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Attorneys for Plaintiffs (continued on next page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE**

~~FAOUR ABDALLAH FRAIHAT, et al., et al~~

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

**DECLARATION OF MARGO
SCHLANGER IN SUPPORT OF
PLAINTIFFS' MOTION TO
ENFORCE THE APRIL 20, 2020
PRELIMINARY INJUNCTION
ORDER**

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3 ORRICK, HERRINGTON &

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1 I, Margo Schlanger, declare as follows:

2 1. I am the Wade H. and Dores M. McCree Collegiate Professor of Law
3 at the University of Michigan. I have substantial expertise in the law, policy, and
4 procedures affecting both criminal and civil detention, including standards and
5 practices relating to immigration detention oversight. I have been retained by
6 Plaintiffs' counsel in this case as an expert on this topic, among others.

7 2. I have been asked to render my opinion with respect to ICE and DHS
8 oversight of civil immigration detention.

9 3. A true and correct copy of my *curriculum vitae* is attached as

10 **Exhibit A.**

11 **I. PROFESSIONAL QUALIFICATIONS**

12 **Appointments and Experience**

13 4. I have been a tenured law professor at the University of Michigan
14 since 2009, except for a two-year period from 2011 to 2013. I have been a
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sponsored by the Vera Institute of Justice and chaired by former Attorney General Nicholas de B. Katzenbach and former Judge John Gibbons, which made recommendations for civil rights improvements in prisons and jails.

- f. From 1995 to 1998, I served as a Trial Attorney and then a SBT0.0043.5 (b)3.

1 U.C. IRVINE L. REV. 153 (2015)

2 j. *Prisoners' Rights Lawyers' Strategies for Preserving the Role of*
3 *the Courts*, 69 U. MIAMI L. REV. 519 (2015)

4 k. *Intelligence Legalism and the National Security Agency's Civil*
5 *Liberties Gap*, 6 Harv. Nat. Sec. L.J. 112 (2015).

6 l. *Offices of Goodness: Influence Without Authority within Federal*
7 *Agencies*, 36 Cardozo L. Rev. 53 (2014).

8 m. *Plata v. Brown and Realignment: Jails, Prisons, Courts, and*
9 *Politics*, 48 HARV. CIV. R

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1 the 2000 National Detention Standards (NDS), revised in 2019;¹ the Family
2 Residential Standards, issued in 2007;² the 2008 Performance Based National
3 Detention Standards³ (PBNDS 2008); and the 2011 Performance Based National
4 Detention Standards (PBNDS 2011), revised in 2016⁴ largely to reflect civil rights
5 initiatives—sexual abuse prevention, disability and language access, and use of
6 solitary confinement, use-of-force reporting, and some others.⁵ The standards
7 applicable to each detention facility are negotiated as part of ICE’s contract with its
8 operator.

9 24. DHS has several overlapping detention conditions oversight
10 processes. Some types of oversight happen routinely on a set schedule; others—
11 generally the more thorough inquiries—occur much more rarely, and based on
12 complaints, adverse incidents, or special initiatives.

13 25. In general, those more rare and thorough inquiries demonstrate that
14 the routine oversight mechanisms are insufficient to detect non-compliance or
15 induce compliance with the applicable detention standards. There is abundant
16 evidence that the routine inspections and monitoring fail to reliably induce
17 compliance with ICE’s detention standards; they do not reliably deter, detect, and
18 cure problems.

19 26. The routine inspections—which may be conducted by contractors or
20 by ICE personnel—have frequently and persuasively been criticized as
21 insufficient. For example, the contracted inspections have been found to focus on

22 ¹ The 2000 version is available at <https://www.ice.gov/detention-standards/2000>; the 2019
23 amended version was posted in December 2019, and is available at [https://www.ice.gov/
detention-standards/2019](https://www.ice.gov/detention-standards/2019).

24 ² <https://www.ice.gov/detention-standards/family-residential>.

25 ³ <https://www.ice.gov/detention-standards/2008>.

26 ⁴ <https://www.ice.gov/detention-standards/2011>. The pre-revision versions are available at
27 <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

28 ⁵ See ICE, Summary of Revisions to the ICE Performance-Based National Detention Standards
(December 2016), <https://www.ice.gov/detention-standards/2011#tab1>.

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- Improving “the array of tools and procedures used to assure effective response to identified deficiencies, including monetary withholding or contract reductions, plus rigorous follow-on review by ERO and other personnel”
- Adding processes apart from inspections that would “connect[] more directly to timely remedy of deficiencies”¹⁵

30. As far as I have been able to determine, very little has been done along the lines of the HSAC subcommittee report. DHS Inspector General John V. Kelly testified to a House Appropriations subcommittee in March 2019, “neither the inspections nor the onsite monitoring ensure consistent compliance with detention standards, nor do they promote comprehensive deficiency corrections.”¹⁶ Neither do the more thorough inquiries themselves induce such compliance; they demonstrate problems but not their correction. The oversight deficits that prompted the HSAC subcommittee’s recommendations remain.

