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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **EASTERN DIVISION**

12 JOSE ROBLES RODRIGUEZ;
13 CHARLESTON EDWARD DACOFF;
14 JOSE HERNANDEZ VELASQUEZ;
LUIS LOPEZ SALGADO; PAOLA
RAYON VITE; MARTIN VARGAS
ARELLANO,

15 Petitioners-Plaintiffs,

16 v.

17 CHAD F. WOLF, Acting Secretary, U.S.
Department of Homeland Security;
18 MATTHEW T. ALBENCE, Deputy
Director and Senior Official Performing
19 the Duties of the Director, U.S.
Immigration and Customs Enforcement;
20 DAVID MARIN, Director of the Los
Angeles Field Office, Enforcement and
21 Removal Operations, U.S. Immigration
and Customs Enforcement; and JAMES
22 JANECKA, Warden, Adelanto ICE
Processing Center,

23 Respondents-Defendants.
24
25
26
27
28

) Case No. 5:20-CV-00627

) **ADELANTO COVID**

) **PETITIONERS'-PLAINTIFFS'**
) **MEMORANDUM OF POINTS**
) **AND AUTHORITIES IN**
) **SUPPORT OF MOTION FOR**
) **TEMPORARY RESTRAINING**
) **ORDER**

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26 **Pro hac vice* application forthcoming

27 ***Pro hac vice* application forthcoming; not admitted in D.C., practice limited to
28 federal courts

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1 **I. INTRODUCTION**

2 Petitioners-Plaintiffs (“Plaintiffs”) are persons detained at the Adelanto ICE
3 Processing Center (“Adelanto”) who are vulnerable to serious illness and death from
4 the COVID-19 global pandemic. As this Court knows, COVID-19 is a contagious
5 disease that has spread like wildfire throughout the United States and the world in the
6 past three months. The number of confirmed cases and deaths rises exponentially by
7 the day, including in San Bernardino and surrounding areas.

8 Recognizing the gravity of this threat, just days ago this Court ordered the
9 immediate release of two individuals subject to immigration detention in Adelanto.
10 *Castillo v. Barr*, TRO and Order to Show Cause (“*Castillo* TRO”), No. CV 20-605,
11 Dkt. 32, at 11 (Mar. 27, 2020) (Att. A). This Court found that “[u]nder the Due
12 Process Clause, a civil detainee cannot be subject to the current conditions of
13 confinement at Adelanto,” where there is “potential exposure . . . to a serious,
14 communicable disease . . . that is more than very likely to cause a serious illness.” *Id.*
15 at 9 (citing *Helling v. McKinney*, 509 U.S. 25, 32 (1993)).

16 The Plaintiffs in this case are identically situated to the detainees who were
17 granted relief in *Castillo*. They are detained by Immigration and Customs
18 Enforcement (“ICE”) at Adelanto, and currently housed in conditions where social
19 distancing is impossible. Just like the petitioners in *Castillo*, they are not kept “at least
20 6 feet apart from others at all times” and “have been put into a situation where they
21 are forced to touch surfaces touched by other detainees, such as with common sinks,
22 toilets and showers.” *Castillo* TRO at 10. If anything, their situation is even more
23 urgent than in *Castillo* because they each have pre-existing health conditions that
24 make them especially vulnerable to serious injury or death from COVID-19, and
25 because in the three days since this Court’s order, the number of confirmed COVID-
26 19 cases in San Bernardino has shot up by 73%—a shocking rate of increase which
27 indicates that San Bernardino is only at the beginning of its epidemiological curve.

28 Given the existing conditions and rapid spread of the disease, there is a serious

1 danger of an imminent COVID-19 outbreak in Adelanto, where the disease “can
2 spread uncontrollably with devastating results.” *Castillo* TRO at 3. Furthermore,
3 Plaintiffs’ serious underlying medical conditions, including HIV, diabetes, asthma,
4 and hypertension, make them acutely vulnerable in the event of a COVID-19
5 infection. Their imminent release is a matter of life and death. The TRO should be
6 granted.

