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12 **[ADDITIONAL COUNSEL ON**  
 13 **FOLLOWING PAGE]**

14 **UNITED STATES DISTRICT COURT**  
 15 **CENTRAL DISTRICT OF CALIFORNIA**  
 16 **EASTERN DIVISION – RIVERSIDE**

17 STEPHENSON AWAH TENENG,  
 18 MARCEL NGWA, ANKUSH KUMAR,  
 19 GURJINDER SINGH, ATINDER PAUL  
 20 SINGH, NOE MAURICIO GRANADOS  
 21 AQUINO, and all others similarly situated,

22 Plaintiffs,

23 v.

24 DONALD J. TRUMP, President of the  
 25 United States,  
 26 KIRSTJEN NIELSEN, Secretary  
 27 Department of Homeland Security;  
 28 RONALD D. VITIELLO, Acting Director,  
 Immigration and Customs Enforcement;  
 DAVID MARIN, Field Office Director, Los  
 Angeles Field Office of Immigration and  
 Customs Enforcement;  
 JEFFERSON BEAUREGARD SESSIONS,  
 III, U.S. Attorney General;  
 HUGH J. HURWITZ, Acting Director,  
 Federal Bureau of Prisons,  
 DAVID SHINN, Warden, FCI Victorville  
 Medium Security Prison I/II, in their official  
 capacities only,

Defendants.

Case Number:

**COMPLAINT**  
**CLASS ACTION**

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17 *themselves and others similarly situated*

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## INTRODUCTION

1. Shackled at the ankles and wrists, men in orange and brown prison jumpsuits shuffle from prison buildings to buses, surrounded by chained link fences and barbed wire in the hot California desert. Inside the prison, they are confused, despondent, and hungry. They are locked in prison cells for much of the day and all night. No health care provider has assessed them, asked if they are suicidal, or attempted to help them cope with the underlying trauma that drove many of them to seek asylum in this country. In the chow hall, they are offered inadequate and, at times, inedible food, such as spoiled milk and sandwiches that consist of just two slices of bread. Uniformed corrections officers rush the men out of the chow hall only minutes after food is served.

2. Outdoor exercise is limited to only a few hours of fresh air and sunlight each week. Correctional officers bark orders in English, occasionally in Spanish, even though many of the men speak only French, Punjabi, Mam, or other languages. As if these conditions were not appalling enough, Defendants have stripped from the imprisoned men one of the few things that might bring them some sense of comfort or peace of mind—the ability to freely practice their faith. Defendants fail to provide religious services or consultation with clergy, and they prohibit detainees from engaging in group prayer and congregate worship. They deny detainees halal or kosher meals that comport with their religious needs, forcing many to go hungry. Upon the detainees’ detention by the Defendants, Defendants confiscate all religious head covers, jewelry, and other articles of faith, and the detainees are unable to obtain replacements for the items.

3. These conditions, all well documented at the Federal Correctional Institution Medium II (“Victorville”), are constitutionally impermissible when applied to individuals convicted of crimes and sentenced under our nation’s criminal laws. But this lawsuit is not about such individuals. Rather, it is

1 about immigrants and refugees who have come to the United States seeking  
2 relief, but have been detained by the Department of Homeland Security  
3 Immigration and Customs Enforcement. Many of these men—refugees from  
4 El Salvador, Honduras, India, Cameroon, and other troubled regions—risked  
5 their lives and those of their families by traveling across continents to avail  
6 themselves of our nation’s asylum and immigration laws. All of them seek a  
7 legal remedy under our nation’s immigration laws.

8 4. Since June 8, 2018, Defendants have imprisoned more than 1,000  
9 civil immigration detainees, in violation of their constitutional rights, at  
10 Victorville. On that date, with very little notice to the Bureau of Prisons  
11 (“BOP”) and its staff, the Immigration and Customs Enforcement agency  
12 (“ICE”) of the Department of Homeland Security (“DHS”) transferred these  
13 men to Victorville, subjecting them to harsh prison conditions that can only  
14 reasonably be described as punitive and inhumane.

15 5. Immigration detention is a form civil confinement. The law  
16 prohibits the government from subjecting this population to punitive  
17 incarceration. Moreover, ICE itself has recognized that there are “important  
18 distinctions between the characteristics of the Immigration Detention  
19 population in ICE custody and the administrative purpose of their detention—  
20 which is to hold, process, and prepare individuals for removal [or, as here, to  
21 ensure their appearance at future immigration and/or asylum proceedings]—as  
22 compared to *the punitive purpose of the Criminal Incarceration system.*”<sup>1</sup> As  
23 that same report noted, “[t]he demeanor of the Immigration Detention  
24 population is distinct from the Criminal Incarceration population. The majority  
25 of the population [detained by ICE] is motivated by the desire for repatriation  
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27 <sup>1</sup> Dora Schriro, Immigration Detention Overview and Recommendations at 2  
28 (Oct. 6, 2009), <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf> (emphasis added).

1 or relief, and [they] exercise exceptional restraint.” *Id.* at 21. Nonetheless, the  
2 ICE detainees at Victorville are being held at a medium-security federal prison  
3 and subjected to policies and practices designed for persons who have been  
4 convicted of crimes. As a result of the unconstitutional treatment of these civil  
5 detainees, many have expressed a desire to be returned, immediately, to their  
6 countries of origin—foregoing their claims for immigration relief altogether—  
7 because they would rather face the dangers back home than be imprisoned in  
8 these abysmal conditions.

9 6. Under clearly established law, these men are deprived of their  
10 rights to due process of law, which the Fifth Amendment to the U.S.  
11 Constitution guarantees to all persons who are present on our soil, regardless of  
12 citizenship. Plaintiffs and the other detainees are also denied their  
13 constitutional rights guaranteed by the Free Exercise Clause of the First  
14 Amendment to the U.S. Constitution, as well as their statutory rights under the  
15 Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq.* This lawsuit,  
16 brought by six class representatives on behalf of all civil immigration detainees  
17 who currently are or in the future will be imprisoned at Victorville, respectfully  
18 asks this Court to immediately end these terrible injustices.

19 7. Specifically, Plaintiffs ask the Court to enter an order directing the  
20 Defendants, under a strict deadline, to move all ICE immigration detainees  
21 from Victorville as quickly as possible. In addition, during the brief period that  
22 such plans are being implemented, the Court should order the Defendants  
23 immediately to provide Plaintiffs, and the classes they seek to represent,  
24 adequate health care, nutrition, out-of-cell time, programming, reading  
25 materials, religious diets, religious clothing and jewelry, religious texts,  
26 opportunities for prayer and group worship, and other accommodations  
27 necessary to practice their religious beliefs.

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1           8. Defendants' actions have inflicted, and continue to inflict,  
2 needless harm and suffering on Plaintiffs. In addition to other constitutional  
3 violations, Defendants systematically and knowingly: (1) fail to provide  
4 minimally adequate health care; (2) fail to provide adequate nutrition;  
5 (3) inhibit detainees' free exercise of religion by (i) refusing to provide  
6 religious services or other adequate opportunities for group prayer, congregational  
7 worship, or consultation with clergy, (ii) ignoring religious dietary needs,  
8 (iii) severely impeding the possession and wearing of religious headwear,  
9 jewelry, and other religious items, (iv) denying access to religious texts, and  
10 (v) otherwise restricting detainees' ability to practice their religious beliefs; and  
11 (4) confine detainees under conditions that are unnecessarily restrictive and  
12 punitive in nature.

13                                       **JURISDICTION AND VENUE**

14           9. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
15 § 1331, and 5 U.S.C. § 702.

16           10. Venue lies in the Central District of California under 28 U.S.C.  
17 § 1391 because at least one federal Defendant resides in this District, Plaintiffs  
18 are detained in this District, and a substantial part of the events giving rise to  
19 the claims in this action took place in this District.

20                                       **PARTIES**

21           11. Plaintiff Stephenson Awah Teneng is a civil detainee currently  
22 incarcerated at Victorville under the authority of DHS and ICE.

23           12. Mr. Teneng is an asylum seeker who has been detained at  
24 Victorville since June 8, 2018. He has suffered from weeks of unaddressed  
25 dental pain, has been unable to access medication or have an appointment with  
26 a dentist, and has been unnecessarily and punitively subject to harsh  
27 conditions, including being denied food and locked in his prison cell for hours  
28 at a time in retaliation for requesting medical care.

1           13. Plaintiff Marcel Ngwa is a civil detainee currently incarcerated at  
2 Victorville under the authority of DHS and ICE.

3           14. Mr. Ngwa is an asylum seeker who has been detained at  
4 Victorville since June 8, 2018. He suffers from back pain that has not been  
5 treated. Due to his imprisonment at Victorville, he has suffered from  
6 depression that has not been treated. He has been told that only BOP prisoners  
7 at Victorville, not ICE detainees, can take classes and buy the majority of  
8 products in the commissary. Mr. Ngwa is a Presbyterian whose sincere  
9 religious beliefs counsel him to attend church and seek out consultation with  
10 clergy, when needed. During his imprisonment at Victorville, he has been  
11 denied access to church services and has not been able to see any clergy.

