UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANDRES RAMIREZ-MARTINEZ, MANUEL URIOSTEGUI, and ERICSON GONZALES, Plaintiffs, vs. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; THOMAS S. WINKOWSKI, Principal Deputy Assistant Secretary of the U.S. Immigration and Customs Enforcement; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; JEH JOHNSON, Secretary of Homeland Security; NATHALIE R. ASHER, Director of the Seattle Field Office of U.S. Immigration and Customs Enforcement, Defendants.	NO. MOTION FOR TEMPORARY RESTRAINING ORDER Noted for Hearing at 9:30 a.m. on Friday, April 4, 2014

I. INTRODUCTION AND RELIEF REQUESTED

Detainees at the Northwest Detention Center (NWDC) in Tacoma, Washington have taken up hunger strikes over the last several weeks in order to express their opposition to federal immigration policies and protest the conditions of their confinement at the NWDC. The public responded by focusing media attention on the issues raised by the detainees. Members of Congress have issued public statements criticizing the

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NWDC's operations and management and federal immigration law. Rather than respond to the concerns expressed by detainees, United States Immigration and Customs Enforcement (ICE) threw individual hunger strikers into solitary confinement after falsely promising them that they would meet to talk about the detainees' concerns. ICE's arbitrary, retaliatory actions continue to violate the First Amendment rights of the Plaintiffs and other detainees who remain in segregation. This Court should enter a temporary restraining order that requires ICE to immediately release these individuals from solitary confinement and prohibits ICE from engaging in any further retaliation against detainees engaging in protected speech.

II. FACTS

Plaintiffs in this case are civil immigration detainees awaiting adjudication of their immigration cases at the NWDC. Ramirez-Martinez Declaration in Support of Motion for Temporary Restraining Order ¶2; Gonzales Declaration in Support of Motion for Temporary Restraining Order ¶ 2; Uriostegui Declaration in Support of Motion for Temporary Restraining Order ¶2.[1] Each engaged in a hunger strike within the last week. Ramirez-Martinez Decl. ¶10; Gonzales Decl. ¶ 10; Uriostegui Decl. ¶10. Their hunger strikes were intended to bring detained immigrants' experiences into the national debate about immigration policy and to raise awareness about conditions at the NWDC. Ramirez-Martinez Decl. ¶4; Gonzales Decl. ¶ 4; Uriostegui Decl. ¶4.

Plaintiffs have engaged in hunger strikes as acts of conscience and not because of any coercion or intimidation by others but because of their strongly held convictions. *Id.*

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[1] Mr. Ramirez Martinez's native language is Spanish, so his attached declaration has been filed in Spanish. A certified English translation of his declaration is attached as Exhibit J to the Declaration of Salvador A. Mungia in Support of Motion for Temporary Restraining Order.

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At no time did Plaintiffs engage in any activity that endangered the safety or security of the detention center, its staff or other detainees. Ramirez-Martinez Decl.¶3; Gonzales Decl. ¶ 3; Uriostegui Decl. ¶3. In fact, Plaintiffs did not affect NWDC's regular operations in any way, except that they refused meal trays when offered. Plaintiff Ramirez- Martinez in fact distributed meal trays to those detainees who were not engaged in hunger strikes. Ramirez-Martinez Decl.¶3.

On March 27, 2014, while detainees in the F-3 unit, including Plaintiffs, were in the living area of their unit, guards entered and offered them the opportunity to meet with NWDC administrators to discuss their reasons for engaging in hunger strikes. Ramirez-Martinez Decl.Decl.¶6; Gonzales Decl. ¶ 6; Uriostegui Decl. ¶6. Several detainees expressed interest in attending the meeting. *Id.* Under the subterfuge of taking them to such a meeting, guards escorted detainees, including Plaintiffs, from the F-3 unit. Ramirez-Martinez Decl.¶7; Gonzales Decl. ¶ 7; Uriostegui Decl. ¶7. Once out of sight of other detainees, and without warning or explanation, guards handcuffed each detainee and escorted him to solitary confinement cells. Ramirez-Martinez Decl.¶7; Gonzales Decl. ¶ 8; Uriostegui Decl. ¶7. The detainees were given no notice that they were at risk of being placed in solitary confinement or even that their participation in hunger strikes could result in sanctions. Ramirez-Martinez Decl.¶; Gonzales Decl. ¶ 10; Uriostegui Decl. ¶10.

