

SETTLEMENT AGREEMENT

This Class Settlement Agreement (“Agreement”) is entered into by and between all parties in *Giotto v. Mayorkas*, 1:20-cv-453-LM (D.N.H.) by and through their counsel. The Parties enter into this Agreement as of the date it is executed by all Parties, and it is effective upon approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

RECITALS

WHEREAS, on April 15, 2020, Plaintiffs filed a petition for habeas corpus, pursuant to 28 U.S.C. § 2241, and a complaint for declaratory and injunctive relief on behalf of themselves and a putative class of civil immigration detainees housed at the Strafford County Department of Corrections (“SCDOC”). The petition claimed that Respondents, the Acting Secretary of the United States Department of Homeland Security, the Acting Field Director of Immigration and Customs Enforcement (“ICE”), and the Superintendent of SCDOC, were acting with deliberate indifference to their health and safety by detaining them in conditions that placed them at a substantial risk of harm of contracting COVID-19;

WHEREAS, on May 4, 2020, the Court provisionally certified a class of all ICE detainees at SCDOC for the limited purpose of holding bail hearings for class members whose medical condition(s) placed them at a heightened risk of contracting COVID-19;

WHEREAS, on May 14, 2020, the Court issued an order that Respondents engaged in deliberate indifference by disregarding the risk COVID-19 posed to Plaintiffs by failing to take reasonable measures to abate it;

WHEREAS, the Parties have concluded that further litigation would be protracted and expensive, and that entering into this Agreement is a fair, adequate, and reasonable settlement of the Action;

WHEREAS, counsel for Plaintiffs have concluded that the terms and conditions of this Agreement are in the best interests of Plaintiffs;

WHEREAS, Respondents have concluded that this Agreement is in the public interest, as it avoids further diversion of governmental resources to adversarial action and helps mitigate risks associated with the spread of COVID-19;

NOW, THEREFORE, after taking into account these factors, as well as the risks of further litigation, the Parties have agreed to settle this matter in the manner and upon the terms set forth in this Agreement.

ACCORDINGLY, it is hereby STIPULATED AND AGREED, by and among the Parties, through their respective attorneys, subject to the approval of the Court pursuant to Federal Rule of Civil Procedure 23(e), in consideration of the benefits flowing to the Parties from this Agreement, that this Agreement constitutes a full, fair, and complete settlement of the Action, upon and subject to the following terms and conditions:

I. Definitions

- A. The “Action” shall refer to the lawsuit *Giotto v. Mayorkas*, 1:20-cv-453-LM (D.N.H.).
- B. “Plaintiffs” or “Class Members” shall mean all individuals held in civil immigration detention at the Strafford County Department of Corrections (SCDOC) between April 17, 2020, to the expiration of this Agreement. *See Gomes/Giotto v. Acting Sec’y, United States Dep’t of Homeland Sec.*, 561 F. Supp. 3d 93 (D.N.H. 2021), Dkt. No. 351 at 14.
- C. “CDC Guidance” means guidance, policies, recommendations, and other documents by the U.S. Centers for Disease Control and Prevention (CDC) related to COVID-19.
- D. “Consistent with CDC Guidance and the PPECGP (ICE’s Enforcement and Removal Operations Post Pandemic Emergency COVID-19 Guidelines and Protocols)” or “So long as consistent with CDC Guidance and the PPECGP,” means that, at a minimum, Defendants will adhere to guidelines provided by each of these sources of COVID-19 protocols with respect to operation of the Facility.
- E. “Court” means the U.S. District Court for the District of New Hampshire.
- F. “Detainee” or “Detainees” shall mean any person detained at the Strafford County Department of Corrections (SCDOC) in Dover, New Hampshire under the authority of ICE.
- G. “Facility” shall mean the Strafford County Department of Corrections (SCDOC) in Dover, New Hampshire.
- H. “Defendants” shall mean all Defendants in this case, including both the Federal Defendants and the SCDOC Defendant Facility Administrator.
- I. “Federal Defendants” shall mean the Secretary of Homeland Security in his/her official capacity, and the ICE ERO Field Office Director for ICE ERO’s Boston Field Office in his/her official capacity.
- J. “Defendant Facility Administrator” shall mean the Defendant SCDOC Superintendent.
- K. “SCDOC Staff” shall refer to employees and contractors of SCDOC and who are managed and/or directed by the Defendant Facility Administrator.
- L. “Post Pandemic Emergency COVID-19 Guidelines and Protocols (PPECGP)” shall mean the operative version of ICE’s COVID-19 Pandemic Response Requirements document that sets forth expectations and assists ICE detention facility operators in sustaining detention operations while mitigating risk to the safety and wellbeing of detainees, staff, contractors, visitors, and stakeholders due to COVID-19.

- M. “IHSC interim medical guidance” shall mean medical guidance issued by the ICE Health Service Corps (IHSC) when medical and public health issues require rapid changes and notifications faster than a new PPECGP version can be developed and approved. Per the terms of this settlement, all IHSC interim medical guidance will be binding at the Facility.
- N. “Vulnerability” means one of more the risk factors for severe illness from COVID-19, as defined by the CDC. “Vulnerable Class Members” means Class Members with COVID-19 Vulnerability.

II. Purpose of the Settlement Agreement

The Parties acknowledge and agree that this Agreement shall constitute a full, fair, and complete settlement of *Giotto v. Mayorkas*, 1:20-cv-453-LM (D.N.H.).

III. COVID-19 Protocols at the Facility

A. ICE’s Post Pandemic Emergency COVID-19 Guidelines and Protocols (“PPECGP”)

1. Unless otherwise specified below in Section III.B, Defendants shall abide by the most current version of the ICE PPECGP, as modified by any IHSC interim medical guidance, and implement its terms for class members at the Facility.
2. The Parties anticipate that ICE may continue to update its PPECGP consistent with CDC guidance, including by issuing IHSC interim medical guidance prior to the release of a new PPECGP.
3. Defendants do not need to consult with Plaintiffs prior to updating the PPECGP or issuing an IHSC interim medical guidance.
4. Federal Defendants agree to notify Plaintiffs’ counsel within ten days of when an updated PPECGP or IHSC interim medical guidance is issued and to provide any non-privileged Facility-specific policy documents, if created, that implement that guidance.
5. Defendants agree to abide by the dispute resolution process in Section VIII to address any concerns that Plaintiffs have regarding implementation of a new PPECGP or binding IHSC interim medical guidance. Plaintiffs recognize, however, that the contents of any PPECGP or IHSC interim medical guidance are not subject to amendment by outside parties.