12           15. Plaintiff Ankush Kumar is a civil detainee currently incarcerated  
13 at Victorville under the authority of DHS and ICE.

14           16. Mr. Kumar is an asylum seeker has been detained at Victorville  
15 since July 16, 2018. Mr. Kumar has a history of kidney stones and has not  
16 received adequate medical care while imprisoned in Victorville. After  
17 experiencing excruciating pain, his request for emergency medical attention  
18 went unmet for hours, until finally he was shackled and taken to a hospital. He  
19 has been met with repeated delays in refilling the medication he was prescribed  
20 at the hospital.

21           17. Plaintiff Gurjinder Singh is a civil detainee currently incarcerated  
22 at Victorville under the authority of DHS and ICE.

23           18. Mr. Gurjinder Singh is an asylum seeker who has been detained at  
24 Victorville since July 16, 2018. As a practicing Sikh, Mr. Singh's sincere  
25 religious beliefs dictate that his diet must be vegetarian and that he wear and  
26 keep with him Sikh religious articles of faith, including a turban and kara (a  
27 religious bracelet). During his imprisonment at Victorville, Mr. Singh has been  
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1 denied an adequate vegetarian diet that comports with his Sikh beliefs. His  
2 turban and kara were confiscated by Defendants and not returned or replaced.

3 19. Plaintiff Atinder Paul Singh is a civil detainee currently  
4 incarcerated at Victorville under the authority of DHS and ICE.

5 20. Mr. Atinder Paul Singh is an asylum seeker who has been  
6 detained at Victorville since June 12, 2018. For the first two weeks he was  
7 incarcerated at Victorville, he wore the same prison uniform without access to  
8 clean clothes or laundry. As an adherent of the Sikh faith, Mr. Singh's sincere  
9 religious beliefs require him to wear a turban and kara, as well as to follow a  
10 vegetarian diet. During his imprisonment, Mr. Singh's articles of faith were  
11 confiscated by Defendants and not returned or replaced, and he has been  
12 denied an adequate vegetarian diet. As a result, he has lost about 15 pounds  
13 since he was taken into ICE custody.

14 21. Plaintiff Noe Mauricio Granados Aquino is a civil detainee  
15 currently incarcerated at Victorville under the authority of DHS and ICE.

16 22. Mr. Granados Aquino is an asylum seeker who has been detained  
17 at Victorville since approximately July 20, 2018. He suffers from depression,  
18 which has been exacerbated by the isolation he experiences at Victorville. Mr.  
19 Granados Aquino is a Christian whose sincere religious beliefs counsel him to  
20 attend church and read the Bible. During his imprisonment at Victorville, he  
21 has been denied access to congregate prayer. Mr. Granados Aquino had a  
22 Bible in his backpack when he crossed the border, but Defendants confiscated  
23 it, and he has not been able to access a Bible at Victorville.

24 23. Defendant Donald J. Trump is the President of the United States.  
25 He is ultimately responsible for the immigration policies as set out and  
26 executed by DHS and BOP. He is responsible for the so-called "zero  
27 tolerance" immigration policy that has prompted the unconstitutional  
28



1 imprisonment of civil immigration detainees. He is named in his official  
2 capacity.

3 24. Kirstjen Nielsen is the Secretary of DHS, an agency of the United  
4 States. Secretary Nielsen is ultimately responsible for the actions of ICE. She  
5 is the legal custodian of immigration detainees incarcerated at the Victorville  
6 prison. She is named in her official capacity.

7 25. Defendant Ronald D. Vitiello is the Acting Director of ICE, a  
8 component of DHS. ICE is responsible for apprehension, detention, and  
9 removal of noncitizens from the United States. He is the legal custodian of  
10 immigration detainees incarcerated at the Victorville prison. Director Vitiello  
11 is named in his official capacity.

12 26. Defendant David Marin is the Field Office Director for the Los  
13 Angeles Field Office of ICE. Director Marin is responsible for the  
14 enforcement of the immigration laws within this district, and for ensuring that  
15 ICE officials follow the agency's policies and procedures. He is the legal  
16 custodian of immigration detainees incarcerated at the Victorville prison. He is  
17 named in his official capacity.

18 27. Defendant Jefferson Beauregard Sessions III is the Attorney  
19 General of the United States and the most senior official in the U.S.  
20 Department of Justice (DOJ). The Attorney General is ultimately responsible  
21 for the actions of the BOP and for the nation's enforcement of its immigration  
22 and asylum laws. Mr. Sessions has implemented the so-called "zero tolerance"  
23 immigration policy of the current presidential administration that has prompted  
24 the unconstitutional imprisonment of civil immigration detainees. He is named  
25 in his official capacity.

26 28. Defendant Hugh J. Hurwitz is the Acting Director of BOP. He is  
27 responsible for the actions, policies and practices of BOP and for the operation  
28 of Victorville. He is named in his official capacity.

1           29. Defendant David Shinn is the Warden of Victorville prison in  
2 Victorville, California. He is the custodian of civil immigration detainees  
3 incarcerated at the Victorville prison. He is named in his official capacity.

#### 4                                   I. FACTUAL ALLEGATIONS

##### 5   A. Victorville is a Medium Security Federal Prison Meant to Imprison 6 Persons Who Have Been Convicted of Crimes, Not Civil 7 Immigration Detainees.

8           30. Victorville is a medium security prison operated by BOP.

9           31. Victorville was built on the site of a former U.S. Air Force waste  
10 site for radioactive materials, and was declared a Superfund site by the  
11 Environmental Protection Agency. According to published reports, the water  
12 supply for the prison at Victorville contains toxic materials.<sup>2</sup>

13           32. Victorville has been recognized as being among the most  
14 dangerous places for convicted persons in the BOP’s system of medium  
15 security prisons.

16           33. Hiring freezes imposed by the federal government have led to  
17 severe understaffing at BOP prisons throughout the country, including  
18 Victorville. Victorville was so critically understaffed that BOP closed down  
19 nine housing units in early 2018 because it could not safely operate with such  
20 limited staff.

21           34. As has been widely reported, the present presidential  
22 administration announced a “zero tolerance” policy toward immigrants that has  
23 employed a series of cruel and inhumane tactics—separating families, denying  
24 parole,<sup>3</sup> widespread detention of immigrants, including the elderly and long-

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25 <sup>2</sup> Michael Waters, *How Prisons Are Poisoning Their Inmates*, The Outline  
26 (July 23, 2018, 10:40 AM), <https://theoutline.com/post/5410/toxic-prisons-fayette-tacoma-contaminated?zd=1&zi=eeblichf>.

27 <sup>3</sup> Spencer S. Hsu, *U.S. Judge Blocks Trump Crackdown on Asylum Seekers,*  
28 *Bars Blanket Detentions of Those With Persecution Claims*, Wash. Post (July  
2, 2018) <https://www.washingtonpost.com/local/public-safety/us-judge-blocks-trump-crackdown-on-asylum-seekers-bars-blanket-detentions-of-those-with->

1 time U.S. residents, blocking asylum seekers from ports of entry,<sup>4</sup> and  
 2 prosecuting immigrants crossing the border—all with the stated objective to  
 3 “deter” those fleeing oppressive and life-threatening conditions.

4 35. As a result of these practices, the administration has manufactured  
 5 a “crisis” of insufficient bed space to detain immigrants. ICE announced, in  
 6 early June, that it would begin transferring 1,600 detainees to five federal  
 7 prisons in early June 2018, one of which is Victorville.

8 36. On June 8, 2018, ICE suddenly began transferring hundreds of  
 9 immigration detainees to Victorville. On June 11, 2018, BOP and ICE entered  
 10 into a formal Inter-Agency Agreement that has a term of one year, concluding  
 11 on June 8, 2019.

12 37. When the ICE detainees arrived at Victorville, BOP reopened the  
 13 housing units it had previously closed, but failed to hire sufficient additional  
 14 staff to address chronic understaffing at the prison and to accommodate the  
 15 influx of new detainees. On information and belief, teachers and other civilian  
 16 staff at the prison have been reassigned to serve as corrections officers due to  
 17 the dire shortages.<sup>5</sup>

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18 [persecution-claims/2018/07/02/cdc707ba-7e36-11e8-b660-4d0f9f0351f1\\_story.html?noredirect=on&utm\\_term=.8893f444427e](https://www.washingtonpost.com/news/immigration/wp/2018/07/02/cdc707ba-7e36-11e8-b660-4d0f9f0351f1_story.html?noredirect=on&utm_term=.8893f444427e); Lydia  
 19 Wheeler, *Judge Rules DHS Must Give Asylum Seekers Individualized Parole*  
 20 *Hearings*, The Hill (July 2, 2018) <http://thehill.com/regulation/395254-judge-rules-dhs-must-give-asylum-seekers-individualized-parole-hearings>.