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1 **IV. COVID-19 OVERSIGHT**

2 **COVID-19 Facility Checklist and Other Oversight Documents**

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1 are used in a typical week by staff, how many week's worth the facility has on
2 hand, and whether you have an adequate source for additional supplies if needed:

Item	Used per week by staff	Weeks' worth on hand	Adequate source for more?
Masks			
N95 respirators			
Medical disposable gloves			
Eye protection			
Face shields			
Other (please list)			

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c. Does the plan, as it currently exists, have the following features:
(With key features listed, each on their own line with a Y/N.)

d. Please provide a copy of the pandemic emergency plan.

Again, a question like this would educate facilities about what is needed, and also facilitate ICE follow-up.

55. Similar problems exist for many of the other questions. E.g., “Does the facility have a policy for protecting staff and detainees while transporting

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EXHIBIT A

Exhibit A

EDUCATION

Yale Law School, J.D. 1993.

Book Reviews Editor, *Yale Law Journal* (Vol. 102); Vinson Prize for excellence in clinical casework.

Yale College, B.A. 1989.

Honors: *magna cum laude*, distinction in the History major, National Merit Scholar.

COURSES TAUGHT

Torts; Prisons and the Law; Equal Protection; Constitutional Law. Seminars include Police and Surveillance Reform; Sexual Orientation, Gender Identity, and the Law; Civil Rights and Homeland Security; Empirical Inquiries into Civil Litigation; Institutional Reform Litigation.

SCHOLARLY PUBLICATIONS, forthcoming and published (for links, see margoschlanger.net)

Accommodating Disabilities, in P

Intelligence Legalism and the National Security Agency's Civil Liberties Gap, 6 HARV. NAT. SEC. L.J. 112 (2015).

Offices of Goodness: Influence Without Authority within Federal Agencies, 36 CARDOZO L. REV. 53 (2014).

The Equal Employment Opportunity Commission and Structural Reform of the American Workplace (with Pauline Kim), 91 WASH. U. L. REV. 1519 (2014).

Prison Segregation: Symposium Introduction and Preliminary Data on Racial Disparities, 18 MICH. J. RACE & LAW 241 (2013).

Plata v. Brown and Realignment: Jails, Prisons, Courts, and Politics, 48 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 165 (2013).

Women Behind the Wheel: Gender and Transportation Law, 1860-1930, in Tracy A. Thomas & Tracey Jean Boisseau, eds., FEMINIST LEGAL HISTORY: ESSAYS ON WOMEN AND LAW (2011).

Regulating Segregation: The Contribution of the ABA Criminal Justice Standards on the Treatment of Prisoners, 47 AM. CRIM. L. REV. 1421 (2010)

Against Secret Regulation: Why and How We Should End the Practical Obscurity of Injunctions and Consent Decrees, 59 DEPAUL L. H. Mnk-1.14atrees

Inmate Litigation, 116 HARV

Obama should finish what he started and end NSEERS, The Hill, Dec. 6, 2016,
<http://thehill.com/blogs/congress-blog/homeland-security/308955-obama-should-finish-what-he-started-and-end-nseers>.

Equality Matters in the National Security Context, Too, American Constitution Society Blog, Sept. 14, 2016, Sept. 14, 2016,

The Bigger No Fly List Problem, JustSecurity.org, June 25, 2014, available at <http://justsecurity.org/12215/guest-post-no-fly-list-problem/>.

The Supreme Court Gives a Subtle Boost to Free Speech, The New Republic, May 28, 2014, available at <http://www.newrepublic.com/article/117925/wood-v-moss-subtle-victory-free-speech>.

Even Conservative Judges Can't Deny the Constitutional Logic of Same-Sex Marriage

Solitary confinement resources development project, with Vera Institute of Justice. See <https://www.safealternativestosegregation.org/promising->

Mapping the Iceberg: The Impact of Data Sources on the Study of District Courts

- Law & Econ workshop, University of Michigan (April 2020)

Panelist/Discussant, 2019/20:

- COVID-19 Prisoners' Advocates Webinars (many, spring/summer 2020)
- *Discovery in Prison Cases*, and *Immigration Detention*, Practicing Law Institute, Prison Law 2019 (Nov. 2019)
- *Teaching Civil Rights*, Michigan Civil Rights Academy (Oct. 2019)

U. Mich. Student Organizations presentations, 2019/20:

- Careers in civil rights law (Mar. 2020)
- Criminal justice reform opportunities (Feb. 2020)
- Prison litigation in Mississippi (with Judge Carlton Reeve) (Feb. 2020)

U. Mich. Student Organizations presentations, 2018/19:

- Lawyers and mental health collaborations to improve prison conditions s

- Korematsu and current immigration detention policies (Jan. 2019)
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The Supreme Court and Prisoner Treatment Standards & Trends in Solitary Confinement Litigation and Policy, Michigan Department of Health and Human Services (Feb. 2017)