B. Protocols at the Facility: So long as consistent with CDC guidance and the PPECGP, Defendants shall have the following protocols in place at the Facility.

Defendants may seek modifications of the protocols as provided in the dispute resolution process in Section VIII. These protocols include:

1. Intake and accompanying testing and quarantine procedures:

- i. Any new intake detainee displaying or reporting symptoms of COVID-19 will be instructed to wear a face mask, medically isolated, and referred to the medical unit for further evaluation, so long as consistent with CDC guidance and the PPECGP.
- ii. When required by CDC guidance and the PPECGP, Defendants shall administer a COVID-19 test to all new detainees who consent. Any detainee who tests positive for COVID-19 will be medically isolated, so long as consistent with CDC guidance and the PPECGP. Detainees who test positive on a COVID-19 test within 3 months of an original positive COVID-19 test will be treated consistent with CDC Guidance.
- iii. Any new detainee who is not tested for COVID-19 upon intake but is exhibiting symptoms of COVID-19 shall be placed into a routine observation period at intake, and housed separately from the rest of the facility's population in accordance with CDC guidance, so long as consistent with CDC guidance and the PPECGP. These detainees shall, if required by CDC guidance, be placed into medical isolation. Medical isolation shall be operationally distinct from administrative or disciplinary segregation, and efforts shall be made to provide similar access to radio, TV, reading materials, personal property, commissary, showers, clean clothing and linens, telephones, and legal materials as would be available in regular housing units.

2. Other case-by-case testing procedures:

- i. Subject to Section III.B.9 regarding the availability of tests, Defendants shall test any Facility detainee prior to inter-facility transfer when required by CDC and ICE guidance. "Inter-facility transfer" shall mean reassignment prior to release/book-out from the Facility, and prior to removal or transfer via ICE Air.
- ii. Defendants shall conduct additional testing for Class Members as required by CDC and ICE guidance.

3. Enhanced cleaning procedures:

- i. Defendants shall adhere to the CDC Guidance and PPECGP for cleaning and disinfection.
- ii. Defendants shall comply with the cleaning and disinfecting practices set forth in the PPECGP or IHSC interim medical guidance.

4. Masks:

- i. Defendants shall comply with CDC guidance, the PPECGP, federal, state, and local face mask protocols and remain current and compliant as such protocols evolve.
- ii. Defendants shall make available written and pictorial instructions on how to wear masks. Detainees shall be instructed to ask if they need a replacement mask and Defendants shall provide one.
- iii. Defendants will allow detainees and any non-detained person who enter the Facility to use a mask based on personal preference, informed by their perceived level of risk for infection based on their recent activities and their potential for developing severe disease if they are exposed.
- iv. The SCDOC may require SCDOC Staff to wear CDC-recommended personal protective equipment (PPE) as appropriate for their level of contact with the individual under medical isolation for all staff entering units where detainees are under held for an observation period before transfer to the general population, and any quarantine room, cell, or housing unit or any other situation where staff anticipate close contact with infectious aerosols or droplets with COVID-19.
- v. Defendants shall provide masks to SCDOC Staff and detainees at no cost to the employee or detainee.

5. Isolation of COVID-19 positive individuals.

- i. Defendants shall assign Class Members who test positive for COVID-19 to a housing unit for COVID-19 positive detainees, or another appropriate placement as permitted by CDC guidance (to include hospitalization outside the facility). Detainees who test positive on a COVID-19 test within 3 months of an original positive COVID-19 test will be treated consistent with CDC Guidance and the PPECGP. A detainee who is still considered to be infectious may be released from custody in accordance with guidance.

6. Diagnostic testing:

- i. Subject to Section III.B.9 regarding the availability of tests, Defendants shall engage in offering periodic testing of a sample of detainees at the Facility to monitor for possible outbreaks of COVID-19 so long as consistent with CDC guidance and the PPECGP.

- ii. Defendants shall perform such testing in accordance with CDC Guidance.
 - iii. To encourage such testing, Defendants shall explain the reason for such testing to detainees, including where positive cases have occurred in general population units.
7. Testing Results:
- i. In all cases of testing, a detainee's test results shall be provided to the tested detainee within 24 hours after receiving the test results.
8. Outbreak Protocols: An "outbreak" shall be defined, solely within the confines of this Agreement, as more than three positive COVID-19 detainees within seven days housed within the general population at the Facility.
- i. Federal Defendants may reassess for release all Class Members who were in any housing unit where a positive COVID-19 detainee giving rise to the outbreak is housed. This provision does not apply to Class Members who are subject to mandatory detention.
 - ii. Defendants will coordinate with local public health authorities to assess the response to the outbreak, to ensure released detainees are informed about opportunities for housing, including housing or quarantine sites provided by local public health authorities, and to ensure policies are in place for the safe release of detainees who are COVID-19 positive.
 - iii. Defendants shall employ the isolation practices identified above in Section III.B.5 as required during the course of an outbreak.
9. Testing Supplies: Provided that supplies are available, Defendants shall ensure a supply of COVID-19 tests for detainees sufficient to carry out the terms of this Agreement. Defendants shall make reasonable efforts to secure and maintain a supply of COVID-19 tests for detainees at the Facility sufficient to carry out this Agreement.
- i. In the event that the Defendants no longer have a sufficient supply of COVID-19 tests, Defendants shall immediately make reasonable efforts to obtain an alternative provider of such test, such as a local health authority.
 - ii. As soon as the Defendants know that they are unable to procure a supply of COVID-19 tests that allows them to satisfy the terms of this Agreement, Defendants shall inform Plaintiffs' counsel and the Court within one business day.