21 <sup>4</sup> Robert Moore, *At The U.S. Border, Asylum Seekers Fleeing Violence Are Told To Come Back Later*, Wash. Post, June 8, 2018 (“They have told those  
 22 who cross the border illegally and make asylum requests that they will face  
 23 criminal prosecution, but that if they go through the official border crossings,  
 24 their applications will be processed. Yet in several cities along the border,  
 25 asylum seekers who follow those instructions are turned away and told to  
 26 return later. At some crossings, applicants camp out for days.”); Aaron  
 27 Montes, *Try Later: It’s Getting Tougher for Migrants to Claim Asylum at U.S. Ports of Entry*, NBC News (June 23, 2018, 5:00  
 28 AM) <https://www.nbcnews.com/storyline/immigration-border-crisis/try-later-it-s-getting-tougher-migrants-claim-asylum-u-n885861> (reporting that “Customs and border protection agents now wait at the port of entry, checking identification and preventing asylum seekers from stepping into the U.S.”).

<sup>5</sup> Lauren Gill, *As Immigrant Detainees Are Moved to Prisons, What Happens to the Prisoners?*, Rolling Stone, July 3, 2018.

1 38. Prior to June 2018, Victorville housed only criminally convicted  
2 persons. On information and belief, the prison has housed well over 1,000 civil  
3 immigration detainees since June. Some have been detained at Victorville for  
4 nearly two months.

5 39. According to the BOP corrections officers' union, the officers and  
6 staff employed at Victorville are trained under BOP standards and have not  
7 received training under ICE standards.<sup>6</sup>

8 40. Upon their arrival at Victorville, ICE detainees are given  
9 Victorville's BOP Inmate Handbook. On information and belief, the  
10 Handbook is available only in English and Spanish.

11 41. BOP Policy states that ICE detainees in BOP facilities are to be  
12 treated as criminal pre-trial detainees.

13 42. Victorville has always operated, and continues to operate, as a  
14 prison that incarcerates people who have been convicted of crimes.

15 **B. Plaintiffs and Putative Class Members are Denied Minimally**  
16 **Adequate Health Care**

17 43. By policy and practice, Defendants fail to provide minimally  
18 adequate health care to Plaintiffs and other detainees. Detainees receive  
19 minimal or no medical, dental, or mental health screenings upon their arrival at  
20 Victorville. *See* Ex. 10, E. Berrios Banegas Dec. at ¶ 12 (no dental screening  
21 despite painful toothache); Ex. 15, J. Rodriguez Rivera Dec. at ¶ 5 (no medical,  
22 dental, or mental health screening upon arrival). The lack of screening is  
23 especially dangerous in light of the confirmed outbreaks of chicken pox and  
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25 \_\_\_\_\_  
26 <sup>6</sup> Samantha Michaels, *Understaffed Federal Prison Is Taking in 1,000*  
27 *Noncriminal Immigrants, and Even the Guards Are Protesting*, Mother Jones  
28 (June 15, 2018) ("Mother Jones Article"),  
<https://www.motherjones.com/crime-justice/2018/06/understaffed-federal-prison-is-taking-in-1000-noncriminal-immigrants-and-even-the-guards-are-protesting/>.

1 scabies among the detained population.<sup>7</sup> Medical staff provide little  
2 information to detainees about the nature of the screenings they are conducting.  
3 *See* Ex. 6, N. Granados Aquino Dec. at ¶ 15 (“They didn’t tell us what was in  
4 the injection”); Ex. 2, M. Ngwa Dec. at ¶ 13 (screening was merely an  
5 injection of unknown contents).

6 44. Those detainees who have received any sort of health screening  
7 generally have been forced to communicate with medical personnel who speak  
8 only English, without the benefit of a translator, even when the detainee does  
9 not speak English. *See* Ex. 17, P. Jaimez Bueno Dec. at ¶ 8 (received medical  
10 treatment he did not understand; all services rendered in English). Prison  
11 medical staff inappropriately rely on detainees who speak English to serve as  
12 translators for other detainees, even for sensitive medical encounters, in  
13 violation of state and federal health privacy laws. Plaintiff Antush Kumar saw  
14 a nurse regarding his kidney stones with the assistance of a fellow Punjabi  
15 detainee who is fluent in English and has been compelled to translate for all  
16 Punjabi speakers in medical encounters. Ex. 3, A. Kumar Dec. at ¶ 6. Plaintiff  
17 Ngwa is fluent in English, and acts as a translator for French speaking  
18 detainees. Ex. 2, M. Ngwa Dec. at ¶ 16.; *see also* Ex. 7, A. Thea Dec. at ¶ 4  
19 (relies on cellmate to translate to French); Ex. 9, M. Escoto Cortez Dec. ¶ 16  
20 (another detainee translated when he saw nurse regarding stomach pain).

21 45. Mental health screening is also inadequate. Victorville medical  
22 staff rely on a short, written survey as the only means of mental health  
23 screening. Plaintiff Aquino has “never been asked about [his] mental health in  
24 person” since arriving at Victorville.” Ex. 6, N. Granados Aquino Dec. at ¶ 15.

25  
26 <sup>7</sup> Roxana Kopetman, *Immigration detainees in Victorville prison get more*  
27 *scabies, chicken pox; protesters to gather Saturday*, The Orange County  
28 Register (June 29, 2018), <https://www.ocregister.com/2018/06/29/immigration-inmates-in-victorville-get-more-scabies-chicken-pox-protesters-to-gather-saturday/>.

1 When he first arrived at the prison, Mr. Granados Aquino filled out a form, on  
2 which he indicated that he was depressed. *Id.* at ¶ 16. No one ever followed  
3 up to conduct an assessment or offer him mental health services. *Id. See also*  
4 Ex. 19, W. Velasquez Ramirez Dec. at ¶ 6 (describing questionnaire used in  
5 lieu of mental health screening). The detainees are required to fill this  
6 screening form out on their own, and on information and belief, it is available  
7 only in English and Spanish. The lack of an adequate mental health screening  
8 process subjects detainees to a substantial risk of needless suffering and harm.

9 46. There is inadequate health care staff to meet the needs of the civil  
10 detainees imprisoned at Victorville, resulting in all detainees being at a  
11 significant risk of serious harm. *See* n.5, *supra* (reporting on medical staff  
12 shortage).

13 47. The sick call process at Victorville is inadequate, resulting in a  
14 significant risk of serious harm. There is no clear process for civil detainees  
15 imprisoned at Victorville to request medical attention other than an emergency  
16 button in their cells. Plaintiff Ngwa has not seen any form to request an  
17 appointment with medical staff. *See* Ex. 2, M. Ngwa Dec. at ¶ 11–12; Ex. 9,  
18 M. Escoto Cortez Dec. at ¶ 15 (there are no forms to fill out to see medical  
19 staff); Ex. 10, E. Berrios Benegas Dec. ¶ 11 (same); Ex. 11, R. Padilla Flores  
20 Dec. ¶ 6 (same).

21 48. Moreover, detainees who try to seek medical help are often  
22 punished by being locked in their cells. Plaintiff Teneng reports that he was  
23 locked in his cell for several hours while other detainees were allowed out in  
24 response to his asking medical staff to care for his tooth pain. Ex. 1, S. Teneng  
25 Dec. at ¶¶ 13-18. As a result, other detainees have been dissuaded from  
26 requesting medical care for their own needs, having witnessed the isolation and  
27 punishment of those who have spoken up. *See* Ex. 13, R. Kumar Dec. at ¶ 3  
28

1 (describing his fear of seeking medical care because of possible punishment  
2 and isolation).

3 49. Defendants deny civil detainees access to emergency health care.  
4 Detainees who have pushed the emergency button in their cells have been  
5 denied care. For example, Plaintiff Kumar pushed the button in his cell to  
6 report excruciating pain from a kidney stone. In response, an officer told him  
7 to wait until the next day, and in the meantime, to soak a towel in hot water and  
8 put it over his abdomen. *See* Ex. 3, A. Kumar Dec. at ¶ 5. Another detainee,  
9 Oscar Colindres Velasquez, witnessed a corrections officer deny medical  
10 attention to a young man who pushed the emergency button when the young  
11 man's nose was bleeding. Mr. Colindres Velasquez witnessed the corrections  
12 officer yell at the man to "deal with it and cut out your bullshit." *See* Ex. 8, O.  
13 Colindres Velasquez Dec. at ¶ 13. A corrections officers told detainee Jexon  
14 Rodriguez Rivera that he "should not touch the call button in [his] cell unless  
15 [he is] dying." Ex. 15, J. Rodriguez Rivera Dec. at ¶ 24. Roger Padilla Flores  
16 suffers from gastritis, and after he pushed the emergency button in his cell, the  
17 officer told him to wait until "mañana" for treatment, and subsequently an  
18 officer told him "don't be a dumbass" and instructed him never to push the  
19 button again. Ex. 11, R. Padilla Flores Dec. at ¶¶ 7-8.

20 50. Detainees do not have access to necessary medications. Detainees  
21 who have attempted to relate their medical problems to the BOP staff that  
22 disburse prescriptions or to corrections officers at Victorville have been denied  
23 those necessary medications. For example, after experiencing excruciating  
24 pain consistent with his history of kidney stones, Plaintiff Ankush Kumar  
25 waited 18 hours to receive emergency medical attention, when he was finally  
26 taken to the hospital while shackled. *See* Ex. 3, A. Kumar Dec. at ¶¶ 5-7. He  
27 was not given any medication prior to his emergency, despite his history of  
28

1 taking medication in his home country, and has experienced delays getting his  
2 pain medication refilled since returning to Victorville from the hospital.