U. Mich. Student Organizations presentations, 2016/17:

- Young Scholars Conference (Apr. 2017)
- American Constitution Society, Private Prisons (Mar. 2017)
- Women Law Students Ass'n, Women Who Lead: Cross-School Viewpoint (Feb. 2017)
- American Constitution Society, The President and the courts (Feb. 2017)
- Women's rights and the presidential election (Nov. 2016)
- U. Mich. Women Law Students Association, Incarcerated women (Oct. 2015)
- OUTLAWS, LGBT issues facing the next president (Sept. 2016)

Panelist/Discussant, 2016/17:

- Practising Law Institute, Prison Litigation 2017: Practical Strategies (June 2017)
- Arizona State University, Bridging the Gap Between Scholars and Criminal Justice Reform (Feb. 2017)
- Police reform and Black Lives Matter (Oct. 2016)
- Security and privacy in an age of terrorism, UM cybersecurity conference (Oct. 2016)
- Prison Litigation Reform Act 101, Prisoners' Advocates conference (Sept. 2016)
- Decarceration and disability, Prisoners' Advocates conference (Sept. 2016)
- Landmark cases in prisoner civil rights, UM forensic psychiatry fellows seminar (Aug. 2016)

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Studying Injunctions Quantitatively, Center for Political Studies, Interdisciplinary Workshop on Politics and Policy (Mar. 2015)

Intelligence Legalism and the NSA's Civil Liberties Gap

- Ass'n of Am. Law Schools, Annual Conference, Nat'l Security Section (chosen in call for papers) (Jan. 2015)
- University of Iowa Law School Faculty Workshop (Nov. 2014)
- University of Michigan Law School Legal Theory Workshop (Sept. 2014)
- 7th Annual National Security Law Workshop (May 2014)

Offices of Goodness: Influence without Authority in Federal Agencies

- Emory Law School (Mar. 2014)
- Cardozo Law School (Feb. 2014)
- Law & Society Ass'n (May 2013)

Panelist/Discussant (2014/15)

- Brennan Center: Strengthening Intelligence Oversight--Executive Branch Oversight (May 2015)
- Michigan Department of Education, Teaching the Movement in Michigan: Civil Rights Education Forum (May 2015) Nat'l

Chair/discussant, panel on Immigration, Law & Society Association Conference (June 2012)

Operationalizing Deterrence: Claims Management (in Hospitals, a Large Retailer, and Jails and Prisons)

- University of Michigan Law Faculty Workshop (Sept. 2008)
- Insurance & Society Seminar, Boston (May 2008)
- Southern Methodist University Law Faculty Workshop (Jan. 2008)
- Law & Society Ass'n, Berlin (July 2007)
- University of North Carolina Law Faculty Workshop (Nov. 2006)
- Law & Society Ass'n, Baltimore (July 2006)

Seminar teaching

- Ass'n of American Law Schools, Workshop for New Law Teachers (June 2008)
- Ass'n of American Law Schools, Workshop for New Law Teachers (June 2007)

Hedonic Damages, Hedonic Adaptation, and Disability

- University of Illinois Law School, Seminar on Law, Psychology & Economics (Apr. 2008)
- Washington University Law Faculty Workshop (Aug. 2006)

Civil Rights Injunctions Over Time: A Case Study of Jail and Prison Court Orders

- University Management Team, Washington University in St. Louis (Apr. 2008)
- Prison Litigation: A Workshop for Plaintiffs' Attorneys (Washington, D.C., Mar. 2008)
- Law and Society Ass'n (Las Vegas, NV, June 2005)
- Junior Scholars Empirical Legal Studies conference, Cornell Law School (Oct. 2004)

The Prison Litigation Reform Act

- *Preserving the Rule of Law in America's Prisons: The Case for Amending the PLRA*, Symposium, Penn. J. of Constitutional Law, Litigating the Eighth Amendment (Feb. 2008)
- Witness, National Prison Rape Elimination Comm'n, *The Role of Courts and Litigation in Regulating Prison and Jail Prevention of Sexual Violence and Misconduct* (Dec. 2007)
- Witness, House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security, hearing: *Review of the PLRA*

2005)

Moderator/discussant, panel on Race, Empirical Legal Studies Conference (Nov. 2007).