- iii. Defendants will further inform Plaintiffs' counsel of what efforts have been made to find an alternative provider of tests as required in Section III.B.9.i.
 - iv. Defendants may fail to comply with the terms of this section that require a testing supply only if they have strictly complied with the provisions of the preceding two paragraphs. In this event, Plaintiffs may seek further relief from the Court to mitigate the potential harm to Class Members due to the lack of testing supply.
 - 10. Ventilation: Defendants shall ensure HVAC systems operate properly and provide acceptable indoor air quality.
- IV. COVID-19 Therapeutic Drugs: Defendants shall, consistent with CDC and clinical guidance and the PPECGP and when no contraindications are present, timely offer detainees diagnosed with COVID-19 a full course of treatment, including medication, to treat COVID-19, subject to them meeting clinical criteria for such treatment.
- V. Vaccines
- A. Administration of Vaccines to Detainees:
- 1. Subject to Section V.A.2 below regarding the supply of vaccines and so long as consistent with CDC guidance and the PPECGP, Defendants shall offer a COVID-19 vaccine to all unvaccinated or not fully vaccinated detainees at the Facility, in line with the medical exceptions noted below at Section V.C, and shall administer a COVID-19 vaccine to every detainee who consents to receive one. Defendants will screen for current vaccination status prior to administering a vaccine. This Agreement specifies timelines for providing vaccines below in Section V.B.
 - 2. The Defendants shall be the primary provider of COVID-19 vaccinations to detainees. They shall make reasonable efforts to secure and maintain a supply of COVID-19 vaccines at the Facility sufficient to carry out this Agreement.
 - i. In the event that the Defendants no longer have a sufficient supply of COVID-19 vaccines, Defendants shall immediately make reasonable efforts to obtain an alternative provider of such vaccines, such as a local health authority.
 - ii. As soon as the Defendants know that they are unable to procure a supply of COVID-19 vaccines that allows them to satisfy the terms of this Agreement, Defendants shall inform Plaintiffs' counsel and the Court within one business day.

- iii. Defendants will further inform Plaintiffs' counsel of what efforts have been made to find an alternative provider of vaccines as required in Section V.A.2.i.
 - iv. Defendants may fail to comply with the terms of this section that require a vaccine supply only if they have strictly complied with the provisions of the preceding two paragraphs. In this event, Plaintiffs may seek further relief from the Court to mitigate the potential harm to Class Members due to the lack of vaccine supply.
3. In implementing this section, the Defendants shall administer a COVID-19 vaccine that has been given emergency use authorization by the Food & Drug Administration (FDA) or a COVID-19 vaccine that has received full approval from the FDA.

B. Timeline for Administering Vaccines to Detainees:

1. So long as consistent with CDC guidance and the PPECGP, as soon as practicable after, but at most within 14 days of intake, Defendants shall offer, and if a detainee consents, administer a COVID-19 vaccine or the initial dose of a two-dose COVID-19 vaccine to that detainee subject to Section V.A.2 above concerning the supply of vaccines, and subject to the medical exceptions noted below at Section V.C.
2. When intake testing is required by CDC guidance and the PPECGP, Defendants will inform detainees that declining to receive a COVID-19 test will delay the ability to receive a vaccine. In the event that a detainee still declines to receive a COVID-19 intake test and the detainee remains asymptomatic, Defendants shall offer, and if the detainee consents, administer a vaccine near the end of a detainee's time during the observation period and prior to transfer to the general population.
3. Defendants shall make available to detainees the opportunity to request their own vaccination appointments on the inmate tablet systems, located for use in public spaces of each general population unit. Defendants shall administer a vaccine in accordance with CDC guidance if the detainee so requests and is eligible in accordance with CDC guidance, subject to Section V.A.2 above regarding the supply of vaccines.

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

1. Defendants may choose not to administer a vaccine within the timeframes outlined in Section V.B or at all in individual cases if vaccination is medically contraindicated. Vaccination is medically contraindicated if (1) an individual is actively displaying COVID-19 symptoms, (2) an individual has tested positive for COVID-19 and has not completed the required quarantine period, (3) an individual has had a severe allergic reaction (e.g., anaphylaxis) after a previous dose or to a component of the

COVID-19 vaccine, (4) an individual has had an immediate allergic reaction of any severity to a previous dose or known (diagnosed) allergy to a component of the administered vaccine, or (5) an individual has another medical contraindication identified by the CDC.

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

D. Vaccine Education for Detainees

1. Defendants shall provide comprehensive vaccine education for new detainees at the Facility. This education shall include the following:
 - i. translated, written materials provided by the vaccine manufacturer in a language understood by the detainee;
 - ii. quarterly presentations by medical staff in English and Spanish;
 - iii. one-on-one counseling opportunities with interpretation access for all; and
 - iv. additional information about vaccines available for access to all detainees on the inmate tablet systems.
2. Defendants shall provide detainees who receive any COVID-19 vaccine with appropriate documentation of vaccination and shall not charge for vaccination or documentation. If a detainee is released from the Facility before the subsequent dose(s) of a multi-dose vaccine is due, Defendants shall provide documentation to the detainee of the date when the subsequent dose(s) is due.
3. Defendants will not continue to hold in custody someone otherwise eligible for release simply to provide the second dose of a two-dose vaccination series, or a booster shot. Defendants shall advise a detainee in this situation of the date they became eligible for a second dose upon release.

VI. Reporting Requirements

- A. Within one business day, Defendants shall report to Plaintiffs' counsel that any detainee—including those who are not being held under ICE's authority—has been hospitalized or has died due to COVID-19, including when that detainee has tested positive for, has been diagnosed with, or has a suspected case of COVID-19. ICE cannot require SCDOC to release any information about non-ICE detainees and any agreement to do so is solely within SCDOC's purview and any motions to enforce or allegations of breach would need to be brought solely against SCDOC.