3 51. Another detainee, Jexon Rodriguez Rivera, suffers from chronic  
4 asthma, which he informed staff upon arrival at Victorville. *See* Ex. 15, J.  
5 Rodriguez Rivera Dec. at ¶¶ 3, 5. Mr. Rodriguez Rivera did not receive an  
6 inhaler or other asthma medicine upon arrival or after informing staff of his  
7 condition. *Id.* One week after arriving at Victorville, Mr. Rodriguez Rivera  
8 suffered an asthma attack. *Id.* at ¶ 6. He told corrections officers but they did  
9 nothing. *Id.* The following day or soon thereafter, he was given an inhaler. *Id.*  
10 at ¶ 7. The inhaler had only 15 doses left, which ran out about one week later.  
11 *Id.* Mr. Rodriguez Rivera requested a new inhaler but did not receive one. *Id.*  
12 at ¶ 8. Fear of another asthma attack without an inhaler confined  
13 Mr. Rodriguez Rivera to his cell the majority of the time while he was detained  
14 at Victorville. *Id.* at ¶ 9.

15 52. As another example, Dervi Garcia Perez was badly injured after  
16 being thrown from a truck during his journey to the U.S. border. *See* Ex. 20,  
17 D. Garcia Perez Dec. at ¶ 2. While in Border Patrol custody, he was taken to a  
18 hospital, where he was given pain medication. *Id.* He has not received any  
19 pain medication since his arrival at Victorville. *Id.* at ¶ 4. Mr. Garcia Perez  
20 has been unable to refill medication for his gastritis since arriving in  
21 Victorville. *Id.* at ¶ 8. He has no information on the process for requesting  
22 more medication or a doctor's appointment. *Id.* at ¶ 9. Similarly, Mr. Thea  
23 suffers from such severe gastritis that it keeps him awake at night and causes  
24 him to feel at times that he cannot breathe. Ex. 7, A. Thea Dec. at ¶¶ 7-8.  
25 Despite multiple requests for medical attention, Mr. Thea has received no  
26 treatment for or medical assessment of his stomach condition. *Id.* at ¶¶ 7-12.

27 53. Marlon Escoto Cortez, after suffering days of stomach pain,  
28 finally saw a nurse, who only took his blood pressure, felt his stomach, and



1 joked that perhaps he was pregnant. The nurse did not refer him to a physician.  
2 Neither the nurse nor any other medical staff took any labs, ran any tests, or  
3 made any diagnosis of Mr. Escoto Cortez's source of pain. *See* Ex. 9, M.  
4 Escoto Cortez Dec. ¶¶ 15-16.

5 54. Many other detainees have experienced similar instances of  
6 having their known medical conditions and needs ignored. For example,  
7 Plaintiff Teneng reports that he complained for nearly a week about a  
8 toothache without receiving any medical treatment. Instead, he was locked in  
9 his cell and threatened with pepper spray if he continued to complain. Ex. 1, S.  
10 Teneng Dec. at ¶ 17. *See also* Ex. 2, M. Ngwa Dec. at ¶ 13 (Plaintiff reporting  
11 that medical staff screening for chicken pox “did not want to talk to me about  
12 my pain”); Ex. 19, W. Velasquez Ramirez at ¶¶ 7–9 (complained of fever,  
13 cough, and sore throat which persisted for five days, but was told that there  
14 “weren’t any medical consultations unless it was really serious, so [he] could  
15 not have any help”).

16 55. Detainees have minimal or no access to mental health services.  
17 For example, Plaintiff Aquino has received no mental health assessment or  
18 services despite expressly indicating upon his arrival to the prison that he was  
19 experiencing depression. Ex. 6, N. Granados Aquino Dec. at ¶¶ 15-16. At one  
20 point, Mr. Granados Aquino told an officer in his housing unit that he felt sad  
21 and depressed; the officer responded, “I can’t help you right now. Maybe  
22 tomorrow.” *Id.* at ¶ 11. No one followed up on Mr. Granados Aquino’s request  
23 for help.

24 56. Many detainees have suffered severe trauma in their home  
25 countries or on their journey to the United States, and require mental health  
26 treatment as a result. Mr. Rodriguez Rivera reported hearing “men crying in  
27 their beds” at night and observing men in his housing unit “with scars from  
28 cutting themselves due to depression and desperation.” Ex. 15, J. Rodriguez

1 Rivera Dec. at ¶¶ 17, 18. Mr. Colindres Velasquez also witnessed a different  
2 young man who had cut himself across his arms and wrists with the blade from  
3 his razor. Ex. 8, O. Colindres Velasquez Dec. at ¶ 14. Prison staff at  
4 Victorville did not remove the young man to receive mental health care or  
5 medical attention for three days. *Id.*

6 57. The punitive and degrading conditions of confinement exacerbate  
7 detainees' mental health needs. Plaintiff Ngwa feels depressed and sad, but no  
8 health care staff at the prison has asked him whether he is depressed or  
9 suicidal. Ex. 2, M. Ngwa Dec. at ¶¶ 10, 15. Plaintiff Aquino cries "every time  
10 [he is] locked back up" in his cell because he feels "so alone." Ex. 6, N.  
11 Granados Aquino Dec. at ¶ 11. With nothing to do, Mr. Granados Aquino  
12 finds himself ruminating on "my mom, who didn't know where I was, and my  
13 loved ones, who I traveled with and who had been separated from me at the  
14 border, and about the horrible things that happened to us that caused us to  
15 come to the U.S." *Id. at 14.*

16 58. Similarly, Mr. Rodriguez Rivera said he needed to talk to a mental  
17 health professional due to his mounting depression and difficulty coping with  
18 the extreme isolation and idleness at the prison, but did not know whom he  
19 should contact or how to get help. Ex. 15, J. Rodriguez Rivera Dec. at ¶¶ 16,  
20 25. Mr. Diallo reported that while he is locked in his cell with nothing to do  
21 but worry about his family, "my thoughts race and I have difficulty sleeping.  
22 My eyes have gotten red because I don't really sleep." Ex. 18, O. Diallo Dec.  
23 at ¶ 3. Mr. Diallo has not received "any counseling or support for [his]  
24 anxiety." *Id. at ¶ 7; see also* Ex. 17, P. Jaimez Bueno Dec. at ¶ 16 ("I spent  
25 much of my time being anxious and worrying about the safety of my family  
26 numbers. As a result, I have not slept at all in the past three nights.")

27 59. In lieu of a meaningful assessment, detainees are given a written  
28 form to fill out regarding their mental health. *See* Ex. 19, W. Velasquez

1 Ramirez Dec. at ¶ 6; Ex. 6, N. Granados Aquino Dec. at ¶ 15. The form is only  
2 available in English and Spanish. Upon information and belief, this is BOP  
3 Standard P5310.017,<sup>8</sup> which is used for screenings of all criminal pre-trial  
4 inmates in BOP custody.

5 60. Defendants' conduct vis-à-vis the Plaintiffs and the other  
6 detainees does not comply with either ICE or the BOP's written policies.

7 **C. Plaintiffs Are Denied Adequate Nutrition**

8 61. Defendants routinely and systematically deny Plaintiffs and other  
9 detainees adequate nutrition and adequate time to eat even the substandard  
10 food they are provided.

11 62. Upon their arrival at Victorville, Plaintiffs and other detainees  
12 were on lockdown for two or three days and received all of their meals in their  
13 cells. These meals were insufficient and regularly consisted of a sandwich and  
14 nothing else. The sandwiches the Plaintiffs were provided were sometimes  
15 frozen in the middle. Upon their initial arrival, detainees who are vegetarians  
16 for religious reasons were given meals with meat in them, with no alternatives.  
17 Ex. 5, G. Singh Dec. ¶ 7.

18 63. When not on lockdown, the civil detainees imprisoned at  
19 Victorville receive their meals in the chow hall. These meals are small,  
20 inadequate, and of poor nutritional value, and frequently do not contain meat or  
21 any other sufficient source of protein. *See* Ex. 15, J. Rodriguez Rivera Dec.  
22 at ¶ 21 ("Some days we receive sandwiches with nothing in them—just two  
23 pieces of bread."); *see also* Ex. 10, E. Berrios Banegas Dec. at ¶ 8  
24 (complaining of inadequate food and being hungry an hour and a half after  
25 dinner); Ex. 8, O. Colindres Velasquez Dec. at ¶ 15 (complaining of inadequate  
26 food). Detainees who are vegetarians for religious reasons, like Plaintiff G.

27 <sup>8</sup> BOP Standard P5310.017, Psychology Services Manual, p. 14,  
28 [https://www.bop.gov/policy/progstat/5310\\_017.pdf](https://www.bop.gov/policy/progstat/5310_017.pdf).

1 Singh, are often offered nothing but two pieces of bread for lunch, and green  
2 beans and rice for dinner. *See* Ex. 5, G. Singh Dec. ¶ 8.