7 **II. FACTS**

8 **A. COVID-19 Poses Grave Risk of Harm, Including Serious Illness or** 9 **Death, to Those with Certain Medical Conditions, Including Plaintiffs.**

10 COVID-19 is a disease that has reached pandemic status. According to the
11 World Health Organization, as of March 29, 2020, there are 634,835 confirmed
12 diagnoses of COVID-19 worldwide and 29,957 confirmed deaths.¹ In the United
13 States alone, there are 103,321 confirmed cases and 1,668 confirmed deaths.² Due to
14 the lack of testing and the significant number of infectious of individuals with mild or
15 no symptoms, “the number of actual cases in the U.S. is without a doubt much, much
16 higher.” *Schneberk Decl.* ¶ 11.

17 Medical conditions that increase the risk of serious complications from
18 COVID-19 for people of any age include lung disease, heart disease, diabetes, asthma,
19 hypertension, and other illnesses leading to a compromised immune system (such as
20 from cancer, HIV, or autoimmune disease). *Greifinger* ¶ 7; *Golob Decl.* ¶ 14;
21 *Schneberk Decl.* ¶ 14. Each of the Plaintiffs has one or more of these conditions and is
22 at an increased risk of developing serious complications or dying from COVID-19.
23 *Greifinger Decl.* ¶ 13; *Schneberk Decl.* ¶ 14.

24 Complications from COVID-19 can develop at an alarming pace. Patients can
25 show the first symptoms of infection within two days after exposure, and their

26 ¹ Coronavirus disease 2019 (COVID-19) Situation Report - 69, World Health
27 Organization (Mar. 29, 2020), *Ngo Decl. Ex. D.*

28 ² *Id.* More recent numbers have been reported to be as high as 140,570 diagnoses and
2,443 deaths confirmed nationally. *See Sergio Hernandez et al., Tracking COVID-10
Cases in the US*, CNN (last updated Mar. 30, 2020 6:40am PT),
<https://www.cnn.com/interactive/2020/health/coronavirus-us-maps-and-cases/>

1 condition can seriously deteriorate in five days or sooner. Golob Decl. ¶ 6. For people
2 in the highest risk populations, the fatality rate of COVID-19 is about 15 percent. *Id.*
3 at ¶ 4. Patients in high-risk categories who do not die from COVID-19 should expect a
4 prolonged recovery, including the need for extensive rehabilitation for profound
5 reconditioning, loss of digits, neurologic damage, and loss of respiratory capacity.

6 Most people in higher risk categories who contract COVID-19 need advanced
7 support. Golob Decl. at ¶ 8. This level of supportive care requires highly specialized
8 equipment that is in limited supply, and an entire team of care providers, including 1:1
9 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians. *Id.*

10 Because of its highly contagious nature, the only known effective measure to
11 reduce the risk of injury or death from COVID-19 is to prevent people from being
12 infected in the first place. Schneberk Decl. ¶ 20; Greifinger Decl. ¶¶ 8, 14. Social
13 distancing, or remaining physically separated from known or potentially infected
14 individuals, and vigilant hygiene, including washing hands with soap and water, are
15 the only way to protect people from COVID-19. Golob Decl. ¶ 10.

16 The Centers for Disease Control and Prevention (“CDC”) projects that over 200
17 million people in the United States could be infected with COVID-19 over the course
18 of the epidemic without effective public health intervention, with as many as 1.5
19 million deaths in the most severe projections. Golob Decl. ¶ 11. On March 19, 2020,
20 Governor Gavin Newsom ordered all California residents to stay at home unless they
21 are getting food, caring for a relative or friend, obtaining healthcare or working in an
22 occupation deemed “essential.”³ While outside, residents must keep at least six feet of
23 distance from each other.⁴

24 In San Bernardino County in particular, growth in COVID-19 diagnoses has
25 grown exponentially with no end in sight. This Court noted on March 27, 2020 that
26 the number of confirmed cases in San Bernardino County has “tripled over the past

27 ³ See California State Government, *California Coronavirus (COVID-19) Response,*
28 *Stay Home Except for Essential Needs* (last updated Mar. 24, 2020), Ngo Decl. Ex. E.
⁴ *Id.*.

