

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

JOAQUIN HERRERA-HERRERA,

Petitioner-Plaintiff,

v.

MICHAEL DOWNEY, in his individual capacity and official capacity as Sheriff of Kankakee County; CHAD KOLITWENZEW, Chief of Corrections of the Jerome Combs Detention Center; ROBERT GUADIAN, Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; MATTHEW ALBENCE, Acting Director, U.S. Immigration and Customs Enforcement; and CHAD WOLF, Acting Secretary, U.S. Department of Homeland Security,

Respondents-Defendants.

Case No. _____

**DECLARATION OF PETITIONER
JOAQUIN HERRERA-HERRERA IN
SUPPORT OF PETITIONER'S
EMERGENCY PETITION FOR A
WRIT OF HABEAS CORPUS**

AND

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

I, Joaquin Herrera-Herrera, make the following declaration based on my own personal knowledge, and if called to testify, I would do so competently as follows:

1. My name is Joaquin Herrera-Herrera. I live in Calumet City, Illinois.
2. I was born in 1959 in Mexico, where I am a citizen.
3. I have three U.S. citizen children. My son, Joaquin Herrera Jr., has two sons. I

cared for my oldest grandson, Isaiah Herrera, from the time he was six months old until he was seven years old. I would care for him on weekdays while my son and his wife were at work from 7:00 a.m. to 7:00 p.m. I used to take him to and from school, feed him lunch, take him to karate, and care for him until his parents returned home in the evening.

4. I have been self-employed for 37 years. I own a business called Jack's Vending Machine. I place and service vending machines in restaurants and doctor's offices in Chicago.

5. I am currently detained by Immigration and Customs Enforcement (ICE) at the Jerome Combs Detention Center, in Kankakee, Illinois.

Medical History

6. I suffer from hypertension, which was diagnosed in 2008.

7. Before I was detained by ICE, my doctor prescribed me 10 milligrams of Amlodipine daily for my hypertension.

8. During the first four days of my detention in ICE custody, I received no treatment for hypertension.

9. I was first detained in the Pontiac Correctional Center, where medical staff took my blood pressure. The reading was 182/107. I was very concerned about this reading and asked to be given medication. But the medical staff did not give me any medicine.

10. Two days later, ICE transferred me to Jerome Combs Detention Center. Medical staff checked my blood pressure, confirmed that I have hypertension, and told me my blood pressure was 159/92. I was not given any medication, however, for two more days.

11. Since around February 9, 2020, the nurses at the Jerome Combs Detention Center check my blood pressure every three to four days, and I receive medication for hypertension. I receive a white, round tablet every day at around 8:30 a.m.

12. Around three and a half years ago, I was diagnosed with prostate cancer. I had surgery to remove my prostate around December 2016. My doctor told me to get annual check-ups to screen for cancer. Despite repeated requests, I did not receive my most recent annual

screening, which was due in December 2019, until last week. On May 5, 2020, they drew three tubes of blood from me, but they did not say what it was for.

13. Medical appointments do not take place in an exam room but in “the bubble,” the office where the correctional officers sit and can see us in the pod through a one-way mirror window.

14. I have had a lump on the back of my head for approximately nine months. It seems to be getting bigger, and I am concerned that it may be a tumor. Before I was detained, my doctor gave me a referral to see a doctor at the University of Chicago for a screening. I was not able to get this screening because there were no appointments available before my incarceration date. When I saw the doctor here for severe neck pain about two weeks ago, I told the doctor that the lump was getting bigger and that my previous doctor had referred me to a specialist. The doctor said the lump was just part of my “bone structure,” and prescribed me a muscle relaxant and pain medication. On May 8 those medications were withdrawn without explanation.

15. Every morning, when I wake up, I feel tired and confused, and I have blurry vision, chest pain, and difficulty breathing. When I feel this way, I sit on my bed and wait for these sensations to pass. Before my detention, I had occasional ringing in my ear. Since I have been detained here, I hear it almost all the time and it is extremely loud. I do not know if these symptoms come from the lump on my head, my hypertension, neither, or both.