The detainees, including Plaintiffs, have been held in solitary confinement for the last six days. Ramirez-Martinez Decl.¶7; Gonzales Decl. ¶ 8; Uriostegui Decl. ¶7. They are allowed only one hour each day in a small "yard" by themselves, have limited access to programming, are allowed to shower only three times a week, and when they do, they are taken in handcuffs and released only once they are in the showers. Ramirez-Martinez

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Decl.¶7; Gonzales Decl. ¶ 8; Uriostegui Decl. ¶7. The detainees, including Plaintiffs, otherwise spend twenty-three hours a day in small cells with little or no natural light and only a bed, a sink, and a toilet. *Id.*

The only explanation that ICE has provided Plaintiffs regarding the basis for their isolation is a one page "Administrative Detention Order," each of which is identical to the other. *See* Ramirez-Martinez Decl. Exhibit A; Gonzales Decl. Exhibit A; Uriostegui Exhibit A. In these Orders, ICE alleges that placement of Plaintiffs in solitary confinement is justified because each Plaintiff is "a security risk to him/herself or the security of the facility." *Id.* Despite the seemingly arbitrary selection of detainees from the F-3 unit to participate in the "meeting," ICE justifies the placement of Plaintiffs and the other detainees based on its unsupported allegation that the detainees "have been identified by staff as a principle [sic] party to intimidating others into not eating." *Id.* ICE further asserts that "for the security and safety of the detainees in the affected housing units, [Plaintiffs and the other detainees removed from the F-3 unit] are being placed in Protective Custody." *Id.* Plaintiffs have not been provided any information articulating facts to support ICE's allegations nor have they been given the opportunity to contest the allegations in the Orders. ICE has not informed the detainees of when, or even if, they will be returned to the general population.

Although Plaintiffs had intended to continue their hunger strikes through Friday, March 28, 2014, they ended their hunger strikes upon their placement in solitary confinement because of their fear of further retaliation by ICE. Ramirez-Martinez Decl.¶11; Gonzales Decl. ¶ 11; Uriostegui Decl. ¶10.

On Monday, March 31, 2014, Attorneys for Plaintiffs requested that ICE release Plaintiffs and other detainees who were placed in solitary confinement on March 27,

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2014. ICE refused to do so. Declaration of Salvador A. Mungia Exhibit A. Accordingly, on April 1, 2014, Attorneys for Plaintiffs informed ICE that they would be filing suit and seek a temporary restraining order the following day. *Id.* at Exhibit B.

III. ARGUMENT

A. Standard For Issuance Of Temporary Restraining Order.

The standard for issuing a temporary restraining order in the Ninth Circuit is identical to the standard for issuing a preliminary injunction. *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.,* 887 F. Supp. 1320, 1323 (N.D. Cal. 1995); *see Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.,* 240 F.3d 832, 839 n. 7 (9th Cir. 2001). To prevail on a motion for a preliminary injunction Plaintiffs must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm; (3) the balance of equities tips in their favor; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.,* 555 U.S. 7, 20 (2008).[2]

B. Plaintiffs are Likely to Succeed on the Merits.

Defendants placed Plaintiffs and the other hunger strikers into solitary confinement to retaliate against them for speaking out about conditions in the detention center and U.S. immigration policy. Defendants' actions were intended and geared toward quieting Plaintiffs' speech and dissuading them and others from engaging in protected speech in the future. This violated Plaintiffs' First Amendment rights, and the violation is ongoing.

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[2] Recently, the Ninth Circuit clarified that its longstanding "serious questions" approach, survives *Winter* when applied as part of the four-element *Winter* test. *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir. 2011). Under this approach, "serious questions going to the merits" and a hardship balance that tips sharply towards the plaintiff will support issuance of an injunction, so long as the plaintiff also shows a likelihood of irreparable injury and that the injunction is in the public interest.