1 five days.” *Castillo* TRO at 10. Since then, the number of cases has grown by 73%,
2 and the peak is not close.⁵

3
4 **B. People Detained at Adelanto Face an Imminent and Substantial Risk of**
5 **Contracting COVID-19.**

6 Defendants’ own experts have recognized that conditions like those present
7 currently at Adelanto amount to a “tinderbox scenario” for the rapid spread of
8 COVID-19. *See* Letter from Drs. Scott A. Allen & Josiah Rich to Rep. Bennie
9 Thompson, et al. (Mar. 19, 2020), Ngo Decl. Ex. A at 4; *see also* Schneberk Decl. ¶
10 18-23; Greifinger Decl. ¶ 10; Schriro Decl. ¶¶ 14–20. Plaintiffs and other detained
11 individuals are housed in crowded cells with four to eight beds on “pods” with as
12 many as 100 people.⁶ Martin Decl. ¶ 15; Garcia Decl. ¶ 16; Brooks Decl. ¶¶ 14–15;
13 Schneberk Decl. ¶ 21. Toilets, sinks, and showers are shared, without disinfection
14 between each use. Schneberk Decl. ¶¶ 21, 27. Food preparation and service is
15 communal with eight to 16 people eating at the same table. Martin Decl. ¶ 15; Garcia
16 Decl. ¶ 16. Schneberk Decl. ¶ 21; Martin Decl. ¶ 15; Zelcer Decl. ¶ 22; Brooks Decl. ¶
17 16. Communal areas are not regularly cleaned; when they are, cleaning is done by
18 detainees using damp towels. Martin Decl. ¶ 13; Zelcer Decl. ¶ 22. Staff arrive and
19 leave on a shift basis, and there is limited ability to adequately screen staff for new,
20 asymptomatic infection. Schneberk Decl. ¶ 22. There is little to no COVID-19 testing

21
22 ⁵ ABC 7, *Coronavirus Southern California update: LA County reports 5 new deaths,*
332 new cases (updated Mar. 30, 2020 6am PT), Ngo Decl. Ex F.

23 ⁶ ICE has placed severe restrictions on attorneys’ ability to access their clients at
24 Adelanto, including limitations on in-person visits unless attorneys bring their own
25 personal protective equipment, which is obviously in very short supply. *See Torres v.*
26 *Nielsen*, Case No. 18-cv-02602 (C.D. Cal), Motion for Temporary Restraining Order,
27 Dkt. No. 127-1 at 10-17 (describing current limitations on attorney-client
28 communication at Adelanto and seeking emergency relief to ensure detainees maintain
basic access to counsel during the COVID-19 pandemic); Brooks Decl. ¶ 19; Garcia
Decl. ¶ 22. In addition, ICE provides no effective way for attorneys to conduct
confidential calls with clients detained at Adelanto. *Id.* As a result, and because of the
urgency of the situation, in lieu of declarations from Plaintiffs-Petitioners themselves,
the attorneys representing Plaintiff-Petitioners in their administrative removal
proceedings have provided declarations describing the facts of their cases.

1 of detainees, such that it is impossible to know who may be carrying the disease.⁷

2 Brooks Decl. ¶ 18; Garcia Decl. ¶¶ 18, 20.

3 Despite the crowded, communal facilities, people have no access to masks and
4 little to no access to hand sanitizer. Martin Decl. ¶ 14; Hellerstein Decl. ¶ 15; Garcia
5 Decl. ¶ 15; Brooks Decl. ¶¶ 16–17. Soni Decl. ¶ 16; Zelcer Decl. ¶ 19. Although fever
6 is one of the earliest symptoms of COVID-19, detainees’ temperatures are not
7 monitored. Zelcer Decl. ¶ 19; Garcia Decl. ¶ 18; Brooks Decl. ¶ 18. Guards and
8 medical staff generally do not wear masks, despite coming in and out of the facility all
9 day, and frequently standing in close proximity to detained individuals. Garcia Decl. ¶
10 15; Soni Decl. ¶ 16; Schneberk Decl. ¶ 22.

11 While Defendants may argue that they have adequate protocols in place to
12 address the epidemic, ICE’s own guidance, issued on March 15, 2020, acknowledges
13 the risks of coronavirus infection and COVID-19 to those in civil detention.⁸
14 Apparently intended as a response to these acknowledged risks, the guidance is
15 impractical, does not reflect the reality of the overcrowded conditions at Adelanto, and
16 is “wholly insufficient to adequately face the crisis at hand”—even if it were being
17 followed, which, as described above, it is not. Greifinger Decl. ¶ 12.

