

Victory for immigrants held in Bristol County!

Coronavirus, Immigrant Rights

Court Finds Bristol County Sheriff and ICE Likely Violated Constitutional Rights of Immigrant Detainees in Their Care

Orders Widespread COVID Testing and Prohibits Future Admissions

In a powerful order, a federal court in Boston ruled strongly in favor of immigrants detained by ICE at Bristol County. The court ruled that the Bristol County Sheriff and ICE likely have acted unconstitutionally and shown deliberate indifference to the substantial risk of serious harm posed by COVID-19 to the detainees in their care. As evidence, the court pointed to BCHOC's failure to conduct comprehensive testing or contact tracing, and its refusal to voluntarily consider release of any detainees. To date, the class action has resulted in the release of 50 detainees. In an order known as a preliminary injunction, the court ordered COVID-19 testing be made available as soon as possible for all detainees and all staff at Bristol County having any contact with immigrant detainees, at ICE's expense. The court also ordered that there be no new persons admitted to immigration detention at Bristol County, effective immediately. These key measures are important steps in addressing the very real life-or-death threats experienced by immigrants at Sheriff Hodgson's facility.

The court also powerfully acknowledged that the ICE detention policies as a whole, which the court must uphold, may well be "misguided," as immigrants' rights advocates long have argued. The Court noted that there may well be tens of thousands of individuals in immigration custody whom ICE might be equally able to supervise were they confined to a known place of residence rather than incarcerated.

The case is *Savino v. Souza*, 20-CV-10617, in the U.S. District Court for the District of Massachusetts.

The court's decision is available [here](#):

Highlights from the attached decision include:

- "A class of civil immigration detainees held in the Bristol County House of Correction, citing this unparalleled health crisis, press this Court to release them from confinement in tight and allegedly unsanitary quarters. The government refuses to play ball." (Page 1)
- "As an experienced trial judge at both the state and federal levels, I have been struck by the fact that the great bulk of these 148 detainees — not all but most — would have been admitted to bail on terms were they American citizens facing criminal charges. The fact I did not release more is due solely to the proper respect I owe to the administrative hearing officers within the executive." (Footnote 4, Page 6)

- “Testing of both staff and detainees has been minimal, so the real infection rate is a mystery. Measures to isolate the carriers and prevent the disease’s spread cannot succeed without testing.” (Page 15)
- “Of particular concern is the contradictory evidence in the record regarding monitoring of those Detainees who are especially vulnerable to COVID-19.” (Page 17-18)
- “The Court does not disagree with the government’s protestation that “[i]rreparable harm cannot be assumed from the fact of the pandemic alone.” Opp’n 12. It is the government’s response to the pandemic that matters. On the evidence in the record, it appears highly likely that serious harm would have followed from the Court’s inaction.” (Page 19)
- “Detainees have demonstrated at least three cavernous holes in the government’s mitigation strategy — holes it has obstinately refused to plug throughout this litigation.” (Page 23)
- “In this case, the authorities have displayed the contrary mindset. Where elasticity is vital, they are rigid; where life hangs upon a carefully drawn line, they opt for near-blanket incarceration. That is evidence of deliberate indifference.” (Page 25)
- “When this Court forced individual bail applications upon the government, it resisted all of them. Day in and day out, the Court was told that “[i]t is ICE’s position, for the record, that release of none of the listed individuals is required for either their safety or the safety of the remaining civil detainee population at BCHOC.”¹⁸ Opposition was understandable for some of the forty-four whom the Court admitted to bail, but at least twenty-five of those had either no criminal records or minimal or nonviolent ones (e.g., fraud, operating under the influence, larceny, drug possession, or failure to appear) along with mitigating circumstances that indicated little continued threat to the public. Several also had health conditions elevating their risk from the virus. ICE is free to disagree with this Court’s determination regarding this or that individual’s aptness for release. A wholesale blockade on bail, however, cannot be justified when the government proffers no alternative method of reducing the population to a safe number.” (Page 27)
- “The government began this litigation suggesting, contrary to all known expert guidance, that social distancing was unnecessary because the virus could somehow be kept out of BCHOC. Even after the fallacy of this view became apparent, as eleven staff members and one Detainee tested positive, the government continued to argue that “BCHOC is not like the world at large” since it “is able to control who comes into its facility, where they go, and what steps are taken to screen such individuals. Social interaction, the primary focus of the social distancing recommendations, is much more limited at BCHOC than in the outside world.” Opp’n 29. This thinking flies in the face of the CDC’s direct warnings that detention centers are hardly impregnable fortresses and that, in fact, they are more susceptible to outbreaks once the virus penetrates.” (Page 28)