16. The medical staff in the Jerome Combs Detention Center did not provide me with any information on how to treat my hypertension or to be alert for certain symptoms. They have not spoken to me about COVID-19 at all.

17. I try to walk up and down the stairs two to three times a day to remain active, as my previous doctor told me that exercise was important.

18. One of the nurses in the Jerome Combs Detention Center once remarked to me that she “has seen worse” blood pressure readings. She said my blood pressure is likely high because I go up and down the stairs. She also told me the bottom number of my blood pressure reading is more important than the top one.

Immigration History

19. I first entered the United States in 1965 as a legal permanent resident, when I was six years old. I have maintained my legal permanent status until now.

20. My mother worked in El Paso, Texas as a housekeeper. She secured legal permanent resident status for my siblings and me before we joined her there. My father lived in Chicago at the time. Once we all reunited in El Paso, we moved and joined my father in Chicago.

21. I never considered applying for United States citizenship because no one advised me to do so.

22. I have always felt American. I grew up here. I have lived in the Chicago area for around 55 years.

23. Throughout my life, I have done my best to be a good father, grandfather, neighbor, and provider. I took my children to church every Sunday, sent them to private Catholic schools, and raised them to be hardworking, provide for themselves, and always be honest and tell the truth.

24. Still, I have made some mistakes that have had serious consequences. I was convicted of driving under the influence in 1993, 2003, and 2019. I was also convicted of drug possession in 2000 and 2007. I regret that conduct and the time away from my family and work it cost me.

25. Despite my mistakes, I am a peaceful man. I do my best to treat everyone with respect. I have never been convicted of or charged with any violent crime.

26. In early February 2020, when I finished serving time for driving under the influence, I was transferred to ICE custody, and I am currently in removal proceedings.

Immigration Detention

27. When ICE first took me into custody in February 2020, I was taken to the Pontiac Correctional Center. I spent about two days there before being transferred to the Jerome Combs Detention Center. I was not given any reason or explanation for the move.

28. My pod at the Jerome Combs Detention Center holds up to 48 ICE detainees. There are currently about 23. There are six cells on each floor in the pod, and each cell has two bunk beds. The cells in the pod surround an area called the dayroom.

29. All the cells look the same, except for the corner cells, which are slightly different. Every cell has a sink and toilet opposite the cell's entrance.

30. I used to have three cellmates until a few weeks ago, and now I have one. He sleeps on the bottom bunk opposite me. When I had three cellmates, the one who slept above me had to come close to me and step on my mattress to pull himself up to the top bed because there was no ladder.

31. The dayroom has approximately five tables, each with eight stools. Most detainees spend the majority of their time at the tables during the day. They eat meals, color, sketch, watch television, and play cards, checkers, and chess at the tables. It is difficult to exercise social distancing when sitting at the tables.

32. I try not to spend time in the dayroom because it is hard to stay six feet away from other people. I try to spend most of my time in my cell.

33. There are four shower stalls in our pod, with two stalls on each floor. For a long time, two of the four showers were broken, and all the detainees used the remaining two showers. We had to stand in line, sometimes for up to an hour, and wait for our turn. It was impossible to maintain social distancing while standing in line for the showers. Finally, last week, the two showers were fixed.

34. There was recently an infestation of worms in the shower area on the lower level of the pod. They are about an inch long and about as wide as spaghetti or a little more. There used to be worms in the upper floor showers, but they eventually sealed off the hole they came through.

COVID-19

35. The officers do not tell us anything about the coronavirus. We only hear things from the news on television or people outside the jail. Even the medical staff has not spoken to me about the virus when I had appointments last week and this week.

36. All the officers began wearing face masks approximately four weeks ago, but they did not explain this change. I have not seen the officers wear gloves, even when they put handcuffs and waist shackles on detainees and take them to court or medical appointments.

37. On or about April 7, 2020, an officer posted a notice in the pod that advised detainees to wash their hands and sneeze in their shirt. The notice does not mention COVID-19, but only talks about germs in general.

38. On April 15, 2020, an officer posted a notice about COVID-19 advising detainees to wash their hands, cover our mouths when sneezing, and socially distance. The officer who posted the notice did not talk about the content of the notice.