B. Definitions:

1. "Hospitalization" shall include any instance in which a detainee is sent to the hospital for further tests or monitoring because of COVID-19 symptoms and does not require formal admission to the hospital. This reporting requirement does not apply to cases medically unrelated to COVID-19.
2. "Suspected case" shall be defined by reference to the CDC's clinical criteria to diagnose non-laboratory-confirmed COVID-19 cases.
3. The reporting requirement Section VI.A shall apply to any detainee currently in Defendants' legal custody, or any detainee who is released from custody while hospitalized. This specifically includes those being held in state custody and are not being held under ICE's authority.

C. For the duration of this Agreement, Defendants shall report only the following information to Plaintiffs' counsel on a weekly basis:

1. A roster of all detained Class Members,
2. When COVID testing is required by CDC and ICE guidance, COVID testing numbers of detained Class Members at the Facility,
3. Any positive COVID tests of detained Class Members at the Facility,
4. If negative pressure cells at the Facility have reached capacity,
5. Population levels at the Facility,
6. The name, Alien number, and country of origin of detained Class Members, and
7. Any arrivals of detained Class Members at the Facility.

VII. Duration of Agreement

- A. This Agreement shall expire, and the entirety of the obligations set forth within its terms shall become null and void, eight months after Final Approval.
- B. The Parties recognize that provisions of this Agreement operate as a form of prospective equitable relief. Should there come a time when a party believes that it is no longer equitable that all or part of this Agreement should have prospective application, the party seeking to dissolve the Agreement shall abide by the dispute resolution process identified in Section VIII. In the event the dispute is submitted to the Court for resolution, the decision on such a motion shall be governed by the legal standard and case law established for relief from judgment under Rule 60(b)(5) or (6) of the Federal Rules of Civil Procedure.

VIII. Dispute Resolution Mechanism

- A. The Parties shall meet and confer within 5 days in the event that (a) Plaintiffs believe there is an issue of noncompliance with the Settlement Agreement, or (b) Parties believe that a change in the Settlement Agreement is warranted at the Facility, including, but not limited to, the plans and protocols for COVID-19 safety or vaccine administration, or (c) to address disputes about the duration of this Agreement. Plaintiffs will agree to changes in the plans and protocols for COVID-19 safety at the Facility in accordance with changes to CDC guidance implementation of the same. Challenges not raised within 5 days of the Plaintiffs learning of (a) an issue or potential issue of noncompliance or (b) information supporting a belief that a change in the Settlement Agreement is warranted shall be deemed waived. The Parties agree to engage in good faith efforts to resolve these disputes about compliance or changes in plans and protocols for COVID-19 safety and vaccine administration at the Facility without further intervention from the Court.
- B. In the event the meet and confer fails to resolve the matter, the Parties agree to mediation before a mutually agreed-upon mediator or a magistrate judge of the United States District Court for the District of New Hampshire.
- C. If the issue cannot be resolved through the mediation, the Parties agree to then refer the dispute to the Court for resolution.
 1. This Agreement shall be governed by the standard principles of contract interpretation. To the extent there is a dispute over the meaning of the terms of this Agreement, any motion to enforce its terms would be treated accordingly.
 2. Any party seeking to modify the terms of this Agreement would be required to meet the standard for relief from judgment under Rule 60(b)(5) or (6) of the Federal Rules of Civil Procedure.
- D. Plaintiffs reserve the right to seek relief on an emergency or expedited basis, or to confer contemporaneously with seeking judicial relief when there is a need for immediate action to safeguard the lives and health of detainees. Plaintiffs will meet and confer with Defendants at least 24 hours prior to seeking relief. If not feasible within the timeline due to Defendants' availability, then Plaintiffs will instead provide notice to Defendants 24 hours prior.
- E. The Parties reserve all rights to pursue discovery on compliance with this Agreement, but only to the extent that it is limited to compliance issues. Such discovery would require prior authorization from the Court.

IX. Modification of this Agreement

The Parties may mutually agree to modifications of this Agreement. Any agreed upon modifications will result in an amended settlement agreement submitted to the Court as an entire

agreement subject to court enforcement under Section XVII below. The Parties recognize that new factual circumstances and/or developments in the scientific understanding of COVID-19 may warrant the need for changes to this Agreement.

X. Effective Date

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

XI. Court Approval and Retention of Jurisdiction

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

Subject to the terms of this Agreement, and upon the Court's approval of this Agreement pursuant to the requirements of Rule 23(e) of the Federal Rules of Civil Procedure (including, inter alia, notice to the Class and an opportunity for Class Members to submit objections), the Parties stipulate that the Court may enter an order dismissing this case with prejudice, provided that the Court expressly include in its dismissal order that it retains jurisdiction to enforce this Agreement. If this Agreement is not approved or the Court does not agree to retain jurisdiction, this Agreement shall be null and void. Dismissal of this case with prejudice shall also include dissolution of the conditions of release orders for Petitioners Marcus Giotto (Dkt. No. 118), Ernest Nsai (Dkt. No. 590), Anthony George-Hamilton (Dkt. No. 86), Zeike Reyes Pujoles (Dkt. No. 101), Waldemar Kaminski (Dkt. No. 153), and Emmanuel Evariste (Dkt. No. 184), as stipulated to by the parties in the separately executed Joint Stipulation Concerning Individual Detainees Released by Bail Orders. The conditions of release orders for Aung Myo Thet (Dkt. No. 69) and Adekunle Adeyanju (Dkt. No. 150) shall be dissolved with dismissal of this case, and those Petitioners may be subject to individual detention pursuant to applicable Federal law.

XII. Attorney Fees

- A. Federal Defendants agree to pay attorneys' fees and costs to counsel for Plaintiffs in the amount of \$193,000 ("Attorneys' Fee Settlement Amount"). Plaintiffs agree to accept ICE's payment of \$193,000 as full and complete satisfaction of Plaintiffs' claims for attorneys' fees, costs, and litigation expenses, inclusive of any interest.
- B. Subject to the foregoing provision, Federal Defendants shall deliver the Attorneys' Fee Settlement Amount to Plaintiffs' Counsel by electronic funds transfer into Plaintiffs' Counsel's designated account. Plaintiffs' Counsel shall provide to Federal Defendants all information necessary to accomplish the electronic funds transfer into that account within five business days of the Effective Date. Plaintiffs and their Counsel acknowledge that payment of the Attorneys' Fee Settlement Amount by Federal Defendants in accordance with the wire instructions shall resolve both Defendants' entire liability risk for such amount.
- C. Plaintiffs represent that they have no existing debts to the United States and that they are not subject to an offset under *Astrue v. Ratliff*, 560 U.S. 586 (2010).