3 64. Plaintiffs and other detainees imprisoned at Victorville have lost  
4 weight due to inadequate food. Plaintiff Atinder Paul Singh reports that since  
5 he arrived in mid-June, he has lost approximately 15 pounds due to the  
6 inadequate amount of food, especially for detainees who adhere to a vegetarian  
7 diet for religious reasons. Ex. 4, A.P. Singh Dec. ¶ 11. *See also* Ex. 8, O.  
8 Colindres Velasquez Dec. at ¶ 15 (10 to 15 pounds lost; “you can see the bones  
9 sticking out of my wrists that you couldn’t see before”); Ex. 11, R. Padilla  
10 Flores Dec. at ¶ 5 (10 pounds of weight loss); Ex. 10, E. Berrios Banegas Dec.  
11 at ¶ 8 (5 to 10 pounds lost); Ex. 15, J. Rodriguez Rivera Dec. at ¶ 22.

12 65. Defendants sometimes serve Plaintiffs food that is inedible. *See*  
13 Ex. 9, M. Escoto Cortez Dec. at ¶ 10 (“I have seen what looks like worms or  
14 maggots in the meat;” complaining of stomach problems and blood in his stool  
15 since arriving at Victorville); Ex. 8, O. Colindres Velasquez Dec. at ¶ 17 (milk  
16 is “often sour and you can’t drink it or you will get sick”); Ex. 15, J. Rodriguez  
17 Rivera Dec. at ¶ 21 (“Many mornings, we receive spoiled milk at breakfast.”);  
18 Ex. 10, E. Berrios Banegas Dec. at ¶ 8 (“Sometimes the meat tastes expired.”).

19 66. Defendants allow Plaintiffs and other detainees only minutes to  
20 eat each meal, and throw away any uneaten food. Plaintiff Aquino reports that  
21 minutes after sitting down in the chow hall, guards yell at the detainees that  
22 they have “only two minutes left” to eat. Ex. 6, N. Granados Aquino Dec. at  
23 ¶ 20. Mr. Thea reports that detainees are permitted to remain in the chow hall  
24 for no more than five minutes at meal times. Ex. 7, A. Thea Dec. at ¶ 5. *See*  
25 *also* Ex. 17, P. Jaimez Bueno Dec. at ¶ 12 (detainees are given three or four  
26 minutes to eat, after which uneaten food is confiscated and thrown away);  
27 Ex. 8, O. Colindres Velasquez Dec. at ¶ 15 (detainees are given approximately  
28

1 five minutes before corrections officers start rushing them out); Ex. 10, E.  
2 Berrios Banegas Dec. at ¶ 8 (“We are only given 3 to 5 minutes to eat.”).

3 67. Detainees are not permitted to take any uneaten food out of the  
4 chow hall. *See* Ex. 6, N. Granados Aquino Dec. at ¶ 21 (“I saw an official  
5 force another detainee to throw away a piece of bread he had put in his pocket  
6 when we were leaving the chow hall . . .”); Ex. 8, O. Colindres Velasquez Dec.  
7 at ¶ 15 (detainees are not permitted to take even an apple from the chow hall).

8 68. Until very recently, Plaintiffs and other detainees were denied  
9 access to commissary to supplement their meals, so they had no access to food  
10 between dinner and the next day’s breakfast. The detainees are not permitted  
11 to purchase all of the food products available in the commissary. For example,  
12 Plaintiff Ngwa was told that only prisoners could purchase certain food items.  
13 Many detainees are indigent and so cannot buy food from the commissary.

14 69. Defendants’ conduct vis-à-vis the Plaintiffs and the other  
15 detainees does not comply with either ICE or the BOP’s written policies.

16 **D. Plaintiffs and Members of the Putative Subclass Are Denied the**  
17 **Right to Freely Exercise their Religious Beliefs**

18 70. Plaintiffs Atinder Paul Singh and Gurjander Singh are adherents  
19 of the Sikh faith. Plaintiff Marcel Ngwa is a Presbyterian. Plaintiff Noe  
20 Mauricio Granados Aquino is a Christian. These Plaintiffs and other religious  
21 detainees, who include Muslims, Catholics, and Hindus, are unable to freely  
22 practice their religious beliefs due to restrictions imposed by Defendants, as  
23 well as by Defendants’ failure to accommodate their religious beliefs.

24 71. Defendants have refused to provide, or make available, any  
25 religious services to Plaintiffs or the other detainees of faith at Victorville, and  
26 they have refused to provide other adequate opportunities for detainees to  
27 engage in congregate worship or group prayer. By policy, detainees are  
28 restricted to their cells to practice religious activities. For example, Plaintiff

1 Aquino, a Christian, reports that a correctional officer denied detainees’  
2 requests to meet as a group to pray, sing, and preach. Ex. 6, N. Granados  
3 Aquino Dec. at ¶ 23. Similarly, Mr. Ngwa reports that there are no church  
4 services for detainees. Ex. 2, M. Ngwa Dec. at ¶ 9. Vakil Singh, a Hindu,  
5 reports the same regarding Hindu religious services. Ex. 14, V. Singh Dec. at  
6 ¶ 12. Sarvejeet Singh, a Sikh, likewise complains that no Sikh religious  
7 services are provided. Ex. 12, S. Singh Dec. ¶ 7. Mr. Thea, a practicing  
8 Catholic, has no opportunity to attend Catholic services or consult with a priest.  
9 Ex. 7, A. Thea Dec. at ¶ 13. Detainee Marlon Escoto Cortez attempted to hold  
10 a Bible study group with about 15 other detainees in a common area of his  
11 building. They were told by an officer to stop praying, and they did not have  
12 the right to assemble or pray. Ex. 9, M. Escoto Cortez Dec. ¶ 9. Mr. O. Diallo,  
13 a practicing Muslim, is forced to complete his prayers on the floor of his cell  
14 and has no access to an Imam or group services. Ex. 18, O. Diallo Dec. at ¶ 2.

15 72. Defendants confiscated from Plaintiffs and the other detainees  
16 imprisoned at Victorville all religious headwear, jewelry, and other religious  
17 items. The detainees have been unable to replace those items. Plaintiffs  
18 Gurjinder Singh and Atinder Paul Singh have both had their turbans and kara  
19 bracelets confiscated. Atinder Paul Singh has made repeated requests for a  
20 head covering and was told it was not allowed. *See* Ex. 4, A.P. Singh Dec. at  
21 ¶ 9; Ex. 5, G. Singh Dec. at ¶ 6 (in response to multiple requests, was told  
22 “[turban and kara] are in [his] personal property”); *see also* Ex. 12, S. Singh  
23 Dec. at ¶ 4-9 (Sikh religious headwear and bracelet taken away).

24 73. Plaintiffs and other detainees are also denied access to religious  
25 texts. Plaintiff Aquino reported that “I had a Bible in my backpack when I  
26 crossed the border. I have asked to have it back but was told I couldn’t. I have  
27 seen other detainees ask for Bibles, and they were told there weren’t any in  
28 Spanish.” Ex. 6, N. Granados Aquino at ¶¶ 24-25. *See also* Ex. 18, O. Diallo

1 Dec. at ¶ 3; Ex. 15, J. Rodriguez Rivera Dec. at ¶ 15 (in response to multiple  
2 requests for a Bible, detainee told “there are no Bibles here.”).

3 74. Some Sikh detainees, including Plaintiff A.P. Singh, were told  
4 that they could purchase religious head coverings for \$10 at the commissary.  
5 *See* Ex. 4, A.P. Singh Dec. at ¶ 10. Not all of the detainees have money on  
6 their books to be able to purchase their covering. None of the detainees has  
7 received a head covering. *Id.*

8 75. Plaintiffs and other detainees are not offered diets that comport  
9 with their religious beliefs. Vegetarian meals offered to members of the Sikh  
10 faith are woefully inadequate nutritionally. Plaintiffs G. Singh and A.P. Singh  
11 and other practicing Sikhs have been forced to go hungry to avoid food that  
12 violates their religious beliefs. *See* Ex. 5, G. Singh Dec. ¶ 7; Ex. 4, A.P. Singh  
13 Dec. ¶ 11.

14 76. Plaintiffs and the other detainees hold sincere religious beliefs that  
15 counsel them to engage in a variety of religious practices including the  
16 attendance of worship services, participation in congregational worship and group  
17 prayer, and consultation with clergy and religious leaders; the consumption of a  
18 religiously mandated diet; the wearing of religious headgear and jewelry; the  
19 use of other religious items; and the reading and study of religious texts.

20 77. Defendants’ refusal to provide detainees with religious services  
21 and clergy access, and their refusal to meet detainees’ religious dietary needs,  
22 as well as their restrictions on religious items and texts, severely impede or  
23 outright prevent Plaintiffs and the other detainees from practicing these  
24 sincerely held religious beliefs and force them to violate their religious beliefs  
25 in many instances. Plaintiffs’ and the other detainees’ inability to freely  
26 practice these religious beliefs has been—and continues to be—a cause of  
27 immeasurable distress for them.

28

1           78. Defendants' conduct vis-à-vis the Plaintiffs' and the other  
2 detainees' religious practices does not comply with either ICE or the BOP's  
3 written policies, which expressly permit the very sort of religious practices that  
4 detainees seek to engage in here.