18 For instance, although the ICE guidance suggests that “[d]etainees who meet
19 CDC criteria for epidemiologic risk of exposure to COVID-19 are housed separately
20 from the general population,” the reality is that this is practically impossible and, in
21 fact, high-risk individuals like Plaintiffs remain housed in the general population.
22 Greifinger Decl. ¶ 12(f); Martin Decl. ¶ 15; Garcia Decl. ¶ 16; Brooks Decl. ¶ 14–15.

23
24 ⁷ Even so, COVID-19 may already be at Adelanto: as of March 29, 2020, an ICE
25 detainee in Bergen County Jail in New Jersey tested positive for COVID-19; at least
26 one ICE medical staff member tested positive for the virus; and, an internal ICE
27 COVID-19 report states that, as of March 19, 2020, ICE’s Health Services Corps had
28 isolated nine detainees and it was monitoring 24 more in 10 different ICE facilities,
and 1,444 officials with ICE and DHS were in precautionary self-quarantine. *See* U.S.
Immigration & Customs Enforcement, *ICE Detainee Tests Positive for COVID-19 at
Bergen County Jail* (Mar. 24, 2020), Ngo Decl. Ex. I; Ken Klippenstein, *Exclusive:
ICE Detainees Are Being Quarantined*, *The Nation* (Mar. 24, 2020), Ngo Decl. Ex. J.
⁸ *ICE Guidance on COVID-19* (“ICE Guidance”), U.S. Immigration & Customs
Enforcement, www.ice.gov/covid19.

1 ICE’s protocol “misses the mark” because the fundamental issues of close quarters,
2 lack of testing, and inability to enforce social distancing are the source of the problem.
3 *Id.* ¶ 12(a); *see id.* at ¶¶ 12(d), (f). As described above, Plaintiffs and other detainees
4 continue to live and eat communally and use communal hygiene facilities with little or
5 no access to hand sanitizer, masks, gloves, or other protection against COVID-19.

6 Moreover, although the ICE guidance suggests that “[d]etainees who do not
7 have fever or symptoms, but meet CDC criteria for epidemiologic risk, are housed
8 separately in a single cell, or as a group,”⁹ other experts, including Plaintiffs’
9 correctional health expert, Dr. Greifinger, concluded that cohorting vulnerable
10 detainees, such as Plaintiffs, *increases* their risk of developing COVID-19 symptoms
11 without proper medical attention. Greifinger Decl. ¶ 12(i). Tellingly, the ICE guidance
12 acknowledges that the options to safeguard vulnerable detainees depend on available
13 space; given how full ICE facilities are, this will be impossible. *Id.* ¶ 12(h). The
14 evidence shows that Defendants are incapable of protecting Plaintiffs at Adelanto
15 from the risks of COVID-19.

16 **C. Continued ICE Detention is Unsafe for Those Vulnerable to COVID-19.**

17 Release from detention is the *only* option to protect Plaintiffs from COVID-19
18 under the current conditions at Adelanto. That fact has been recognized by public
19 health experts and prison administrators alike. Dr. Schneberk has concluded that
20 “releasing detainees is the only effective means of preventing widespread infections at
21 the [Adelanto] facility.” Schneberk Decl. ¶ 39; *see* Greifinger Decl. ¶ 14. As he
22 explains, “[c]ongregate settings such as Adelanto are nearly impossible to protect in
23 scenarios such as this one, and it will be very difficult *irrespective of the amount of*
24 *sanitation and hygiene practices employed*, to prevent spread in such a confined
25 densely populated space” as Adelanto. Schneberk Decl. ¶ 41 (emphasis added). For
26 that reason, Dr. Schneberk states that “[a]t a *minimum*, Adelanto should immediately
27 release all detainees in high risk medical groups,” and that “[f]rom a public health
28

⁹ *Id.*

1 perspective, the most effective action to combating COVID-19 would be to
2 depopulate Adelanto” to facilitate social distancing by staff and detainees. Schneberk
3 Decl. ¶ 39; *see id.* at ¶¶ 44–45; Greifinger Decl. ¶ 14; (correctional medical expert
4 recommending release of high-risk individuals as a “key part of a risk mitigation
5 strategy”); Schriro Decl. ¶ 33 (former senior advisor to the Department of Homeland
6 Security (“DHS”) and founding director of the ICE Office of Detention Policy
7 recommending release of medically vulnerable individuals); Golob Decl. ¶ 14
8 (infectious disease specialist concluding there are “many reasons” that vulnerable
9 people are at grave risk).