- D. Named Plaintiff represents that his claim for attorney's fees, litigation costs, and other expenses have been assigned to his counsel, and ICE accepts the assignment and waives any applicable provisions of the Anti-Assignment Act, 31 U.S.C. § 3727.
- E. This Settlement Agreement does not waive Named Plaintiff's or his attorneys' tax liability, or any other liability owed to the United States government.
- F. Plaintiffs' Counsel is responsible fully for the allocation of and payment of the Attorneys' Fee Settlement Amount among themselves.

XIII. Additional Provisions

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

XIV. Release of Claims

- A. Upon final approval of this Agreement by the Court, Plaintiffs and all Class Members waive and release Defendants from liability for all claims, demands, rights, liabilities and causes of action for declaratory or equitable relief, including injunctive relief, known or unknown, that relate to risks associated with COVID-19 inside the Facility that existed prior to the execution of this Agreement, and which were or could have been alleged in the Action based on the same common nucleus of operative facts alleged.
- B. Nothing in this Agreement shall have any preclusive effect on any damages claim by Plaintiffs or any Class Members or any claim by Plaintiffs or any Class Members concerning any individual challenges to the legal basis of their custody, now or in the future.
- C. By agreeing to this Agreement and the releases contained herein, Defendants do not waive any defenses available to any Defendant or the United States in any other

pending or future action to claims that were or could have been made in the Action that arise from the same common nucleus of operative facts alleged by Plaintiffs.

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

XV. Approval of Class Settlement

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

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

B. Notice: Notice to Class Members, attached hereto as Exhibit A, shall be translated into Spanish and Portuguese. The Parties will propose to the Court that the notice shall be given to Class Members upon preliminary approval of the Settlement Agreement via the following: Posting in the Facility.

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

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

[T]he Court shall retain jurisdiction over all disputes between and among the Parties arising out of the Agreement, including but not limited to interpretation and enforcement of the terms of the Agreement, except as otherwise provided in the Agreement, for a term of eight months after Final Approval.

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

XVII. Enforcement

- A. The District Court shall have continuing jurisdiction to enforce the Settlement Agreement's terms, subject to the limitations in this Agreement. The Court shall only have jurisdiction to enforce material breaches of the Joint Stipulation Concerning Individual Detainees Released By Bail Orders against ICE on behalf of an individual Class Member, subject to appeal. Nothing in this Agreement shall be construed as granting the Court authority to enjoin or restrain the operation of the provisions of Chapter 4 of Part II of the Immigration and Nationality Act, other than with respect to the application of such provisions to an individual class member. Nothing in this Agreement shall be construed as a waiver by the federal government of any rights to assert the limitations on judicial relief set forth in 8 U.S.C. § 1252(f).
- B. Limitation on Court Orders. The Court shall retain jurisdiction to enter orders only after compliance with the dispute resolution procedures set forth in the Settlement Agreement. The Court shall not have jurisdiction to enter an order regarding compliance with the Joint Stipulation Concerning Individual Detainees Released By Bail Orders that applies to more than one individual Class Member. The Court shall not have jurisdiction to enter orders enforcing the Settlement Agreement that would violate 8 U.S.C. § 1252(f)(1).

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IN WITNESS WHEREOF, the Parties, by and through their authorized counsel, intending to be legally bound, have executed this agreement on the dates shown below:

MARCUS GIOTTO, CLASS REPRESENTATIVE

Dated: January 2, 2025

By: /s/ Marcus Giotto
Marcus Giotto

COUNSEL FOR CLASS PLAINTIFFS,

Dated: January 2, 2025

By: /s/ Gilles Bissonnette
Gilles R. Bissonnette
ACLU of New Hampshire
18 Low Avenue
Concord, NH 03301

Dated: January 2, 2025

By: /s/ David A. Vicinanza
David A. Vicinanza
Nixon Peabody LLP
900 Elm Street, 14th Floor
Manchester, NH 03101

JANE E. YOUNG
UNITED STATES ATTORNEY,

Dated: January 2, 2025

By: /s/ Robert J. Rabuck
Robert J. Rabuck
Assistant U.S. Attorney
Chief, Civil Division
NH Bar # 2087
53 Pleasant Street
Concord, New Hampshire
603-225-1552
rob.rabuck@usdoj.gov

EXHIBIT A

NOTICE OF PROPOSED SETTLEMENT
United States District Court for the District of New Hampshire,
Case No. 1:20-cv-453-LM (D.N.H.)

If you are a noncitizen who is detained by Immigration and Customs Enforcement at the Strafford County Department of Corrections, you may be a Class Member entitled to the benefits of COVID-19 mitigation measures while in detention at the Strafford County Department of Corrections.

A proposed settlement has been reached in a class action lawsuit called *Giotto v. Mayorkas*, 1:20-cv-453-LM (D.N.H.), currently pending in the United States District Court for the District of New Hampshire. This lawsuit is about the rights of civil immigration detainees who are detained in Immigration and Customs Enforcement (“ICE”) custody in the Strafford County Department of Corrections (“SCDOC”) in Dover, New Hampshire. The Parties in the lawsuit have reached an agreement to settle the case. The federal court must decide whether to approve the settlement.

This Notice will tell you about your rights under this proposed settlement. You are not being sued, and this is not an advertisement. If you think this settlement relates to you, please read this Notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

| | |
|------------------|---|
| Learn More | If you would like to learn more about the settlement, please read the summary below, contact your lawyer, or contact class counsel at the contact information on Pages 24-25. |
| Do Nothing | You do not need to do anything to receive the benefits of this settlement. |
| Object | You can write to the Court why you do not like the settlement. |
| Attend a Hearing | You can ask to speak in Court about the fairness of the settlement. |

What is this lawsuit about?