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1. Plaintiffs enjoy significant First Amendment protections.

As immigrants, Plaintiffs enjoy all of the protections of the Bill of Rights that are not expressly limited to citizens, including most importantly here the protections of the First Amendment. *Bridges v. Wixon,* 326 U.S. 135, 148 (1945) (freedom of speech and of press is accorded aliens residing in this country). *See also Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1109 (9th Cir. 2001) (Fifth and Fourteenth Amendments protect all who have entered the United States regardless of status).

Plaintiffs are immigration detainees but this does not limit their First Amendment rights beyond restrictions absolutely necessary to the detention setting. They are *civil detainees* held pursuant to civil immigration laws. As such, under the Fifth Amendment they can be punished while in detention and their rights may not be limited even as much as pre-trial criminal detainees. *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), *cert. denied*, 546 U.S. 820 (2005). Under *Jones*, a civil detainee "is entitled to 'more considerate treatment' than his criminally detained counterparts..". *Id.* at 933 (quoting *Youngberg v. Romeo*, 457 U.S. 307, 321-32 (1982)). *See Agyeman v. Corrections Corp. of Amer.*, 390 F.3d 1101, 1104 (9th Cir. 2004) (noting that detention on noncriminal charges "may be a cruel necessity of our immigration policy; but if it must be done, the greatest care must be observed in not treating the innocent like a dangerous criminal").

Under *Jones,* the Plaintiffs in this case are effectively in the same status as other civil detainees, such as people confined against their will in mental health institutions or similar settings. While there can be some restrictions on free expression in any institutional setting, civil detainees of this kind retain expressive and associational rights that criminal justice prisoners do not enjoy. *Jones*, 393 F.3d at 934.

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The greater constitutional protections afforded civil detainees mean that restrictions that limit those rights are unconstitutional where they are either intended to punish or are excessive in relation to the allegedly non-punitive purpose for which they are imposed. *Id.* ICE's treatment of Plaintiffs fails this test: It had the effect of punishing Plaintiffs for their First Amendment expression through a hunger strike to call attention to conditions of confinement and important issues of public policy. If it was intended to have this punitive effect, it fails the first prong of the *Jones* test. If not intended to punish, it fails the second prong. Defendants' response to the peaceful protests was clearly excessive when they first deceived the Plaintiffs into identifying themselves and then placed them in isolation even though there was no threat to the security of the institution.

2. ICE retaliated against Plaintiffs in violation of the First Amendment.

One of the vital constitutional protections afforded civil detainees, like the Plaintiffs, is the right to engage in protected speech without fear of retaliation. *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2005). A First Amendment retaliation claim arises when the following five elements are present: (1) the Plaintiffs engaged in conduct protected by the First Amendment; (2) ICE took an adverse action against them (3) because of that conduct; (4) ICE's action chilled their exercise of their First Amendment rights, and (5) ICE's action did not reasonably advance a legitimate institutional goal. *Id.* at 567-68. All five elements are present here.

a. Plaintiffs were retaliated against for engaging in two types of protected conduct.

Plaintiffs took two separate protected actions which led to their confinement in solitary. First, they engaged in hunger strikes to bring detained immigrants' experiences into the national debate about immigration policy and to raise awareness about

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conditions at the NWDC. Second, they sought to address their grievances with the NWDC administration. The First Amendment protects each of these separate activities.

i. Hunger strikes by detainees are protected First Amendment activities.

"The First Amendment literally forbids the abridgment only of 'speech,' but [the United States Supreme Court] ha[s] long recognized that its protection does not end at the spoken or written word." *Texas v. Johnson*, 491 U.S. 397, 404 (1989). Accordingly, courts have consistently acknowledged that conduct may be "sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments[.]" *Id.*; *see also, Roulette v. City of Seattle*, 97 F.3d 300, 302-03 (9th Cir. 1996) ("The First Amendment protects not only the expression of ideas through printed or spoken words, but also symbolic speech" (citing *Spence v. Washington,* 418 U.S. 405, 409 (1974)). "In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, courts ask whether '[a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it.'" *Johnson,* 491 U.S. at 404.

