DECLARATION OF DAVID HAUSMAN

I, David Hausman, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a Ph.D. candidate in Political Science at Stanford University. Until July 31, 2019, I was an attorney at the American Civil Liberties Union's Immigrants' Rights Project in New York. I have published several quantitative analyses of immigration data, including articles in the University of Pennsylvania Law Review and the Fordham Law Review. I also worked extensively with data from Immigration and Customs Enforcement ("ICE") as part of my litigation work at the ACLU, including particularly Risk Classification Assessment data.

2. I have been informed that petitioners' counsel in this case, the New York Civil Liberties Union, submitted a Freedom of Information Act request to ICE related to initial custody determinations made by the agency. *See* FOIA Request (Attached as Exhibit A). The attorneys for plaintiffs in this case provided me with three spreadsheets that ICE produced in response to the FOIA request, entitled "Copy of NYC_2013-2018_Decision History - 2018-ICFO-54305 RIF," "2019-10-28 Copy of BUF-NYC RCA - Decision Data - Final v3 (00073442xB2D9A)," and "Decision Data Aug-Sept 2019 - Final.xlsx." It is my understanding that these spreadsheets together contain the recommendations produced by the administration of ICE's computer-based Risk Classification Assessment ("RCA") tool and final custody decisions made by ICE officers and supervisors for individuals assessed by the New York Field Office during the period January 7, 2013 to September 30, 2019.

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3. The first two spreadsheets overlap, both including decisions made between January 1, 2016 and August 8, 2018. For this overlapping period, I use the second spreadsheet, which is the more recently produced document from ICE.

4. I analyze only the detain/release decisions in the three spreadsheets.

5. The first spreadsheet contains only RCA decisions from the New York City Field Office; the second and third contain RCA decisions from the Buffalo Field Office as well. I analyze only decisions in the New York City Field Office from the second and third spreadsheets.

6. In order to run my analyses on the full set of data, I combined the three spreadsheets into a single spreadsheet containing 20,442 RCA detain/release decisions. Of these, 9 were missing RCA decisions. I dropped these, yielding a spreadsheet with 20,433 detain/release decisions.

7. Because of the volume of this spreadsheet, which would be hundreds or thousands of pages in length if printed or saved in paginated format, it is impractical to submit a copy to the Court. As a result, pursuant to Federal Rule of Evidence 1006, this declaration contains a summary of the contents of the spreadsheet as they relate to custody determination factors and results for individuals assessed using ICE's RCA tool.

The RCA

8.   Based on ICE's data, the RCA issues one of the following four recommendations for each individual: detain without a bond ("detain"); detain but eligible for release on bond ("set bond")[1]; release on community supervision, also sometimes referred to as release on one's own recognizance ("release"); or that the decision should be left to a supervisor

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[1] It is not possible to discern, based on this data set alone, what percentage of the people who had bond set were actually released after paying that bond.

("supervisor to determine"). ICE officers and their supervisors then determine whether to affirm or override the RCA's recommendation. Based on my analysis of the data, it appears that the RCA was modified to remove the tool's ability to recommend bond be set (effective as of approximately February 2015) and its ability to recommend release (effective as of approximately June 2017).

9. I used the following information from the spreadsheet:

    a. The date on which information was submitted to the RCA tool for a given person;

    b. The public safety risk classification ("low," "medium," or "high") assigned to the person;

    c. The flight risk classification ("low," "medium," or "high") assigned to the person;

    d. The RCA tool's initial recommendation as to whether the person be detained; have a bond set; be released; or supervisor to determine;

    e. The final decision as to the individual's custody determination (i.e., whether the individual was detained without a bond; detained but eligible for release on bond; or released on community supervision);

    f. The date of that final decision. Wherever I refer to dates in this declaration, I always refer to this final decision date.

Final Decisions

10. The dataset shows a substantial increase in detention rates for final decisions in the New York Field Office beginning in 2017. In the period from the beginning of the data (January 2013) until June 5, 2017, 2,227 of 13,532 cases (approximately 16%) in fact resulted in a release decision, and an additional 1,719 (approximately 13%) had a bond

set. In the period from June 6, 2017 to September 2019, 109 of 6,788 (under 2%) were
released, and 4 of 6,901 (under one-tenth of 1%) had a bond set.

11. Among individuals who posed a low flight risk and low danger (according to the RCA
tool), in the period from the beginning of the data until June 5, 2017, 348 of 874 cases
(approximately 40%) were ordered released, and an additional 61 (approximately 7%)
had a bond set. In the period from June 6, 2017 to September 2019, 9 of 322
(approximately 3%) were released on community supervision and 3 of 322
(approximately 1%) had a bond set.