Giotto v. Mayorkas is a federal court case brought on behalf of a class of people who are in ICE custody at the SCDOC (“Class”). You are a “Class Member” if you meet the criteria listed below on Page 21.

The people who initially brought this lawsuit on April 17, 2020 were Robson Xavier Gomes, Darwin Aliesky Cuesta-Rojas, and Jose Nolberto Tacuri-Tacuri. Currently, the class representative is Marcus Vinicius Giotto, who is the “Named Plaintiff.” The Named Plaintiff brings this action against the Director of the Secretary of Homeland Security, the Field Office Director of Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO)

Boston Field Office; and the Facility Administrator of the SCDOC. Collectively, these parties are known as the “Defendants.” A case like this, called a “class action,” is brought on behalf of a group of people who have similar claims. The United States District Court for the District of New Hampshire is hearing this case, with the Honorable Landya B. McCafferty presiding. She is the Chief Judge for the District in Concord.

This case alleged, in part, that the lack of COVID-19 protocols and social distancing in the SCDOC put Class Members at a dangerous risk of contracting COVID-19 in violation of the United States Constitution. Accordingly, this case sought, among other things, appropriate measures such that the population of civil immigration detainees at the SCDOC could engage in adequate social distancing.

On May 14, 2020, the Court issued a written opinion holding that civil immigration detainees at the SCDOC with medical conditions placing them in a high-risk category with respect to COVID-19 are constitutionally entitled to bail hearings. *See Robson Xavier Gomes, et al. v. Acting Secretary, U.S. Dep’t of Homeland Sec.*, 460 F. Supp. 3d 132 (D.N.H. 2020) (Dkt. No. 123). On March 5, 2021, the Court certified a class of “all individuals who are now held in civil immigration detention at” the SCDOC seeking individual bail hearings to determine whether they should be released amid the COVID-19 pandemic because of the inability to be 6-feet apart from other detainees. Petitioner Robson Xavier Gomes was appointed class representative. *See Gomes v. Acting Sec’y, U.S. Dep’t of Homeland Sec.*, No. 20-cv-453-LM, 2021 U.S. Dist. LEXIS 41387 (D.N.H. March 5, 2021) (Dkt. No. 351). On December 22, 2021, the Court substituted Marcus Vinicius Giotto as the appointed class representative in this case. The case caption in this matter was changed accordingly.

Since this Court’s order requiring bail hearings for medically vulnerable immigration detainees amid the COVID-19 pandemic, the Court has conducted 17 bail hearings, with 10 individuals released by this Court.

During this case, Defendants have been required to report any positive COVID-19 case at the SCDOC under the federal court’s order. Defendants have also adopted a number of COVID-19 measures at the SCDOC, including testing people for COVID-19.

Due in part to the end of the federal COVID-19 Public Health Emergency declaration effective May 11, 2023, this settlement does *not* include eligibility for bail hearings for medically vulnerable civil immigration detainees. However, this agreement, as explained below, does contain requirements that the SCDOC, for eight months after the Court’s approval order, engage in mitigation measures to reduce the risk of this disease within the facility.

The Named Plaintiff and the Defendants have agreed to a settlement, which will (1) provide protections for people newly transferred to the SCDOC; (2) provide COVID-19 mitigation efforts at the SCDOC, subject to changes to the Centers for Disease Control and Prevention’s (“CDC”) Guidance and ICE guidance for detention centers unless otherwise specified; (3) provide for vaccination (including boosters), testing, appropriate isolation and quarantine for detainees who test positive for COVID-19, and other protocols to protect against the introduction and spread of

COVID-19 at the SCDOC, subject to CDC Guidance and ICE guidance for detention centers; and (4) ensure Class Members are timely identified.

The Defendants deny any wrongdoing but are settling the case in order to avoid the expenses and resources that would be needed to keep fighting the case. The Named Plaintiff and lawyers for the Class (“class counsel”) believe that the settlement provides important rights and benefits for the Class, and that it is in the best interest of the Class to settle the case, while avoiding the expense, delay, and uncertainty of continuing to litigate the case.

How do I know if I am a Class Member and therefore covered by the settlement?

You are a Class Member if you are in ICE custody at the SCDOC.

If you are not sure whether you qualify as a Class Member covered by the settlement, please contact class counsel at the information listed on Pages 24-25.

What does the settlement provide?

This is only a summary of the settlement. If you want to know more, you should read the settlement agreement or talk to a lawyer to learn more about it.

A: Specific Provisions to Limit the Introduction and Spread of COVID-19.

The settlement requires Defendants to implement specific procedures to limit the introduction and spread of COVID-19 at the SCDOC. Among other things, the settlement agreement provides that ICE and the Facility Administrator of the SCDOC will or will continue to:

- Implement policies and procedures for how Defendants will combat the spread of COVID-19 at the SCDOC;
- Unless otherwise specified in the Agreement, comply with CDC Guidance and the most current version of ICE’s Post Pandemic Emergency COVID-19 Guidelines and Protocols (“PPECGP”) on COVID-19 mitigation efforts in detention settings unless otherwise specified (Section III.A);
- When required by CDC guidance and the PPECGP, upon intake Defendants shall administer a COVID-19 test to all new detainees who consent. So long as consistent with CDC guidance and the PPECGP, any detainee who tests positive for COVID-19 will be transferred to a housing unit for COVID-19 positive detainees for continued monitoring, or otherwise isolated. (Section III.B.1);
- So long as consistent with CDC guidance and the PPECGP, any new detainee who is not tested for COVID-19 upon intake but is exhibiting symptoms of COVID-19 shall be placed into a routine observation period at intake, and housed separately from the rest of the facility’s population in accordance with CDC guidance. (Section III.B.1);
- Isolate detained persons who test positive for COVID-19, so long as consistent with CDC guidance and the PPECGP (Section III.B.5);