Hunger strikes are such protected conduct. They are particularly powerful modes of expressive conduct often used as a way of communicating what is otherwise not being heard.[3] Courts have held that a hunger strike may be expressive conduct protected by the First Amendment in the prison setting "if it was intended to convey a particularized message." *Stefanoff v. Hays Cnty., Tex.,* 154 F.3d 523, 527 (5th Cir. 1998) (citing *Johnson,* 491 U.S. at 404).

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[3] "The passive nonviolence of King and Gandhi are proof that the resolute acceptance of pain may communicate dedication and righteousness more eloquently than mere words ever could. *A boycott, like a hunger strike, conveys an emotional message that is absent in a letter to the editor, a conversation with the mayor, or even a protest march.*" *F.T.C. v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 450-51 (1990) (emphasis added).

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Accordingly, a number of federal courts have recognized that hunger strikes even in prison may constitute protected activity sufficient to support First Amendment retaliation claims. *See, e.g., Ajaj v. Fed. Bureau of Prisons,* No. 13-1010, 2014 WL 998413 (10th Cir. Mar. 17, 2014) (upholding the district court's decision that Mr. Ajaj had adequately pled a First Amendment retaliation claim against a BOP employee for issuance of a disciplinary notice based on Mr. Ajaj's participation in a hunger strike); *Brown v. Graham,* 9:07-CV-1353 FJS ATB, 2010 WL 6428251 (N.D.N.Y. Mar. 30, 2010) *report and recommendation adopted,* 9:07-CV-1353 FJS ATB, 2011 WL 1213482 (N.D.N.Y. Mar. 31, 2011), aff'd, 470 F. App'x 11 (2d Cir. 2012) (accepting "for the purposes of these motions, that a hunger strike is protected activity in the context of a retaliation claim"); *Green v. Phillips,* No. 04 Civ. 10202, 2006 WL 846272 (S.D.N.Y. Mar. 31, 2006) ("assuming for the sake of argument that retaliation against an inmate for participation in a hunger strike could state a claim"). Because of the expanded First Amendment rights held by the Plaintiffs here as *civil* detainees, their right to engage in peaceful hunger strikes is even more significant than that recognized by courts addressing prison related actions.

Even ICE's own policies recognize that hunger strikes by immigrant detainees are constitutionally protected, expressive conduct. ICE Policy 4.2 provides the guidelines for the medical and administrative management of detainees who engage in hunger strikes. *See* Mungia Decl. Exhibit C (ICE Policy 4.2 (Hunger Strikes)). This policy focuses solely upon how ICE should monitor and manage the health of a detainee engaged in a hunger strike. It explicitly prohibits ICE from taking any action to end a hunger strike, until such time as ICE has followed an elaborate set of procedures and only when a physician has verified that the detainee's "life or health is at risk." *Id.* at 4.2(V)(E). The hunger strike

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policy authorizes the isolation of a hunger striker only "[w]hen medically advisable...for close supervision, observation and monitoring." *Id.* at 4.2(II)(4).

ICE's disciplinary policy also implicitly recognizes that hunger strikes are protected activities with which it should not interfere until medically necessary. *See* Mungia Decl. Exhibit D (ICE Policy 3.1 (Disciplinary Policy)). Hunger strikes are not conduct for which a detainee can be disciplined under 3.1 *Id.* Like the hunger strike policy, the disciplinary policy does not allow ICE to transfer a hunger striker into segregation, absent a documented medical need. *Id.* ICE policies 3.1 and 4.2 implicitly recognize, as have the courts that have reviewed the issue, that detainees have a constitutionally protected right to engage in hunger strikes.

Here, Plaintiffs engaged in hunger strikes to protest national immigration policy that separates families and places communities at-risk. They sought to raise awareness about the problems that deportations and incarceration have on them as individuals and on all who are in the immigration system. They did so at a time when the national debate about immigration reform has been at a peak. Plaintiffs also sought to raise awareness about the NWDC and problems with the physical conditions of the facility, which has had some degree of success as Representative Adam Smith visited the facility to learn more about immigrant detainees' concerns at the NWDC. *See* Alexis Krell, *Congressman Adam Smith Speaks with Detainees Amid Hunger Strike at Tacoma Immigration Center,* Tacoma News Tribune (March 20, 2014) (attached as Exhibit G to Mungia Decl.). There is thus little doubt that Plaintiffs were engaged in expressive conduct meant to convey a message; conduct protected by the First Amendment.

