

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 March 11, 2025, at 10:00 AM 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:

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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?

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