39. We have not been given any pamphlets, handouts, or other written materials about how to protect ourselves from COVID-19.

40. When we get our medicine, a nurse stands by the door of the correctional officers' bubble. The nurse has a cart that faces out to the pod, blocking the entrance. We stand in a line to get our medicine. We cannot stand six feet apart in the line, and correctional officers do not tell or advise detainees to do so. Typically, around eight people or more stand in line to get medicine in the morning shift and around 13 people stand in line in the evening shift.

41. The officers have not given me or any of the other detainees in my pod face masks, gloves, or hand sanitizer.

42. Meals are prepared and delivered the way they were since before we knew about COVID-19. Detainees bring trays with food on a cart. They block the bubble's door with the cart and hand out the meals there. Those detainees do not wear masks or gloves. Sometimes they do not even wear hairnets. Today, May 8, at breakfast was the first time I've seen the people handing out breakfast wear mask and gloves.

43. The trays are stacked one on top of the other. The food is not covered, so the food on one tray always touches the tray on top.

44. The other detainees and I stand in line to get our trays of food. We cannot maintain a distance of six feet when we stand in line, and I have never heard guards instruct us to do so.

45. Once we get our food trays, most detainees sit at the tables in the dayroom. The tables seat eight people. People sit inches away from each other on each side. I am afraid of being too close to them, so I take my lunch tray to my cell and eat there. Some other detainees eat in their cells now, so there may be room in the dayroom to sit about 3 feet apart, but most people still sit right next to each other. Two tables are always full. I have never heard the guards tell detainees to sit farther apart.

46. There was an outbreak in our pod around a month ago of what seemed to be a cold. Most detainees, including me, got sick at the same time. We were all coughing, sneezing, and had runny noses. Approximately a week prior to the outbreak, the officers posted a notice saying that no one in the facility had tested positive for COVID-19. We were still very concerned that it may be a COVID-19 outbreak, so every detainee in our pod signed a petition asking for medical staff to test us for COVID-19. Two days later, the nurses started taking our temperatures once a day. They did not test us for COVID-19. No one was transferred out of our pod for being sick.

47. Currently, there are two or three detainees with cold symptoms in my pod, but they have not been moved, or, as far as I know, received a test for COVID-19.

48. The nurses continue to check everybody's temperature once a day. Detainees who take medication get their temperatures taken when they pick it up. Then the other detainees line up to get their temperature taken. No one has room to stand six feet apart when they are in line. The people taking temperatures do not ask about symptoms of COVID-19.

49. I do not know if nurses are checking temperatures in other pods or whether anybody in the jail has been tested for COVID-19.

50. I have never seen guards checking in with detainees to see how they're doing when they do their rounds. I have not seen any psychologist or counselor talking to detainees in my pod.

Hygiene

51. I try to wash my hands every time I touch something that was touched by anybody else, like the microwaves, tables, and telephones.

52. We can ask for soap anytime we want, but how much we get depends on the officer on duty. There are small bars like the ones in hotel rooms, and even smaller bars less than

half that size. Sometimes they run out of soap. Recently, they were out of soap for about two days, so those who could not afford to buy some at the commissary did not have access to soap. I typically buy an additional bar of soap at the commissary every two to three weeks. These are regular-sized bars that cost \$3.20 apiece. The cheapest soap in the commissary is \$1.20. We do not have access to hand sanitizer.

53. We do not have paper towels to dry our hands. We have to use our personal cotton towels to dry them. I have a large cotton towel to dry myself with after I shower and a small washcloth. We can only wash our towels on Sundays, Mondays, Wednesdays, and Fridays.

54. Every day after lunch and dinner, but not after breakfast, two detainees clean the dayroom tables. After dinner, they also sweep and mop the dayroom floors.

55. The telephones are cleaned at the same time as the rest of the dayroom, but they are not cleaned between uses. I clean the phone before using it, with a small supply of disinfectant I have. If I do not do that, I can feel the oils from the skin of the people who used the phone before me. A few detainees cover the phone with a sock when they use it, but most do not.