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ii. The First Amendment also protects the detainees' rights to present grievances to ICE and NWDC administrators.

In addition to their right to engage in hunger strikes, Plaintiffs also retain the right to petition the authorities over the conditions of their confinement. *Lewis v. Casey*, 518 U.S. 343, 355 (1996). This First Amendment right includes the right to raise grievances with detention administrators. *See Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012). In fact, "[r]etaliation against prisoners for their exercise of this right is itself a constitutional violation, and prohibited as a matter of clearly established law." *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009) (*citing Rhodes,* 408 F.3d at 566).

Here, ICE placed Plaintiffs in isolation following a ruse in which ICE offered the detainees an opportunity to express their concerns directly to detention center administrators. Rightly expecting such a meeting, at least one of the Plaintiffs and other detainees identified themselves as interested in participating. However, rather than abide by its promise, ICE instead placed each man in handcuffs and marched him to isolation. ICE's trick was predicated on the men identifying themselves as detainees with grievances that they would like to share with detention center administrators. The men's interest in presenting these grievances led directly to ICE placing them in isolation. Plaintiffs and other detainees engaged in protected speech.

b. Placing Plaintiffs in isolation constitutes an adverse action.

A jailer's use of segregation to punish a prisoner for speaking out about conditions in the jail is an actionable adverse action. *Hines v. Gomez*, 108 F.3d 265, 269 (9th Cir. 1997) (ten-day confinement is sufficiently serious to support First Amendment retaliation claim); *Gray v. Hernandez*, 651 F.Supp.2d 1167, 1175 (S.D. Cal. 2009) (placement in solitary confinement); *cf., Pratt v. Rowland,* 65 F.3d 802, 807 (9th Cir.1995) (transfer and double-celling). Here is it undisputed that ICE locked these men away in solitary

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confinement and that they suffered injury in lost access to privileges and programming usually available to immigrant detainees at NWDC.

c. ICE placed the men in isolation because they engaged in protected activities.

ICE retaliated against Plaintiffs by placing them in solitary confinement for speaking out about conditions within the NWDC and ICE policies more broadly. This is evident by how ICE identified the detainees it would place in segregation. ICE officials did not carefully catalog alleged conduct or behavior by the detainees over an extended period of time. Instead, ICE determined who would be placed in solitary confinement by asking detainees who were interested in speaking with a warden about complaints in the detention center to identify themselves. Those men who did were rounded up and thrown in isolation without notice or a hearing. None of these men engaged in any act that threatened the safety or security of the institution. Rather, these men sought to improve conditions within the institution via the only means available to them, speaking out.

Furthermore, ICE has not alleged that these men violated any rule or policy that would justify disciplinary segregation. *See* Ramirez-Martinez Decl. Exhibit A; Gonzales Decl. Exhibit A; Uriostegui Decl. Exhibit A. The absence of any legitimate justification to support ICE's action and the clear temporal link between the actions these men took and ICE's reaction demonstrate that ICE took this adverse action because the men had engaged in protected activity. The close correlation in time between the protected speech and the adverse action is strong evidence of ICE's retaliatory motive. *See Pratt*, 65 F.3d at 808 ("timing can properly be considered as circumstantial evidence of retaliatory intent").

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d. ICE's actions chilled Plaintiffs' exercise of their First Amendment rights.

Confining a detainee to isolation has a "chilling effect" on that person's First Amendment rights and constitutes sufficient injury to support a retaliation claim. *Gomez*, 108 F.3d at 269; *see also*, *Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004) (prisoner stated claim for retaliation where he alleged that he was placed in segregation for filing grievance); *cf., Pratt,* 65 F.3d at 807 (illegal for corrections officials "to transfer and double-cell plaintiff solely in retaliation for his exercise of protected First Amendment rights.") Moreover, even a limited restriction upon a detainee's First Amendment right is actionable. "[W]e have never required a litigant... to demonstrate a total chilling of his First Amendment rights to file grievances... Speech can be chilled even when not completely silenced." *Rhodes*, 408 F.3d at 568.

