

1 Louise C. Stoupe*
MORRISON & FOERSTER LLP
2 Shin-Marunouchi Building, 29th Floor
5-1, Marunouchi 1-Chome
3 Tokyo, Chiyoda-ku 100-6529, Japan
Telephone: +81-3-3214-6522
4 Facsimile: +81-3-3214-6512
Email: LStoupe@mofo.com

5
6 Colette Reiner Mayer*
Pieter S. de Ganon*
MORRISON & FOERSTER LLP
7 755 Page Mill Road
Palo Alto, CA 94304-1018
8 Telephone: (650) 813-5600
Facsimile: (650) 494-0792
9 Email: CRMayer@mofo.com
Email: PdeGanon@mofo.com

10
11 Attorneys for Plaintiffs
*Admitted pursuant to *Ariz. Sup. Ct. R. 38(a)*
12 Additional counsel listed on next page

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA

15
16 Jane Doe #1; Jane Doe #2; Norlan Flores, on
behalf of themselves and all others similarly
17 situated,

18 Plaintiffs,

19 v.

20 Kirstjen M. Nielsen, Secretary, United States
Department of Homeland Security, in her
21 official capacity; Kevin K. McAleenan,
Acting Commissioner, United States
22 Customs & Border Protection, in his official
capacity; Carla L. Provost, Acting Chief of
23 the United States Border Patrol, in her
official capacity; Rodolfo Karisch,
24 Commander, Arizona Joint Field Command,
and Chief Patrol Agent-Tucson Sector, in his
25 official capacities,

26 Defendants.

Case No. 4:15-cv-00250-TUC-DCB

**PLAINTIFFS' MOTION FOR
LEAVE TO SUBMIT NEW VIDEO
EVIDENCE IN SUPPORT OF
MOTION FOR PARTIAL
SUMMARY JUDGMENT
REGARDING DEFENDANTS'
OBLIGATION TO PROVIDE BEDS**

CLASS ACTION

**(Assigned to the
Honorable David C. Bury)**

Action Filed: June 8, 2015

1 Elizabeth Balassone*
MORRISON & FOERSTER LLP
2 425 Market Street
San Francisco, CA 94105-2482
3 Telephone: (415) 268-7000
Facsimile: (415) 268-7522
4 Email: EBalassone@mofo.com

5 Linton Joaquin*
Karen C. Tumlin*
6 Nora A. Preciado*
NATIONAL IMMIGRATION LAW
7 CENTER
3450 Wilshire Boulevard #108-62
8 Los Angeles, CA 90010
Telephone: (213) 639-3900
9 Facsimile: (213) 639-3911
Email: joaquin@nilc.org
10 Email: tumlin@nilc.org
Email: preciado@nilc.org

11 Mary Kenney*
12 AMERICAN IMMIGRATION COUNCIL
13 1331 G Street NW, Suite 200
Washington, D.C. 20005
Telephone: (202) 507-7512
14 Facsimile: (202) 742-5619
Email: mkenney@immcouncil.org

Elisa Marie Della-Piana*
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO
BAY AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444
Facsimile: (415) 543-0296
Email: edellapiana@LCCR.com

Kathleen E. Brody (Bar No. 026331)
William B. Peard (Bar No. 033831)
ACLU FOUNDATION OF ARIZONA
3707 North 7th Street, Suite 235
Phoenix, AZ 85014
Telephone: (602) 650-1854
Facsimile: (602) 650-1376
Email: bmfurnish@acluaz.org
Email: kbrody@acluaz.org

Attorneys for Plaintiffs

* Admitted pursuant to Ariz. Sup. Ct. R.
38(a)

1 TO DEFENDANTS AND THEIR COUNSEL OF RECORD:

2 Plaintiffs hereby move for leave to file new video evidence relevant to Plaintiffs'
3 pending Motion for Partial Summary Judgment Regarding Defendants' Obligation to
4 Provide Beds (*see* ECF No. 345). Since Plaintiffs filed their summary judgment motion,
5 Defendants have produced new video surveillance footage that shows class members
6 continue to be held in crowded cells, forced to lie next to toilets and repeatedly stepped
7 over. (*E.g.*, May 4, 2018 Pls.' Mot. for Partial Summ. J. at 1, 2, 8.) The new video
8 surveillance footage contradicts Defendants' assertion that such conditions are limited to
9 the pre-preliminary injunction period, or the period "shortly after" the preliminary
10 injunction was issued when Defendants were still "adjusting" to the requirements. (*E.g.*,
11 June 4, 2018 Resp. in Opp'n to Mot. for Partial Summ. J. ("June 4, 2018 Opp'n") at 15-
12 16; June 4, 2018 Opp'n, Ex. H (Decl. of C. Defreitas) ¶ 15.)