Fault and the Constitutional Law of Equality. Invited response to David Strauss, Childress Lecture (Little Rock and the Legacy of *Brown*), Saint Louis University (Oct. 2007)

Teaching the Equal Protection Clause. Presentation to high school teachers, Street Law (Oct. 2007)

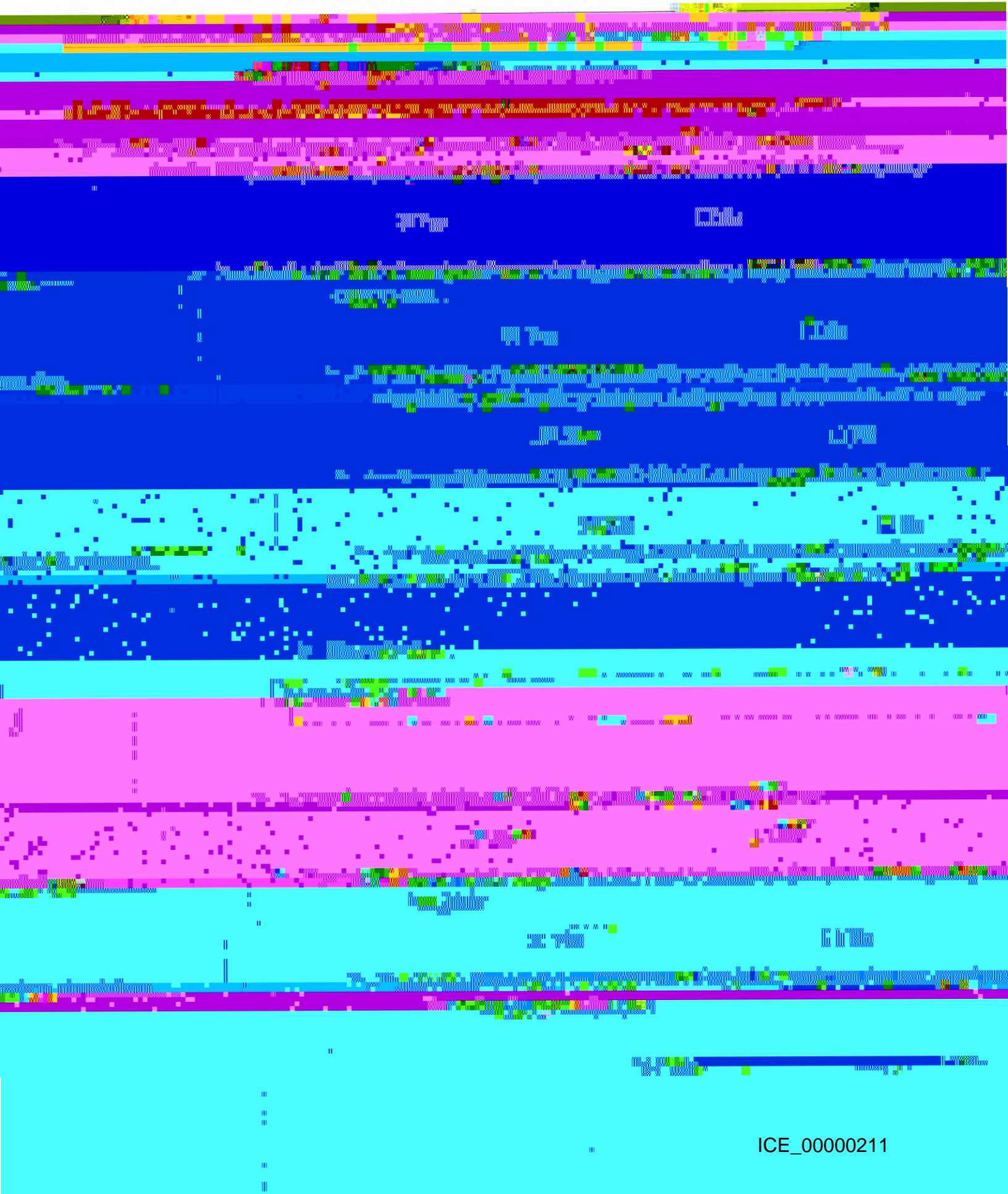
The Plaintiffs' Bar and the Conceptualization of Litigation

- Law & Society Ass'n, Berlin (July 2007)
- Washington University Law Faculty Workshop (May 2007)
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EXHIBIT B

Exhibit B

Bergen County



➤ if a staff member is confirmed with COVID-19 infection, does the facility plan to inform other facilities?

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emca: surface cleaning every 4-6 hours throughout the day and is thus being documented.