5 **E. The Conditions at Victorville are Unnecessarily Restrictive and**  
6 **Punitive**

7           79. Plaintiffs and other detainees are subjected to conditions at  
8 Victorville that are unnecessarily restrictive to fulfill the government's  
9 purported objectives of ensuring that immigrants appear at future immigration  
10 proceedings.

11           80. Upon transferring Plaintiffs and other detainees to Victorville,  
12 Defendants maintained a 24-hour lockdown for three or more days, during  
13 which time Plaintiffs were not allowed to leave their cells for any reason,  
14 including exercise, free time, telephone calls, religious services, personal or  
15 attorney visits, meals, or showers. *See* Ex. 4, A.P. Singh Dec. ¶ 8 (Plaintiff  
16 was not allowed to make a phone call for the first week he was at Victorville);  
17 Ex. 5, G. Singh ¶ 7 (Plaintiff was kept in his cell the first few days after he  
18 arrived); Ex. 17, P. Jaimez Bueno Dec. at ¶ 7 ("I spent the first three or four  
19 days in FCI-II Victorville locked in my cell."); Ex. 11, R. Padilla Flores Dec. at  
20 ¶ 3 ("The first three days I was here, we were constantly locked in our cells 24-  
21 hours a day."); Ex. 8, O. Colindres Velasquez Dec. at ¶ 16 (describing lock  
22 down "for about four days without clean clothes or showers").

23           81. Victorville was so unprepared for the influx of detainees in June  
24 that Defendants issued to the men only one set of clothing upon their arrival at  
25 Victorville. Defendants did not issue another set of clean clothing, including  
26 clean undergarments, to detainees for approximately the first two to three  
27 weeks the detainees were at the prison. Plaintiff Atinder Paul Singh, who  
28 arrived at Victorville in June soon after detainees were sent to the prison,



1 reports that he went for 15 days with one prison uniform before he was  
2 provided a new one, and he had to wash the uniform in the sink in his cell.  
3 Ex. 4, A.P. Singh Dec. ¶ 3. Mr. Rodriguez Rivera reported that for over a  
4 month, he washed his prison jumpsuit with hand soap in the toilet in his cell  
5 because of the lack of clean clothing or laundry services. The only clean  
6 jumpsuit offered to Mr. Rodriguez Rivera was size 8X—so large that he could  
7 not move while wearing it. *See* Ex. 15, J. Rodriguez Rivera Dec. at ¶ 23. *See*  
8 *also* Ex. 10, E. Berrios Banegas Dec. at ¶ 9 (had only one set of clothing for  
9 three weeks); Ex. 9, M. Escoto Cortez Dec. at ¶ 11 (same); Ex. 17, P. Jaimez  
10 Bueno Dec. at ¶ 11 (same).

11 82. Plaintiffs' time outside of their prison cells is extremely limited.  
12 The prison provides, at most, a few hours per week of outdoor exercise time;  
13 this time is not regularly scheduled and is sometimes canceled. *See* Ex. 10, E.  
14 Berrios Banegas Dec. at ¶ 4; Ex. 17, P. Jaimez Bueno Dec. at ¶ 10 (describing  
15 outdoor exercise as one or two hours per week); Ex. 15, J. Rodriguez Rivera  
16 Dec. at ¶ 20 (describing outdoor exercise as once per week for 40 minutes).

17 83. The amount of time that Plaintiffs are permitted to spend in indoor  
18 common areas is also severely limited. Defendants require Plaintiffs and other  
19 immigration detainees to be locked in their cells whenever the prison's general  
20 population of prisoners are being moved throughout the facility, resulting in  
21 several hours of lockdown each day that Plaintiffs would not experience if they  
22 were not being imprisoned in the same facility as prisoners. *See* Ex. 10, E.  
23 Berrios Banegas Dec. at ¶ 5 (describing extremely limited out of cell time);  
24 Ex. 9, M. Escoto Cortez Dec. at ¶ 6 (same); Ex. 11, R. Padilla Flores Dec. at  
25 ¶ 3 (lockdown 24 hours per day on weekends for the first month at Victorville).

26 84. From June 8 through July 13, 2018, there were no clocks  
27 anywhere in the cell blocks in which the Plaintiffs and other civil detainees are  
28

1 imprisoned. As a result, they had no way to tell the time of day or to mark the  
2 passage of time, which added to their sensory deprivation and disorientation.

3 85. Detainees have no access to educational or other programming,  
4 work opportunities, or even reading materials in languages they understand.  
5 For example, Plaintiff Atinder Paul Singh reports that there are no books in his  
6 building in a language he can understand. Ex. 4, A.P. Singh Dec. at ¶ 7.  
7 Mr. Rodriguez Rivera was detained alone in a small cell, with no radio or  
8 television. There was one TV in the common space of his housing unit, which  
9 he could see through the door of his cell, but the television was muted  
10 throughout the day. Mr. Rodriguez Rivera was unable even to access a book in  
11 Spanish for over a month, despite his repeated requests. Ex. 15, J. Rodriguez  
12 Rivera Dec. at ¶ 14.

13 86. Plaintiff Marcel Ngwa read in the Inmate Handbook he was given  
14 upon arrival at Victorville the list of classes available at the prison. When he  
15 asked whether he could take any of the classes listed there to improve his  
16 reading and writing, ICE officials responded, “sorry, [you] couldn’t.” Ex. 2,  
17 M. Ngwa Dec. at ¶ 8. On information and belief, these programs are available  
18 only to inmates at Victorville and not to ICE detainees.

19 87. The Plaintiffs and other civil detainees are forced to wear prison  
20 uniforms, and when they are transported to or from Victorville, they are  
21 shackled like convicted prisoners. Their hands are cuffed to belly chains, and  
22 they wear ankle shackles that connect their feet via a short chain that severely  
23 limits their ability to walk normally. Plaintiff Aquino reports that “[w]hen I  
24 was moved to Victorville, I was shackled. I had handcuffs on my wrists and  
25 they were tied to a belly chain. I also had a chain between my ankles and cuffs  
26 around my ankles. The ankle cuffs cut my skin. . . . We were shackled for  
27 the whole bus ride, which was 4 or 5 hours long. I have never been chained  
28 like that in my life.” Ex. 6, N. Granados Aquino Dec. at ¶ 5.

1           88. Upon his arrival at Victorville, Plaintiff Aquino was informed by  
2 an officer that “the more food you ask for, the less we’re going to give you.  
3 The more you ask us to let you out, the less we’re going to.” *Id. at 6.* Mr.  
4 Granados Aquino was still shackled at the time. *Id.* Correctional officers at  
5 Victorville informed Plaintiff Teneng that “the rules at a federal prison are  
6 stricter than a jail.” Ex. 1, S. Teneng Dec. at ¶ 7.

7           89. When he was suffering excruciating pain from a kidney stone,  
8 Plaintiff Antush Kumar was transported to the hospital in full shackles. While  
9 at the local hospital receiving treatment, he was chained to the hospital bed  
10 despite the lack of any indicia that he was a threat to any others in the hospital.  
11 Ex. 3, A. Kumar Dec. ¶¶ 7-8.

12           90. As a result of the many hours of imprisonment in cells, with no  
13 reading material, no religious or other programming, and virtually no  
14 information about the processing of their immigration and/or asylum  
15 proceedings, Plaintiffs and other ICE detainees are suffering from anxiety, fear,  
16 apprehension, enforced idleness, fatigue, and, in many instances, depression,  
17 including suicidal ideation.

18           91. Faced with harsh, punitive conditions, some detainees have been  
19 coerced into abandoning their immigration claims and returning to their home  
20 countries rather than remain incarcerated at Victorville. Emerson Berrios  
21 Banegas, who had planned to seek asylum, reported, “I signed papers agreeing  
22 to be deported. I do not want to go back but I signed the papers because I do  
23 not like being treated like a criminal prisoner.” *See* Ex. 10, E. Berrios Banegas  
24 Dec. at ¶ 3. Detainees who came to this country to exercise their right to seek  
25 asylum have expressed shock at the conditions of their confinement. Plaintiff  
26 Teneng said, “I didn’t expect to be sent to prison. I came here as an asylum  
27 seeker, seeking liberty.” Ex. 1, S. Teneng Dec. at ¶ 17. Similarly, Mr. Diallo  
28

1 said, “I don’t understand why I am being held in a prison since I am just an  
2 immigrant asking for asylum.” Ex. 18, O. Diallo Dec. at ¶ 10

3 92. Plaintiffs are detained ostensibly to ensure their appearance at  
4 immigration proceedings, but detainees report that they have not spoken to ICE  
5 officials regarding their cases. Plaintiff Aquino reports that he has been unable  
6 to access information about his immigration case. Ex. 6, N. Granados Aquino  
7 Dec. at ¶ 19. Detainees have been told that their immigration cases will not  
8 proceed until they are moved to an immigration detention center, such as the  
9 nearby Adelanto facility. ICE agents told Mr. Granados Aquino “to think of  
10 Victorville like a hotel.” *Id.*

11 93. These individuals are not being detained because they stand  
12 accused of a crime, much less convicted of one. Yet the conditions under  
13 which these civil detainees are being imprisoned are no better than, and in  
14 some instances worse than, the conditions to which the population of convicted  
15 prisoners at Victorville is subjected.