The chilling effect of segregation on speech is evident in this instance. The Plaintiffs stopped their hunger strikes after placement in isolation out of fear of continued or additional retaliation. Further, the chilling effect of placing individuals, who are peacefully protesting immigration policies and conditions within the facility, on other detainees who witness the retaliation is immense.

e. ICE's actions do not reasonably advance any legitimate institutional goal.

ICE's actions serve no legitimate purpose if its actions are intended to punish the detainees or are excessive in relation to the allegedly non-punitive purpose for which it is imposed. *Jones*, 393 F2d at 932, 934. As detailed in Plaintiffs' declarations, they and the other detainees engaged in voluntary hunger strikes that were free from coercion. Even though their actions did not interrupt the daily functions of the facility, Plaintiffs were placed in segregation after allegedly having been "identified by staff as a principle [sic] party to intimidating others into not eating." *See* Ramirez-Martinez Decl. Exhibit A;

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Gonzales Decl. Exhibit A; Uriostegui Decl. Exhibit A. The Order further indicated that "for the security and safety of the detainees in the affected housing units, you are being placed in Protective Custody." *Id.* However, ICE's explicit justification is not supported by the facts and its shifting justifications indicate that the proffered reason for the segregation was pretext to cover up its actual, illegal motivation.

Even if ICE tries to articulate a post-hoc legitimate institutional interest, its actual retaliatory motive and arbitrary actions invalidates that interest. *See Clement v. California Dept. of Corr.,* 364 F.3d 1148, 1152 (9th Cir. 2004); *Williams v. Lane*, 851 F.2d 867, 875 (7th Cir. 1988). Furthermore, even if segregating Plaintiffs for participating in a hunger strike and for seeking to redress grievances with administrators could be a legitimate penological interest in a prison context, because detainees' First Amendment rights are entitled to greater protections than prisoners, any institutional interest should fail scrutiny here unless it is important, factually supported and verifiable. *Cf.*, *Jones*, 393 F2d at 932.

ICE choice to utilize administrative segregation rather than disciplinary segregation also evidences its desire to avoid scrutiny of its reasons for placing Plaintiffs and other detainees in solitary. ICE policy provides for two different types of segregation, disciplinary segregation for violation of a detention center rules or administrative segregation for other purposes. *See* Mungia Decl. Exhibit E and F (ICE policies regarding segregation). In order to utilize disciplinary segregation, ICE would have been required to provide Plaintiffs with procedural protections, including explicit notice of the allegations against them, the opportunity for disciplinary proceedings at which the men could have contested those charges and copies of relevant documents. *See* Mungia Decl. Exhibit D (ICE policy 3.1(V)(H) (stating that a detainee may not be placed in disciplinary segregation until so

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ordered by a disciplinary panel following a disciplinary hearing at which Plaintiffs would have the right to present witnesses).

Instead, ICE summarily threw these detainees in solitary confinement and did so without providing any explanation short of a single, vague, two-sentence statement.[4] Rather than being required to present some justification for its actions, ICE simply locked the men away with little explanation.

The rationale included in these orders also indicates the arbitrary nature of the claims brought against the men. ICE alleges that they have coerced others into engaging in hunger strikes while asserting this as a basis to place them in "Protective Custody." Under ICE's policy, protective custody is only appropriate "to protect the detainee from harm." *See* Mungia Decl. Exhibit E (ICE policy 2.12(V)(A)(1)(c)). ICE does not explain why it believes that the detainees are in danger.

Furthermore, the manner in which ICE identified the men to segregate demonstrates its intent to punish those who had chosen to speak out. It asked men to self-identify as interested in speaking with detention center administrators. Those who did so were placed in segregation.