- Periodic testing of a sample of detainees at the SCDOC, so long as consistent with CDC guidance and the PPECGP (Section III.B.6);
- Provide masks to all detained persons, so long as consistent with CDC guidance and the PPECGP (Section III.B.4);
- Use of enhanced cleaning procedures, so long as consistent with CDC guidance and the PPECGP (Section III.B.3);
- May evaluate Class Members with medical vulnerabilities who are not subject to mandatory detention for release from detention, so long as consistent with CDC guidance and the PPECGP (Section III.B.8(i));
- Timely offer COVID-19 therapeutic drugs to individuals diagnosed with COVID-19 when clinically appropriate, consistent with CDC Guidance and the PPECGP (Section IV);
- Maintain testing supplies at the facility, provided that supplies are available. If testing supplies are not available, immediately make reasonable efforts to obtain testing supplies, and if not available, ICE must notify Plaintiffs' Counsel and the Court (Section III.B.9);
- Creation of "outbreak protocols" so long as consistent with CDC guidance and the PPECGP (Section III.B.8); and
- Ensuring HVAC systems operate properly and provide acceptable indoor air quality so long as consistent with CDC guidance and the PPECGP (Section III.B.10).

B: Provisions to Guarantee Timely Access to CDC-Recommended Vaccinations

In addition, the settlement provides several specific guarantees regarding vaccines for persons detained at the SCDOC. Among other things, the settlement agreement requires that ICE and the Facility Administrator of the SCDOC (Section V):

- Make reasonable efforts to maintain a supply of COVID-19 vaccines, provided that supplies are available. If vaccines are not available, immediately make reasonable efforts to obtain vaccines, and if not available, ICE must notify Plaintiffs' counsel and the Court;
- So long as consistent with CDC guidance and the PPECGP, administer vaccines to consenting, medically eligible, and newly arriving detainees as soon as possible, but at least within 14 days of intake; and
- Provide individualized vaccine educational opportunities, as well as other educational opportunities.

C: Information Reporting Requirements

The settlement agreement also requires ICE and the Facility Administrator of the SCDOC to report information to detained persons and class counsel, including (but not limited to) the following (Sections III.B.7 and VI):

- 1) To detained persons:
 - Individual COVID-19 test results within 24 hours of receiving all the test results for a housing unit so long as consistent with CDC guidance and the PPECGP; and

2) To class counsel:

- Within one business day, notice of any detainee at the SCDOC who has been hospitalized or has died due to COVID-19, including when that detainee has tested positive for, has been diagnosed with, or has a suspected case of COVID-19; and
- On a weekly basis the following:
 - A roster of all detained Class Members;
 - When COVID testing is required by CDC and ICE guidance, COVID testing numbers of detained Class Members at the Facility,
 - Any positive COVID tests of detained Class Members at the SCDOC,
 - If negative pressure cells at the SCDOC have reached capacity,
 - Population levels of detained Class Members at the SCDOC,
 - The name, Alien number, country of origin, and date of ICE apprehension of detained Class Members, and
 - Any arrivals or releases of detained Class Members at the SCDOC.

D: Other Provisions and Considerations

The terms of this settlement expire eight months after the Court's approval order. This settlement does not seek any money from the Government on behalf of the Class, except to reimburse Plaintiffs' attorneys for \$193,000 of their fees and costs in bringing this lawsuit.

If the settlement agreement is approved, the claims brought by the Named Plaintiff will be considered settled for all Class Members. If the settlement agreement is approved, you will not be able to sue ICE or the SCDOC separately for injunctive relief about the same legal claims in this lawsuit.

However, this settlement does not prevent Class Members from bringing individual lawsuits seeking money from Defendants for harms suffered while in their custody, or to bring other legal challenges for the basis of a Class Member's detention unrelated to COVID-19. All of the terms of the proposed settlement are subject to Court approval at a "Final Approval Hearing," which is explained below. A copy of this settlement agreement is available at <https://www.aclu-nh.org/en/cases/giotto-et-al-v-us-department-homeland-security> or, if this Notice was mailed, is enclosed.

What if I am a Class Member but don't agree with the settlement?

If you are satisfied with the settlement's terms, you don't have to do anything.

If you are not satisfied with the settlement, you do not have the right to opt out of the settlement. But you do have the right to file an objection asking the Court to deny approval for the settlement. The Court can only approve or deny the settlement; it cannot change the terms of the settlement. If the Court denies approval, Plaintiffs and Defendants will attempt to renegotiate the settlement. If no further settlement can be reached, the lawsuit will continue in court. If that is what you want to happen, you must object.

If you object, you must do so in writing. If you object in writing, you may also appear at the Final Approval Hearing (explained below), either in person or through your own attorney. The

requirement that you first submit a written objection before you can appear in court may be excused upon a showing of good cause. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must:

- Clearly identify the following case name and number: *Giotto v. Mayorkas*, 1:20-cv-453-LM (D.N.H.);
- Include the Class Member's name;
- Include an explanation of why the Class Member objects to the settlement, including why they are not satisfied, any supporting documents, and the reasons, if any, for wishing to appear and be heard at the Final Approval Hearing;
- Be submitted to the Court either by
 - (1) mailing them to the Clerk, U.S. District Court for the District of New Hampshire, 55 Pleasant Street, Room 110, Concord, NH 03301, or
 - (2) by filing them in person at any location of the United States District Court for the District of New Hampshire; and
- Be filed or postmarked within 30 days after this notice is posted.

The Court will require only substantial compliance with the requirements for submitting an objection.

When and where will the Court decide whether to approve the settlement?

The Final Approval Hearing will be held on _____, 2025, at _____ AM/PM at the United States District Court for the District of New Hampshire, 55 Pleasant Street, Concord, NH 03301, to determine the fairness, reasonableness, and adequacy of the proposed settlement. The date may change without further notice to the class. Please check the Court's Public Access to Court Electronic Records ("PACER") system at <https://ecf.nhd.uscourts.gov/>, or by visiting the office of the Clerk of the Court for the United States District Court for the District of New Hampshire, between 8:30 a.m. and 4:30 p.m., EST, Monday through Friday, excluding Court holidays to confirm that the date has not been changed. The date and time of the Final Approval Hearing will also be posted on the website of the American Civil Liberties Union of New Hampshire at <https://www.aclu-nh.org/en/cases/giotto-et-al-v-us-department-homeland-security>.