16 94. On information and belief, ICE routinely detains immigrants in  
17 conditions that are far less restrictive and punitive than those at Victorville.  
18 The conditions to which Defendants are subjecting Plaintiffs and other  
19 detainees violate their own standards applicable at other facilities where ICE  
20 detainees are held.

21 95. Significantly less restrictive and more humane means exist of  
22 ensuring civil detainees’ appearance at immigration proceedings. For example,  
23 Defendants offer to some individuals the opportunity to parole into the United  
24 States on their own recognizance. Additionally, Defendants maintain a bond  
25 system whereby individuals may be released upon posting a cash bond as low  
26 as \$1,500. Some released individuals are required to wear a GPS-enabled  
27 ankle monitoring device while others are not.

28

1           96. The conditions of confinement at Victorville, and the very  
2 deprivation of the Plaintiffs' liberty, are excessive in relation to, and not  
3 reasonably related to, the legitimate objective of ensuring Plaintiffs' and other  
4 detainees' appearances at future immigration proceedings.

5           97. The BOP's Program Statement on Religious Beliefs and Practices,  
6 Victorville USP's Inmate Handbook, and ICE's Religious Practices and Policy  
7 all represent less restrictive means that could be used by Defendants.

8                               **II. INJUNCTIVE RELIEF**

9           98. Plaintiffs re-allege and incorporate by reference paragraphs 1-97  
10 of this Complaint as if fully set out herein.

11           99. Plaintiffs and the putative class are entitled to preliminary and  
12 permanent injunctive relief.

13           100. Defendants have acted, and threaten to act, to deprive Plaintiffs,  
14 and the others they seek to represent, of their constitutional and statutory rights.

15           101. Plaintiffs and those similarly situated have suffered irreparable  
16 physical and psychological injury and the loss of fundamental due-process and  
17 religious-exercise rights. They have been and will continue to be subjected to  
18 serious risk of irreparable harm as the result of imprisonment at Victorville.

19           102. Defendants have been and are aware of the conditions and  
20 deprivations complained of herein. In the alternative, Defendants have acted  
21 with deliberate indifference regarding the conduct and conditions described  
22 herein.

23           103. Plaintiffs and putative class members have no plain, adequate, or  
24 speedy remedy at law.

25                               **III. CLASS ACTION ALLEGATIONS**

26           104. Plaintiffs re-allege and incorporate by reference paragraphs 1-103  
27 of this Complaint as if fully set out herein.

1           105. Plaintiffs Stephenson Awah Teneng, Marcel Ngwa, Ankush  
2 Kumar, Gurjinder Singh, Atinder Paul Singh, and Noe Mauricio Granados  
3 Aquino bring this action on behalf of themselves and all other persons who are  
4 similarly situated, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1),  
5 and 23(b)(2), and in compliance with Local Rule 23-3.

6           106. With respect to the First Claim herein, Plaintiffs seek to represent  
7 a class (the “Civil Detainee Class”) consisting of: “All persons who are now,  
8 or in the future will be, in the legal custody of the U.S. Immigrations and  
9 Customs Enforcement (‘ICE’) and housed at Federal Correctional Institution  
10 (‘FCI’) Victorville.”

11           107. There are multiple questions of law and fact common to the  
12 putative Civil Detainee Class, including:

- 13           a. The sufficiency of access to medical and mental health care for  
14           civil detainees at Victorville;
- 15           b. The sufficiency of access to adequate nutrition for civil detainees  
16           at Victorville;
- 17           c. Whether the conditions at Victorville are unnecessarily restrictive  
18           and/or punitive;
- 19           d. Whether civil detainees at Victorville are confined in conditions  
20           similar to, or more restrictive than, persons convicted of criminal  
21           offenses; and
- 22           e. Whether deprivation of the aforementioned results in  
23           constitutional or statutory violations.

24           108. The putative Civil Detainee Class is so numerous that joinder of  
25 all members would be impracticable. There are currently approximately 1,000  
26 civil detainees imprisoned at Victorville. The putative Civil Detainee Class is  
27 fluid, with detainees arriving at and leaving Victorville every day, making  
28 joinder of all members not just impracticable but impossible.

1           109. Prosecution of separate actions by individual class members  
2 would create a risk of inconsistent or varying adjudications with respect to  
3 individual class members that would establish incompatible standards of  
4 conduct for defendants, or adjudications with respect to individual class  
5 members that, as a practical matter, would be dispositive of the interests of  
6 other members not parties to the individual adjudications or would  
7 substantially impair their ability to protect their interests.

8           110. The claims of the Plaintiffs are typical of the claims of the  
9 putative Civil Detainee Class. Each of the Plaintiffs, like all putative class  
10 members in the Civil Detainee Class, is a civil detainee at Victorville, subject  
11 to the same conditions of confinement challenged here. The claims of the  
12 Plaintiffs arise from the same policies, practices, and courses of conduct, and  
13 their claims are based on the same theory of law as the Civil Detainee Class's  
14 claims are.

15           111. All of the Plaintiffs will fairly and adequately represent the  
16 interests of all members of the putative Civil Detainee Class because they seek  
17 relief on behalf of the class they represent as a whole and have no interest  
18 antagonistic to other members of the class. The plaintiffs are represented by  
19 counsel from the Prison Law Office; the Civil Rights Education and  
20 Enforcement Center; and the American Civil Liberties Union ("ACLU")  
21 National Prison Project and ACLU Program on Freedom of Religion and  
22 Belief. Counsel are experienced in class action, complex litigation, detention  
23 and prisoners' rights litigation, religious liberty law, and constitutional law  
24 generally.

25 **Religious Freedom Subclass**

26           112. With respect to the Second and Third Claims herein, Plaintiffs  
27 Marcel Ngwa, Atinder Paul Singh, Gurjinder Singh, and Noe Mauricio  
28 Granados Aquino further seek to represent a subclass (the "Religious Freedom

1 Subclass”) consisting of: “All religious persons who are now, or in the future  
2 will be, in the legal custody of ICE and housed at FCI Victorville, and whose  
3 ability to practice their religious beliefs is or would be impeded or substantially  
4 burdened by Defendants’ policies and practices.”

5 113. There are multiple questions of law and fact common to the  
6 putative Religious Freedom Subclass, including:

- 7 a. The sufficiency of access to religious services or other  
8 adequate opportunities for group prayer, congregate  
9 worship, or consultation with clergy for civil detainees at  
10 Victorville;
- 11 b. The sufficiency of access to meals that comport with  
12 detainees’ religious beliefs for civil detainees at Victorville;
- 13 c. The sufficiency of access to the possession and wearing of  
14 religious headwear, jewelry, and other religious items for  
15 civil detainees at Victorville;
- 16 d. The sufficiency of access to religious texts for civil  
17 detainees at Victorville;
- 18 e. Whether deprivation of the aforementioned impermissibly  
19 infringes on detainees’ religious exercise; and
- 20 f. Whether deprivation of the aforementioned results in  
21 constitutional or statutory violations.

22 114. The putative Religious Freedom Subclass is so numerous that  
23 joinder of all members would be impracticable. The precise number of the  
24 subclass is difficult to ascertain, as Defendants do not track or report detainees’  
25 religious beliefs, but upon information and belief, Plaintiffs estimate that it is at  
26 least 150. Moreover, the putative Religious Freedom Subclass is fluid, with  
27 detainees arriving at and leaving Victorville every day, making joinder of all  
28 members not just impracticable but impossible.



1           115. Prosecution of separate actions by individual class members  
2 would create a risk of inconsistent or varying adjudications with respect to  
3 individual class members that would establish incompatible standards of  
4 conduct for defendants, or adjudications with respect to individual class  
5 members that, as a practical matter, would be dispositive of the interests of  
6 other members not parties to the individual adjudications or would  
7 substantially impair their ability to protect their interests.

8           116. The claims of Plaintiffs Marcel Ngwa, Atinder Paul Singh,  
9 Gurjinder Singh, and Noe Mauricio Granados Aquino are typical of the claims  
10 of the putative Religious Freedom Subclass, since their claims arise from the  
11 same policies, practices, and courses of conduct, and their claims are based on  
12 the same theory of law as the Religious Freedom Subclass's claims are.

13           117. Plaintiffs Marcel Ngwa, Atinder Paul Singh, Gurjinder Singh, and  
14 Noe Mauricio Granados Aquino will fairly and adequately represent the  
15 interests of all members of the putative Religious Freedom Subclass because  
16 they seek relief on behalf of the class they represent as a whole and have no  
17 interest antagonistic to other members of the class. The plaintiffs are  
18 represented by counsel from the Prison Law Office; the Civil Rights Education  
19 and Enforcement Center; and the American Civil Liberties Union ("ACLU")  
20 National Prison Project and ACLU Program on Freedom of Religion and  
21 Belief. Counsel are experienced in class action, complex litigation, detention  
22 and prisoners' rights litigation, religious liberty law, and constitutional law  
23 generally.