Yes

No

0. Yes No Not Sure

Yes

Yes

1. Yes No Not Sure

Yes

No

2. Yes

No

3. Not Sure

Yes

No

4. Yes No Not Sure

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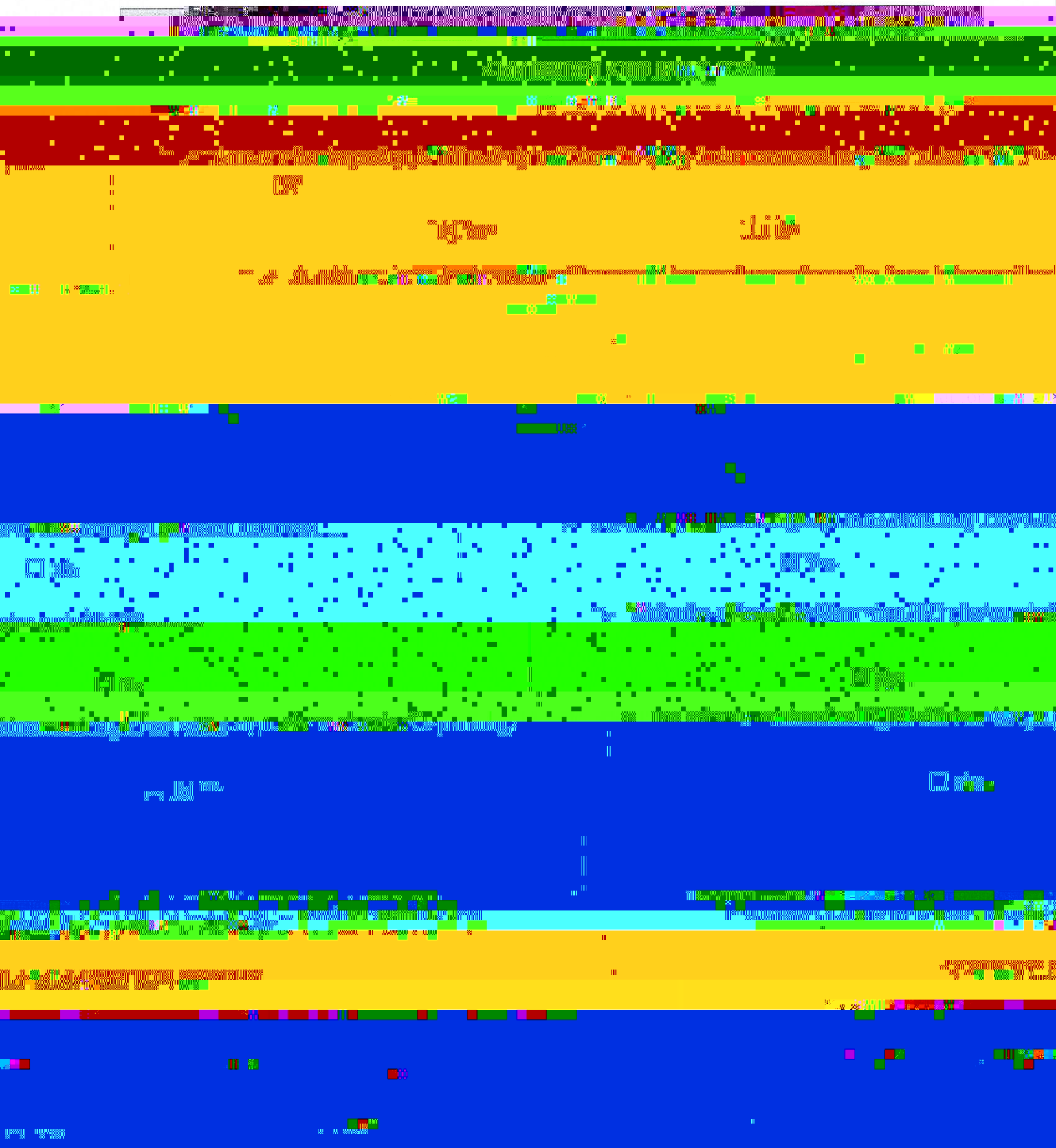
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Does this facility have a disinfection protocol?

Yes/No/Not Sure

➤ Does the facility have



➤ Are the... can... identification?

➤ Is there a screening procedure in the lobby for all people (contract, ICE, medical, EOU, etc.) entering the faculty?

Yes

No

➤ Is there a procedure a professor should follow to reveal 100% of degrees received?

Yes

No

For Detainees?