12. In other words, among individuals who posed a low flight risk and low danger (according
to the RCA tool), in the period from the beginning of the data until June 5, 2017, 465 of
874 cases (approximately 53%) resulted in decisions to detain without bond, whereas
from June 6, 2017 to the end of the spreadsheet, 310 of 322 (more than 96%) resulted in
decisions to detain without bond.

13. Table 1, below, shows final decisions over the years 2013-2019, including only
individuals categorized as presenting a low risk of flight and a low risk to public safety.

Table 1: Final Decisions for Low-Low Risk Individuals Over Time

Year	Detained	Eligible for Release on Bond	Released	Percent Detained	Total
2013 (after Jan. 7)	66	23	62	44%	151
2014	116	36	179	35%	331
2015	94	1	29	76%	124
2016	66	0	47	58%	113
2017	208	3	33	85%	244
2018	158	0	5	97%	163
2019 (pre-Sep. 30)	67	1	2	96%	70

14. Table 2, below, shows all final decisions over the years 2013-2019, including all

individuals in the spreadsheets that ICE provided.

Table 2: Final Decisions for All Individuals Over Time

RCA Decision Year	Detained	Eligible for Release on Bond	Released	Percent Detained	Total
2013 (after Jan. 7)	3,087	1,112	960	60%	5,159
2014	2,336	559	1,025	60%	3,920
2015	1,765	45	116	92%	1,926
2016	1,439	1	84	94%	1,524
2017	2,894	4	71	97%	2,969
2018	3,242	1	45	99%	3,288
2019 (pre-Sep. 30)	1,611	1	35	98%	1,647

RCA Tool Initial Recommendations

15. Although the RCA tool always allowed for the possibility of officers and supervisors

overruling the tool's recommendation in their final decisions, the change in the RCA

tool's recommendations precipitated the change in final decisions in the New York Field

Office described above.

16. Over the course of the time period in the spreadsheet, the RCA tool ceased recommending bond or release, even when it determined that individuals posed both a low danger and a low flight risk.

Bond

17. The last day on which the RCA tool recommended that a bond be set was February 13, 2015. In the period from the beginning of the data until February 13, 2015, the RCA tool recommended that a bond be set in 1,947 of 9,248 cases (approximately 21%). In the period from February 14, 2015 to the end of the spreadsheet, the RCA tool recommended that a bond be set in 0 of 11,185 cases.

Release

18. The last day on which the RCA tool recommended that an individual be released was June 5, 2017. In the period from the beginning of the data until June 5, 2017, the RCA tool recommended release in 664 of 13,532 cases (approximately 5%). In the period from June 6, 2017 to the end of the spreadsheet, the RCA tool recommended release in 0 of 6,898 cases.[2]

19. This change mostly affected recommendations for individuals who, according to the RCA tool, presented a low risk of flight and a low risk to public safety. Among such individuals, in the period from the beginning of the data until June 5, 2017, the RCA tool recommended release in 599 of 874 cases (approximately 69%). In the period from June 6, 2017 to the end of the spreadsheet, the RCA tool recommended release in 0 of 322 cases.

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[2] The spreadsheet records three release recommendations on September 24, 2019. However, I believe these are data errors because all three recommendations were issued on a single day, all were for individuals classified as posing a high flight risk, and all resulted in final decisions to detain.

20. Table 3, below, shows RCA tool recommendations over the years 2013-2019, including

only individuals with a low risk of flight and a low risk to public safety.

Table 3: RCA Recommendations for Low-Low Risk Individuals Over Time

RCA Decision Year	Detain	Bond[3]	Release	Supervisor to Determine	Total
2013 (after Jan. 7)	95		56	0	151
2014	96		234	1	331
2015	44		79	1	124
2016	31		82	0	113
2017	24		148	72	244
2018	19		0	144	163
2019 (pre-Sep. 30)	8		0	62	70

21. Finally, I looked at individuals in the dataset that were and were not marked by ICE as

"mandatory detention per statutes and allegations." It is my understanding that individuals in

cases that are not marked as subject to mandatory detention are people who ICE believes are

detained pursuant to 8 U.S.C. 1226(a). In 2018, ICE denied release in 1854 cases not subject

to mandatory detention, and in the part of 2019 for which data is available, ICE denied

release in 769 such cases.

Dated: February 28, 2020
New York, New York

DAVID HAUSMAN

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[3] The RCA tool never recommended detention with bond eligibility for such individuals.