24                           **IV. CLAIMS FOR RELIEF**

25   **FIRST CLAIM**

26                           **(Violation of the Due Process Clause of the Fifth Amendment  
27 to the United States Constitution)**

28           118. Plaintiffs re-allege and incorporate by reference paragraphs 1-116  
of this Complaint as if fully set out herein.

1           119. Due process prohibits the use of detention as a means of punishing  
2 civil detainees. *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001)  
3 (acknowledging that immigration detention is civil); *Jones v. Blanas*, 393 F.3d  
4 918, 932 (9th Cir. 2004); *King v. County of Los Angeles*, 885 F.3d 548 (9th Cir.  
5 2018).

6           120. As the United States Court of Appeals for the Ninth Circuit has  
7 held, “[A civil] detainee is entitled to ‘more considerate treatment’ than his  
8 criminally detained counterparts. . . . Therefore, when a [civil] detainee is  
9 confined in conditions *identical to, similar to, or more restrictive than* those in  
10 which criminal counterparts are held, we presume that the detainee is being  
11 subjected to ‘punishment.’” *Jones*, 393 F.3d at 933 (citations omitted)  
12 (emphasis added).

13           121. As an initial matter, BOP policy makes clear that that ICE  
14 detainees at Victorville are equivalent to criminal “pre-trial inmates.”<sup>9</sup> The  
15 *Jones* presumption is therefore triggered in this case.

16           122. In addition, conditions of confinement that are expressly intended  
17 to punish, that are not reasonably related to a legitimate governmental  
18 objective, or that are excessive in relation to that objective, constitute  
19 punishment in violation of the due process clause.

20           123. The conditions of confinement at Victorville for immigration civil  
21 detainees violate the Due Process Clause.

22           124. For example, Defendants have deprived and continue to deprive  
23 Plaintiffs and putative class members imprisoned at Victorville of adequate and  
24 necessary health care by, without limitation:

- 25           a. Failing to provide sufficient medical and mental health  
26           screenings to civil detainees upon their arrival at

27 \_\_\_\_\_  
28 <sup>9</sup> See BOP Program Statement 7331.04, *available at*  
[https://www.bop.gov/policy/progstat/7331\\_004.pdf](https://www.bop.gov/policy/progstat/7331_004.pdf).

1 Victorville. As a result of Defendants' actions, Plaintiffs  
2 and other civil detainees have not received adequate  
3 medical or mental health care for conditions existing at the  
4 time they arrived at Victorville, or that have arisen since  
5 their imprisonment there.

- 6 b. Failing to staff Victorville with adequate numbers of  
7 qualified medical or mental health care providers and  
8 custody staff to service the civil detainee population.
- 9 c. Failing to provide a method by which Plaintiffs and other  
10 detainees can seek non-emergency medical or mental health  
11 care when in their cells, or by which they can seek any sort  
12 of medical or mental health care when outside of their cells.
- 13 d. Failing to respond to Plaintiffs' or other detainees' requests  
14 for emergency help, including by using the emergency  
15 button located in their cells.
- 16 e. Failing to respond to Plaintiffs' non-emergency requests for  
17 medical care, and failing to follow-up on known medical  
18 and mental health concerns.

19 125. As a result of Defendants' practices and policies, Plaintiffs are  
20 exposed to a significant risk of serious harm to which Defendants are  
21 deliberately indifferent, in violation of Plaintiffs' rights under the Due Process  
22 clause of the Fifth Amendment.

23 126. In addition, Defendants are systemically failing to provide  
24 adequate nutrition to Plaintiffs by serving meals that are inedible or of  
25 insufficient size or nutritional value, and by denying Plaintiffs adequate time to  
26 eat the food they are provided. As a result of Defendants' policies and  
27 practices, Plaintiffs do not receive adequate nutrition at Victorville, creating a  
28 substantial risk of serious harm to which Defendants are deliberately

1 indifferent, in violation of Plaintiffs' rights secured by the Due Process clause  
2 of the Fifth Amendment.

3 127. Defendants severely limit Plaintiffs' access to outdoor exercise to  
4 only a handful of hours each week and such limited and inadequate  
5 opportunities to exercise outside are not regularly scheduled.

6 128. Defendants severely limit Plaintiffs' out-of-cell time by  
7 maintaining a policy under which Plaintiffs are on lockdown several times  
8 throughout the day in order to accommodate the movement of Victorville's  
9 prisoner population.

10 129. Defendants have impeded Plaintiffs' and other detainees' ability  
11 to practice their faith by refusing to provide religious services and meals that  
12 meet detainees' religious needs, severely impeding detainees' ability to wear  
13 and possess religious items, and denying detainees access to religious texts,  
14 among other restrictions.

15 130. The conditions described herein, which are illustrative and not  
16 exhaustive, violate the Due Process clause because they, individually and  
17 collectively: (a) are identical to, similar to, or more restrictive than those in  
18 which persons convicted of criminal offenses at Victorville are confined;  
19 (b) are expressly intended to punish; (c) are not reasonably related to legitimate  
20 governmental objectives; and/or (d) are excessive in relation to those  
21 objectives.

## 22 **SECOND CLAIM**

### 23 **(Violation of the Free Exercise Clause of the First Amendment)**

24 131. Plaintiffs re-allege and incorporate by reference paragraphs 1-130  
25 of this Complaint as if fully set out herein.

26 132. By Defendants' conduct alleged above, they have violated, and  
27 continue to violate, Plaintiffs' and the other detainees' rights under the Free  
28 Exercise Clause of the First Amendment to the U.S. Constitution.

1 133. Defendants’ restriction of Plaintiffs’ and other detainees’ ability to  
2 exercise their religion, as described in detail above, is not narrowly tailored to  
3 further a compelling governmental interest. Nor is there a rational basis or  
4 legitimate penological interest upon which Defendants may justify their  
5 conduct, especially in light of the Defendants’ own written policies pertaining  
6 to religious exercise and the distinctions between civil immigration detainees  
7 and convicted persons.

8 **THIRD CLAIM**  
9 **(Violation of the Religious Freedom Restoration Act,**  
10 **42 U.S.C § 2000bb, et seq.)**

11 134. Plaintiffs re-allege and incorporate by reference paragraphs 1-133  
12 of this Complaint as if fully set out herein.

13 135. Defendants’ policies and practices restricting and impeding  
14 Plaintiffs’ and the other detainees’ religious exercise, as described above,  
15 substantially burden Plaintiffs’ and the other detainees’ exercise of their  
16 sincerely held religious beliefs. Because of Defendants’ conduct, Plaintiffs and  
17 the other detainees have been, and continue to be, severely impeded or  
18 prevented outright from attending religious services, engaging in congregational  
19 worship and group prayer, consulting with clergy and religious leaders,  
20 following religious requirements for their diet, wearing religious headgear and  
21 religiously significant jewelry, possessing other religious items, and accessing  
22 religious texts for reading and religious study. Unless this Court intervenes,  
23 Plaintiffs and the other detainees will be forced to abandon, or significantly  
24 limit, their religious practices and violate their sincerely held religious beliefs  
25 throughout their entire imprisonment at Victorville.

26 136. Under RFRA, Defendants may not impose these substantial  
27 burdens on Plaintiffs and the other detainees unless they can demonstrate that  
28

1 doing so is the least restrictive means of furthering a compelling governmental  
2 interest.

3 137. Defendants have no compelling interest in treating Plaintiffs and  
4 the other detainees in this manner.

5 138. Even if Defendants could identify a compelling interest to support  
6 their policies and practices pertaining to detainees' religious exercise, they  
7 have not used the least restrictive means to further that interest. The BOP's  
8 Program Statement on Religious Beliefs and Practices, Victorville USP's  
9 Inmate Handbook, and ICE's Religious Practices and Policy all represent less  
10 restrictive means that could be used by Defendants. To eliminate the  
11 substantial burdens on Plaintiffs' and the other detainees' religious exercise,  
12 Defendants could also simply release Plaintiffs and the other detainees from  
13 imprisonment at Victorville, in the same manner that civil detainees have  
14 previously been treated.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs respectfully ask this Court to exercise its  
17 federal question jurisdiction over this actual controversy and:

- 18 (a) certify the Civil Detainee Class and Religious Freedom Sub-Class  
19 as proposed above, appoint the Named Plaintiffs to serve as  
20 representatives of those two Classes and appoint undersigned  
21 counsel to represent the two Classes;
- 22 (b) enter an order preliminarily and permanently enjoining  
23 Defendants from imprisoning Plaintiffs, or any member of the  
24 Civil Detainee Class, at Victorville, and set a date certain by  
25 which all such detainees must be removed therefrom;
- 26 (c) enter an order preliminarily and permanently enjoining  
27 Defendants from depriving Plaintiffs:  
28 i. of minimally adequate health care;

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- ii. of adequate food, clean non-prison uniform clothing, freedom of movement, and other programming or activities that do not cause physical, emotional, and psychological harm and other affronts to basic human dignity;
- iii. of their constitutional and statutory rights to exercise their freedom of religion;
- iv. of their rights to due process of law as a result of their being imprisoned at Victorville, in conditions that are excessive and constitute punishment;

- (d) award Plaintiffs their attorneys’ fees and costs; and
- (e) enter such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: August 1, 2018

/s/ Margot K. Mendelson  
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