *Fraihat v. Imm. and Customs Enf.*, No. 19-CV-1546, ECF No. 132 (Apr. 20, 2020). If ICE is unwilling to take these steps systematically, Prisoners Legal Services and the New York Civil Liberties Union are prepared to seek expedited relief on a class-wide basis. Please let us know your position by Monday, April 27.

The Court in *Jones* determined being housed at Batavia in communal settings without appropriate social distancing measures violates the due process rights of petitioners who are medically vulnerable according to the CDC guidelines and ordered ICE to develop a plan for implementing such measures for them. *See Jones v. Wolf*, No. 20-CV-361, 2020 WL 1643857, at *12 (W.D.N.Y. Apr. 2, 2020). In response, ICE transferred some named medically vulnerable petitioners to single-occupancy cells and adopted certain practices for these petitioners, including “accommodation to eat meals in those cells and to bathe and shower in isolation; the provision, without charge, of sufficient shower disinfectant, masks, and ample soap; and the requirement that all BPDF staff and officers wear masks whenever interacting with these petitioners.” *Jones*,

2020 WL 1809677, at *4. The Court concluded these actions adequately addressed the due process violations at issue and ordered ICE to maintain them throughout the duration of the temporary restraining order. *See id.* at *6. It further ordered ICE to extend these protections to the other medically vulnerable named petitioners who remained in communal housing by a certain date or else release them. *Id.* While the Court’s order was limited to the petitioners in *Jones* and the related case *Ramsundar v. Wolf* (No. 20-CV-402), the Court since has applied its holdings in at least one habeas petition presenting a similar claim, *see* Order at 3, *Rodriguez v. Wolf*, No. 20-CV-424, ECF No. 27 (W.D.N.Y. Apr. 20, 2020) (applying *Jones* to dismiss habeas petition because the petitioner was not medically vulnerable under CDC guidelines), and there is no reason that its analysis—which treats all medically-vulnerable individuals the same—would not apply to any other person who also meets the CDC’s guidelines.

Since the *Jones* decisions, a court in the Central District of California has ordered ICE to identify medically vulnerable individuals in its custody nationwide and to reconsider their release. *See* Order at 38, *Fraihat v. Imm. and Customs Enf.*, No. 19-CV-1546, ECF No. 132 (Apr. 20, 2020). This order—which applies to ICE at Batavia—encompasses a broader list of risk factors than *Jones*, derived from ICE’s own agency guidance. Specifically, these factors include “being over the age of 55; being pregnant; or having chronic health conditions, including: cardiovascular disease (congestive heart failure, history of myocardial infarction, history of cardiac surgery); high blood pressure; chronic respiratory disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases); diabetes; cancer; liver disease; kidney disease; autoimmune diseases (psoriasis, rheumatoid arthritis, systemic lupus erythematosus); severe psychiatric illness; history of transplantation; and HIV/AIDS.” *Id.* at 21 n. 20. Given ICE now is on notice that people with at least one of these risk factors are medically vulnerable, we ask that ICE commit to extending, at a minimum, the same protections to them as to the medically vulnerable petitioners in *Jones* and release any of these individuals for whom the facility cannot implement these measures.

Sincerely,

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