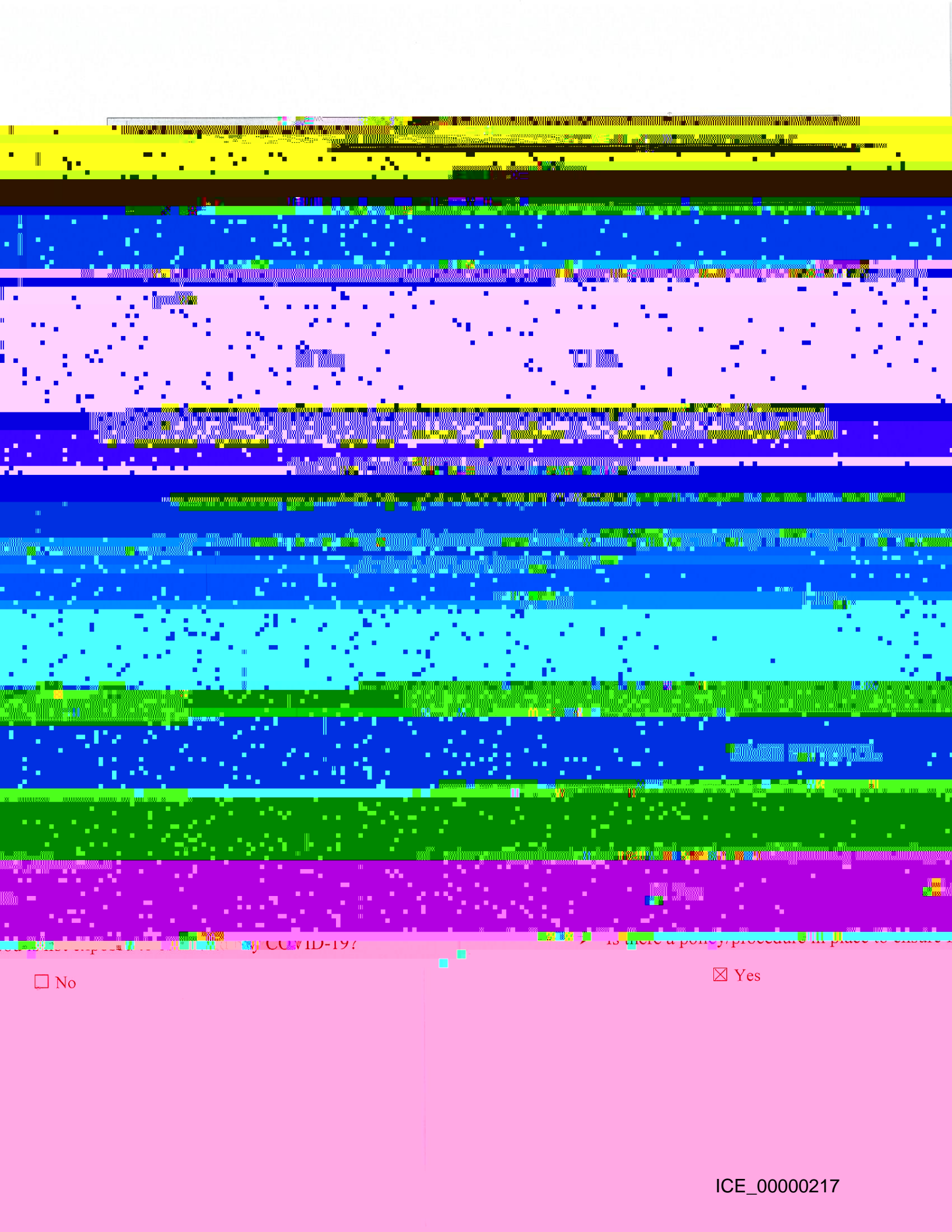
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Readiness been implemented:

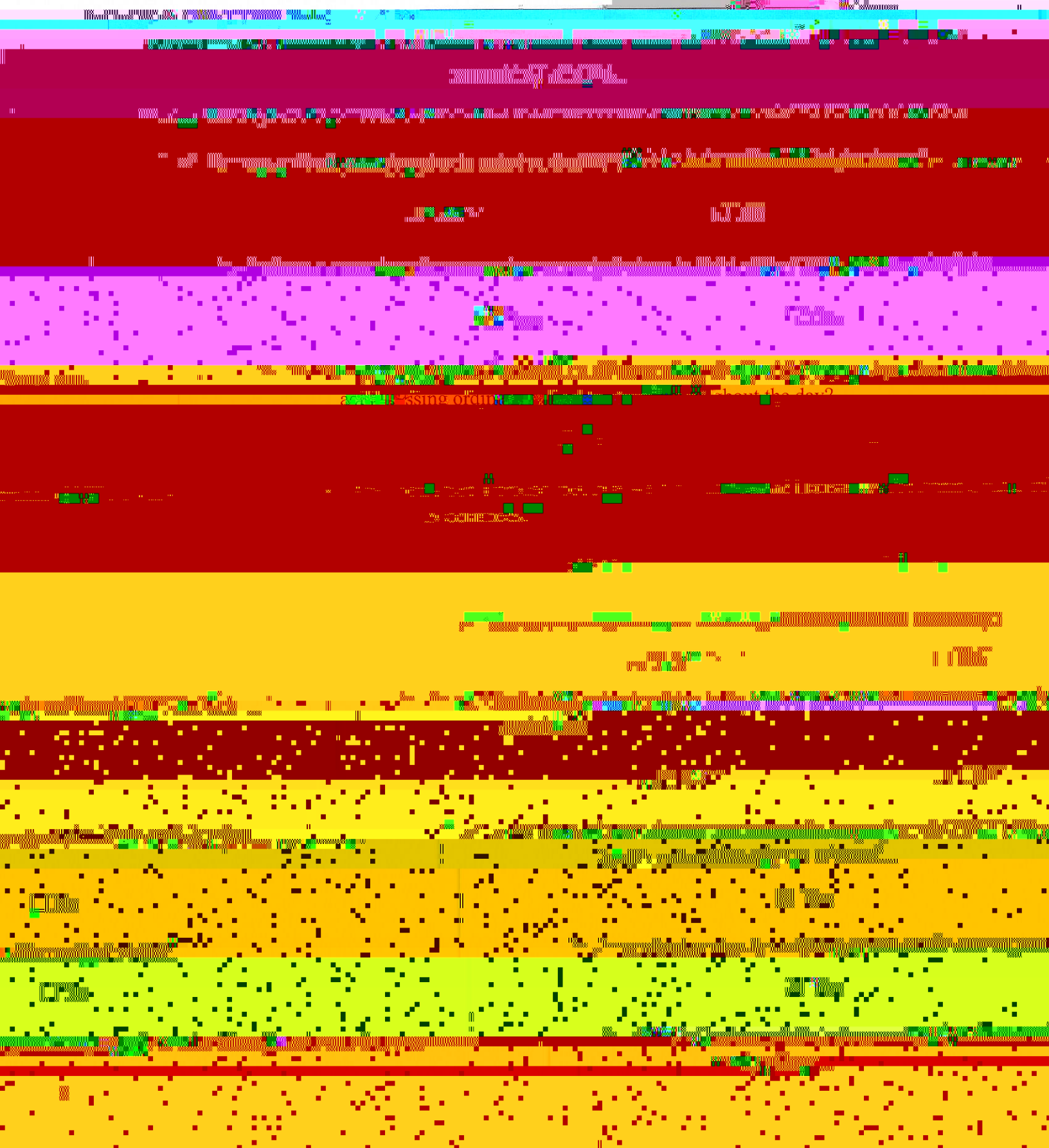
➤ Does the facility have staff training in place?