This notice merely summarizes the proposed settlement. For the full terms of the settlement, please see the attached settlement agreement. You should feel free to talk to your lawyer if you want to know more about the settlement.

The settlement agreement is also available at the following website:

<https://www.aclu-nh.org/en/cases/giotto-et-al-v-us-department-homeland-security>

You can also contact Class Counsel, SangYeob Kim, by phone at (603) 333-2081 or at these mail or email addresses:

- SangYeob Kim
sangyeob@aclu-nh.org
ACLU of New Hampshire
18 Low Avenue
Concord, NH 03301

Gilles R. Bissonnette
gilles@aclu-nh.org
ACLU of New Hampshire
18 Low Avenue
Concord, NH 03301

- Nathan P. Warecki
nwarecki@nixonpeabody.com
Nixon Peabody LLP
900 Elm Street, 14th Floor
Manchester, NH 03101

If you call the ACLU-NH using its main line at [\(603\) 225-3080](tel:6032253080), you will have to leave a voice message. We will set up a time to talk to you after receiving your voice message.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records ("PACER") system at <https://ecf.nhd.uscourts.gov/>, or by visiting the office of the Clerk of the Court for the United States District Court for the District of New Hampshire, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

Who represents the Class?

Class Counsel are:

Gilles R. Bissonnette
SangYeob Kim
ACLU of New Hampshire
18 Low Avenue
Concord, NH 03301

David A. Vicinanza
Nathan P. Warecki
Nixon Peabody LLP
900 Elm Street, 14th Floor
Manchester, NH 03101

EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

**MARCUS VINICIUS GIOTTO, on behalf
of himself and all those similarly situated,**

Petitioners-Plaintiffs,

v.

**ALEJANDRO MAYORKAS, Secretary,
United States Department of Homeland
Security,**

**MARCOS D. CHARLES, Acting Field
Office Director, Immigration and
Customs Enforcement, Enforcement and
Removal Operations; and**

**CHRISTOPHER BRACKETT,
Superintendent of Strafford County
Department of Corrections,**

Respondents-Defendants.

Civil No. 1:20-cv-453-LM

**[PROPOSED] ORDER GRANTING STIPULATED MOTION TO DISMISS AND
GRANTING FINAL APPROVAL OF PROPOSED CLASS SETTLEMENT**

The Parties have filed a Stipulated Motion to Dismiss the First Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Class Complaint for Declaratory and Injunctive Relief (Dkt. No. 5) and Grant Final Approval of the class action settlement. The Court has carefully considered the Class Settlement Agreement together with all exhibits thereto, all the filings related to the settlement, the arguments of counsel, and the record in this case. The Court also held a fairness hearing on _____, 2025, following notice to the class as approved by the Court's previous order granting preliminary approval of the Agreement. The Court finds that the Agreement is sufficiently fair, reasonable, and adequate.

IT IS HEREBY ORDERED THAT:

1. The First Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Class Complaint for Declaratory and Injunctive Relief (Dkt. No. 5) is dismissed with prejudice. The Parties shall bear their own attorney's fees and costs, except as provided by the Agreement.

2. The Agreement is hereby incorporated by reference in this Order, and all terms or phrases used in this Order shall have the same meaning as in the Agreement.

3. The Court grants final approval of the Agreement, finding that the terms of the Agreement are fair, reasonable, and adequate as required by Fed. Rule Civ. Proc. 23(e)(2).

4. The Court previously certified the class as "all individuals held in civil immigration detention at" the SCDOC. *Gomes/Giotto v. Acting Sec'y, United States Dep't of Homeland Sec.*, 561 F. Supp. 3d 93 (D.N.H. 2021), Dkt. No. 351 at 14. This is also the class for settlement purposes.

5. As specified in the Agreement, and notwithstanding the dismissal of this case, the Court shall retain jurisdiction over all disputes between and among the Parties arising out of the Agreement, including but not limited to interpretation and enforcement of the terms of the Agreement, except as otherwise provided in the Agreement, for a term of eight months after Final Approval.

6. Neither the settlement, nor any exhibit, document, or instrument delivered thereunder shall be construed as or deemed to be evidence of an admission or concession by Defendants or an interpretation of any liability or wrongdoing by Defendants, or of the truth of any allegations asserted by Plaintiffs, Class Members, or any other person.

7. The Parties' Joint Motion for Final Approval of Proposed Class Settlement ("Motion") is hereby GRANTED. The Court hereby approves the proposed class-wide relief set forth in the Agreement (attached to the Joint Motion).

IT IS SO ORDERED.

Dated this _____ day of _____, 2025.

Honorable Landya B. McCafferty
Chief Judge
United States District Court for the District of New Hampshire
Presented this [] day of [], 2025.

Attorneys for Federal Respondents-
Defendants

JANE E. YOUNG
United States Attorney

/s/ Robert J. Rabuck
Robert J. Rabuck
(N.H. Bar No. 2087)
Assistant U.S. Attorney
Chief, Civil Division
U.S. Attorney's Office
53 Pleasant Street, 4th Floor
Concord, NH 03301-3904
(603) 225-1552
rob.rabuck@usdoj.gov

Attorneys for Class Plaintiffs

By and through their attorneys
affiliated with the American Civil
Liberties Union of New
Hampshire Foundation and Nixon
Peabody LLP,

/s/ Gilles Bissonnette
Gilles R. Bissonnette
(N.H. Bar No. 265393)
SangYeob Kim
(N.H. Bar. No. 266657)
18 Low Avenue
Concord, NH 03301
(603) 333-2081
gilles@aclu-nh.org
sangyeob@aclu-nh.org

/s/ Nathan P. Warecki
David A. Vicinanza (N.H. Bar
No. 9403)
Nathan P. Warecki (N.H. Bar No.
20503)
NIXON PEABODY LLP
900 Elm Street, 14th Floor
Manchester, NH 03101
(603) 628-4000
dvicinanza@nixonpeabody.com
nwarecki@nixonpeabody.com