56. The showers are cleaned only once a week, on Saturdays.

57. Recently, the two detainees in charge of distributing the laundry have been accepting help from four or five other detainees. They dump the clean clothes on the dayroom tables to sort it out—often before lunch, when the tables are cleaned for the first time that day. They do not wear masks or gloves while sorting and distributing the laundry.

58. The detainees are responsible for cleaning their own cells. Every morning, the guards give my pod one bucket of water pre-mixed with cleaning detergent. The bucket has two compartments, where we keep spray bottles with disinfectants. We also have a broom and mop to clean the floor. I do not know what kind of cleaner is in the bucket or the spray bottles. The

strength of the disinfectants varies day by day; sometimes they seem watered down. They will only give us one bucket with the water pre-mixed with the cleaning detergent to clean the 12 cells. Depending on my turn, by the time I get the bucket, the water is very filthy, and sometimes the spray bottles are empty. When we ask for more disinfectant, the guards refuse.

59. We are only given cleaning supplies for our cells once a day.

60. There is something wrong with the toilet in Cell 9 of my pod. It often clogs, and the water in the bowl keeps rising until it overflows, which happens about every two weeks. The plumber comes and fixes it, but then the water starts to rise again until it overflows. The toilet overflowed one day last week, and the people in the cell asked for disinfectant to clean up the floor. The guard said no, and gave them only a bucket and mop to get the water off the floor. There were feces that they had to pick up themselves using pieces of paper.

Conclusion

61. I feel very vulnerable to COVID-19 because of my age and medical conditions. I cannot protect myself from the coronavirus while in immigration detention. The officers have not discussed COVID-19 with me or advised me on how to protect myself while in detention. The only information I have received from the jail has come out of the two notices posted on a wall. It is impossible to follow the advice on the poster about social distancing when living in such close quarters with 23 other detainees who have to line up every day for meals and medicine. Some detainees do not practice good hygiene and we all constantly share and touch the equipment and common surfaces. The jail staff have not given me or any other detainee in my pod any masks, gloves, or hand sanitizer.

I, Ana Torres, certify that I drafted this declaration based on Mr. Herrera-Herrera's statements. I also certify that I read this declaration to Mr. Herrera-Herrera by telephone on May 8, 2020 and that he certified that the declaration is true and correct to the best of his knowledge.

Dated: May 14, 2020

/s/ Ana Torres

Ana Torres
Roger Baldwin Foundation of ACLU, Inc.
150 N. Michigan Ave.
Suite 600
Chicago, IL 60601
Tel. 312.201.9740

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on May 14, 2020, she caused a copy of the above and foregoing DECLARATION OF PETITIONER JOAQUIN HERRERA-HERRERA to be served on all counsel of record via the Court's electronic filing system (CM/ECF) and to the following:

By Summons Process Service:

Michael Downey, Sheriff
Sheriff of Kankakee County
3000 Justice Way
Kankakee, IL 60901

Chad Kolitwenzew
Chief of Corrections of the Jerome Combs Detention Center
3050 Justice Way
Kankakee, IL 60901

By US Certified Mail:

Robert Guadian
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
101 W Ida B Walls Drive, Suite 4000
Chicago, IL 60605

Matthew Albence
Deputy Director and Senior Official Performing the Duties of the Director
of U.S. Immigration and Customs Enforcement
500 12th St., SW
Washington, DC 20536

Chad Wolf
Acting Secretary of Homeland Security
Office of Executive Secretary, MS 0525
2707 Martin Luther King Jr. Ave SE
Washington, DC 20528

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of the United States Attorney
ATTENTION: Tami Richmond
Secretary to the United States Attorney

318 S. Sixth Street
Springfield, IL 62701

By Email:

Jim Rowe
Kankakee County State's Attorney
JROWE@k3county.net

Nancy Ann Nicholson
Kankakee County State's Attorney
nnicholson@k3county.net

Hilary W. Frooman
Assistant U.S. Attorney
U.S. Attorney's Office for the Central District of Illinois
Courteilary.frooman@usdoj.gov

John David Hoelzer
Assistant U.S. Attorney
U.S. Attorney's Office for the Central District of Illinois
john.hoelzer@usdoj.gov

/s/ Rebecca K. Glenberg