➤ Have social distancing strategies implemented during facility operations (e.g. interviewing,



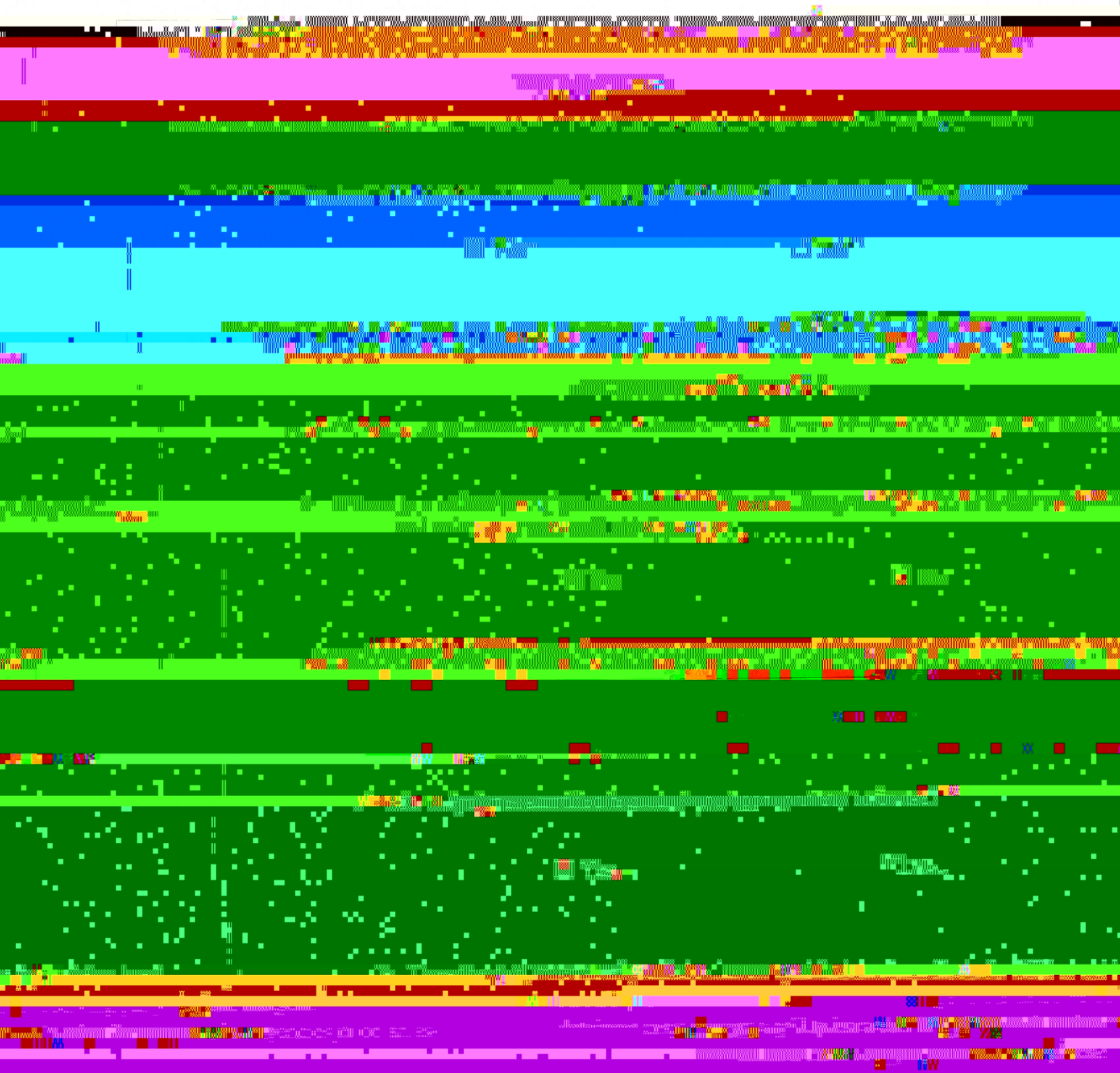
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