13 Specifically, this new video surveillance footage shows:

- 14 • March 2018 at Casa Grande Station – overcrowded cell with class member
15 climbing over the back of a concrete bench dividing the cell to avoid
16 stepping on others (Decl. of Elizabeth Balassone ISO Pls.' Mot. for Leave
17 ("Balassone Decl.") Ex. A1);
- 18 • April 2018 at Tucson Coordinating Center ("TCC") Station – overcrowded
19 cell with class members sleeping in toilet areas (Balassone Decl. Exs. B1-
20 B2);
- 21 • May 2018 at TCC Station – overcrowded cell with class member jumping
22 over others to go to toilets (Balassone Decl. Ex. C1); and
- 23 • June 2018 at TCC Station – overcrowded cell with class member sleeping in
24 toilet area while toilet is being used (Balassone Decl. Ex. C2).

25 Plaintiffs were unable to submit this evidence with their Motion for Partial
26 Summary Judgment because the video surveillance footage was received by Plaintiffs on
27 May 4, 2018, May 24, 2018, July 6, 2018, and July 30, 2018, respectively. (Balassone
28 Decl. ¶¶ 5, 6, 10, 11.) Once received, Plaintiffs must then load and review the video data.

1 This takes significant time and resources, as there are procedures and software that are
 2 unique to the video from different stations. This process is further delayed when Plaintiffs
 3 have to troubleshoot issues with accessing the video. Plaintiffs encountered those issues
 4 with some of this video evidence: for example, they made repeated attempts to access the
 5 May 2018 video from TCC without success, and Defendants offered to send a
 6 replacement copy. (*Id.* ¶ 8.) Defendants also reported that footage from three holding
 7 cells was missing for almost the entire 14-day period requested by Plaintiffs, and
 8 accordingly Defendants had to produce replacement video for alternate dates. (*Id.* ¶ 9.)
 9 Plaintiffs worked as quickly as possible to access and review the new video evidence.
 10 *See, e.g., Agne v. Papa John's Int'l*, No. C10-1139-JCC, 2012 WL 12882904, at *1
 11 (W.D.Wa. May 1, 2012) (granting motion and finding good cause where evidence was not
 12 available during the initial briefing on the issue).

13 Accordingly, Plaintiffs respectfully request that the Court grant their motion for
 14 leave to file the Declarations of Nicholas Gamiz, Gary Stenger, and Elizabeth Balassone
 15 in Support of Motion for Partial Summary Judgment Regarding Defendants' Obligation to
 16 Provide Beds (Balassone Decl. Exs. A, A1, B, B1 & B2, C, C1 & C2).

17
 18 Dated: August 15, 2018

By: /s/ Colette Reiner Mayer
 Colette Reiner Mayer

MORRISON & FOERSTER LLP

Louise C. Stoupe*
 Colette Reiner Mayer*
 Pieter S. de Ganon*
 Elizabeth Balassone*

NATIONAL IMMIGRATION LAW CENTER
 Linton Joaquin*
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 Nora A. Preciado*

AMERICAN IMMIGRATION COUNCIL
 Mary Kenney*

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ACLU FOUNDATION OF ARIZONA
Kathleen E. Brody (Bar No. 026331)

LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
Elisa Marie Della-Piana*

Attorneys for Plaintiffs

**Admitted pursuant to Ariz. Sup. Ct. R. 38(a)*

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2018, I caused a PDF version of the documents listed below to be electronically transmitted to the Clerk of the Court, using the CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to all CM/ECF registrants and non-registered parties.

- **PLAINTIFFS’ MOTION FOR LEAVE TO SUBMIT NEW VIDEO EVIDENCE IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING DEFENDANTS’ OBLIGATION TO PROVIDE BEDS**
- **DECLARATION OF ELIZABETH BALASSONE IN SUPPORT OF PLAINTIFFS’ MOTION FOR LEAVE TO SUBMIT NEW VIDEO EVIDENCE IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING DEFENDANTS’ OBLIGATION TO PROVIDE BEDS**
- **APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFFS’ MOTION FOR LEAVE TO SUBMIT NEW VIDEO EVIDENCE IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING DEFENDANTS’ OBLIGATION TO PROVIDE BEDS**
- **APPENDIX PART I: EXHIBITS A and A1**
- **APPENDIX PART II: EXHIBITS B, B1, and B2**
- **APPENDIX PART III: EXHIBITS C, C1, and C2**
- **[PROPOSED] ORDER REGARDING PLAINTIFFS’ MOTION FOR LEAVE TO SUBMIT NEW VIDEO EVIDENCE IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING DEFENDANTS’ OBLIGATION TO PROVIDE BEDS**

Colette Reiner Mayer
(typed)

/s/ Colette Reiner Mayer
(signature)