ICE's interest in ending the hunger strikes and limiting further scrutiny into its actions is clear. Before ICE shuttled these men into segregation, there were many local and national media reports documenting the hunger strikers' activities and their

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[4] The lack of additional documentation with the Order of Detention is illuminating. ICE's policy regarding Administrative Segregation requires that ICE prepare a written order to which it must attach "[a]ll memoranda, medical reports and other relevant documents." Mungia Decl. Exhibit E (ICE Policy 2.12(V)(A)(2)(d)). These documents "shall be immediately provided to the detainee, unless delivery would jeopardize the safe, secure, or orderly operation of the facility." *Id.* at 2.12(V)(A)(2)(f). ICE policy also requires that any ICE officer who witnesses "a prohibited act, or [has] reason to suspect one has been committed, shall prepare and submit an Incident Report". Mungia Decl. Exhibit D (ICE Policy 3.1(V)(D)). The absence of any Incident Report outlining the allegations against them from the documents provided to Plaintiffs indicates that any alleged coercion either did not occur or was so insignificant that it went unreported by staff.

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concerns. *See e.g.,* Alex Altman, *Prison Hunger Strike Puts Spotlight on Immigration Detention,* Time.com (March 17, 2014) (attached as Exhibit I to Mungia Decl.); Dan Berger and Angelico Chazaro, *What's Behind the Hunger Strike at Northwest Detention Center,* Seattle Times (March 19, 2014) (attached as Exhibit H to Mungia Decl.). Federal officials, including United States Representative Adam Smith, toured the facilities and issued statements critical of ICE's actions. *See* Mungia Decl. Exhibit G. ICE attempted to downplay the reports and limit embarrassing exposure. *Id.*

The record strongly suggests that ICE threw these men into solitary in order to keep them quiet. The strength of Plaintiffs' showing justifies issuance of a temporary restraining order.

C. Detaining Plaintiffs In Solitary Confinement Constitutes Irreparable Harm.

Plaintiffs have suffered, and will continue to suffer irreparable harm if a temporary restraining order is not granted. ICE has violated Plaintiffs' First Amendment rights by retaliating against them for engaging in hunger strikes and for desiring to discuss their grievances with ICE. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373 (1976); *see Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (finding no abuse of discretion where Plaintiffs "faced irreparable harm in the form of a deprivation of constitutional rights absent a preliminary injunction"); *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984) (upholding finding of irreparable harm where prisoners showed possible deprivation of constitutional rights). Furthermore, Plaintiffs are likely to suffer further irreparable injury because of their indefinite placement in solitary confinement. *See Adams v. Carlson*, 488 F.2d 619, 629 (7th Cir. 1973) ("Imprisonment in segregation is the condition perhaps most paradigmatic of [irreparable harm].").

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D. **The Balance Of The Hardships And The Public Interest Both Support Issuance Of A Temporary Restraining Order.**

In considering whether a temporary restraining order should issue, "courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter,* 555 U.S. at 24. In this case, Plaintiffs are being irreparably injured by the on-going punishment they are suffering. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Klein v. City of San Clemente*, 584 F.3d 1196, 1207-08 (9th Cir. 2009). By contrast, absent a showing of an actual threat to the orderly operations of the Northwest Detention Center, any countervailing injury ICE may allege is not sufficient to defeat a TRO. *Sammartano v. First Judicial Dist. Court, in & for Cnty. of Carson City*, 303 F.3d 959, 973 (9th Cir. 2002).

Finally, the Ninth Circuit has recognized the "significant public interest" in upholding free speech principles. *Klein*, 584 F.3d at 1208. This is especially true where the infringement affects not only the individual plaintiff, "but also... anyone seeking to express their views in this manner." *Id.* Here, all detainees are chilled by ICE's actions.

IV. CONCLUSION

ICE has placed Plaintiffs and other men into solitary confinement because they exercised their constitutional right to free speech. Because ICE has refused to remedy the situation by releasing these men from segregation, this Court should enter an order requiring ICE to do so and barring it from engaging in any further retaliatory actions.

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Because Plaintiffs have been in solitary confinement since March 27, 2014 they are requesting a hearing on their request for immediate injunctive relief to be set for Friday, April 4, 2014 at 9:30 a.m.

Dated this 2 day of April, 2014.

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