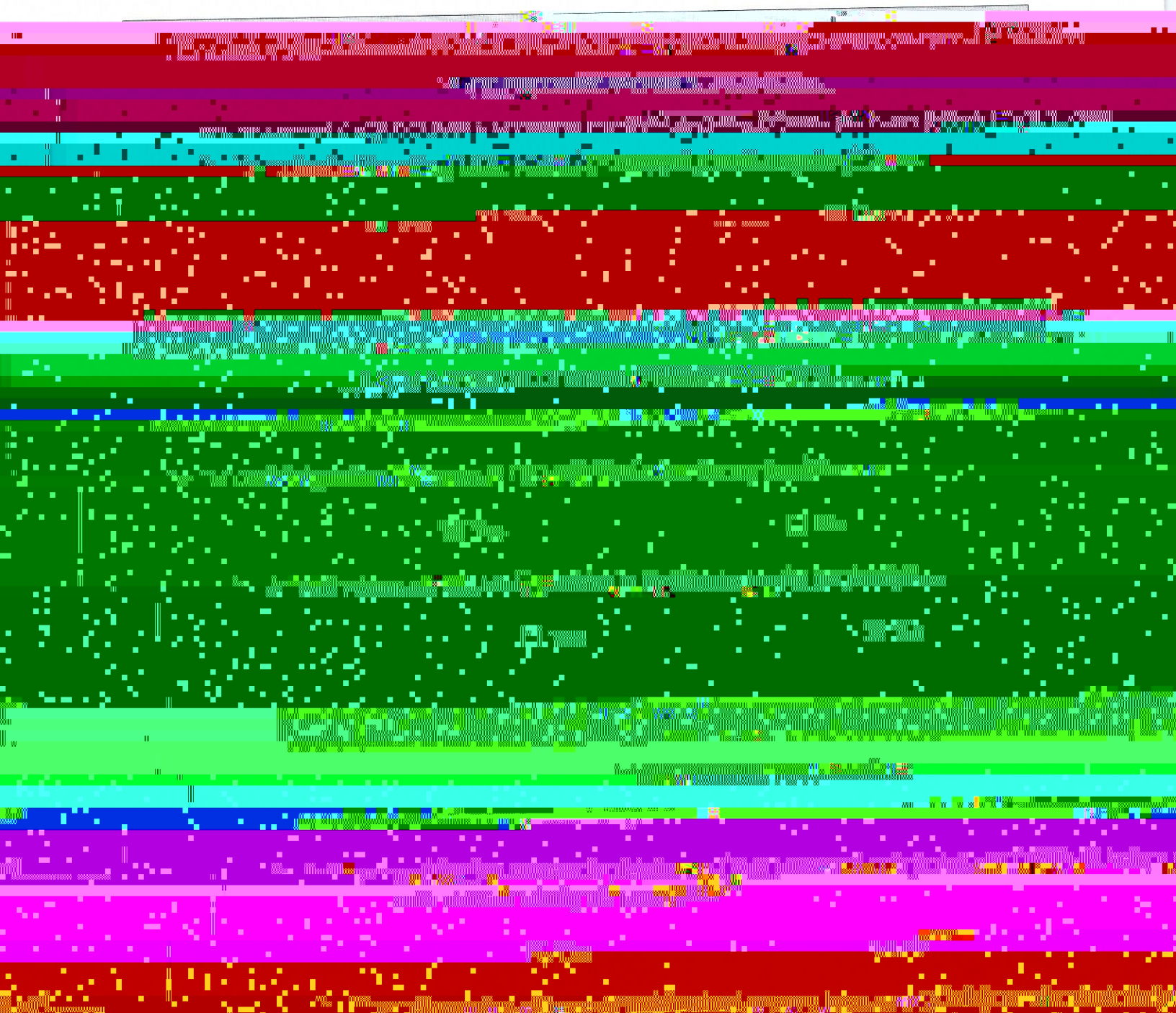
Yes



Yes

No





facilities, unless necessary for
concerns, or to prevent overcrowding

Exhibit B