10 For similar reasons, multiple jurisdictions, including Los Angeles, CA,
11 Chicago, IL, Harris County, TX, New York City, and the entire states of New Jersey
12 and Iowa have released thousands of people from criminal custody, acknowledging
13 the grave threat that an outbreak in jails and detention centers pose. Schriro Decl. ¶¶
14 28–30 (listing efforts across the country to reduce jail and prison population, including
15 releasing individuals and lowering arrests).

16 Other public officials have likewise called for the release of eligible individuals
17 from detention. The former Acting Director of ICE, John Sandweg, has stated that
18 “ICE can, and must, reduce the risk [COVID-19] poses to so many people, and the
19 most effective way to do so is to drastically reduce the number of people it is currently
20 holding.” John Sandweg, *I Used to Run ICE. We Need to Release the Nonviolent*
21 *Detainees*, *The Atlantic* (Mar. 22, 2020), Ngo Decl. Ex. B.

22 Moreover, Defendants have been explicitly informed by their own medical
23 advisors of the dangers of continuing to detain inmates in light of COVID-19. As
24 early as February 25, 2020, Dr. Scott Allen and Dr. Josiah Rich, medical experts to
25 DHS, specifically warned the agency of the danger to detainees of rapid spread of
26 COVID-19 in immigration detention facilities. In a whistleblower letter to Congress,
27 Dr. Allen and Dr. Rich recommended that “[m]inimally, DHS should consider
28 releasing all detainees in high risk medical groups such as older people and those with

1 chronic diseases.” Ngo Decl. Ex. A at 5–6. They concluded that “acting immediately
2 will save lives not of only those detained, but also detention staff and their families,
3 and the community-at-large.” *Id.* at 6.

4 **D. Plaintiffs are Vulnerable to Serious Illness or Death If Infected by**
5 **COVID-19.**

6 All Plaintiffs have underlying medical conditions that increase their risk of
7 serious illness or death if exposed to COVID-19. Greifinger Decl. ¶ 13. Plaintiff Jose
8 Robles Rodriguez suffers from diabetes, high blood pressure, and high cholesterol.
9 Martin Decl. ¶ 7. Plaintiff Luis Lopez Salgado has been diagnosed with HIV, and has
10 experienced problems receiving his HIV medications consistently while detained.
11 Garcia Decl. ¶¶ 9, 13. Plaintiff Paola Rayon Vite has been diagnosed with asthma and
12 diabetes. Zelcer Decl. ¶¶ 9, 15. She had had a recurring cough for about a month, and
13 has been prescribed an inhaler due to her diminished lung capacity. *Id.* ¶ 18. Plaintiff
14 Jose Hernandez Velasquez has been diagnosed with hypertension and, though only 19
15 years old, takes medication to lower his risk of a heart attack. Soni Decl. ¶¶ 14–15.
16 Plaintiff Charleston Edward Dacoff suffers from diabetes, congestive heart failure,
17 and hypertension. Brooks Decl. ¶ 7.

18 **E. ICE Has Discretion to Release Inmates for Medical Reasons.**

19 ICE has a track record of releasing vulnerable detainees like Plaintiffs,
20 especially for medical reasons. *See* Lorenzen-Strait Decl. ¶¶ 4–9. Under ICE policies,
21 individuals who did not yet have a serious physical illness but were vulnerable to
22 medical harm were considered for release. *Id.* at ¶ 7. When deciding whether to
23 release medically-vulnerable detainees from custody, ICE considered whether the
24 detainees had any physical or mental condition that would make them more
25 susceptible to medical harm while in ICE custody. *Id.*¹⁰

26 Nor is detention required for ICE to achieve its goals. ICE has a range of highly

27 _____
28 ¹⁰ Plaintiffs do not argue that they can force ICE to exercise discretionary authority to release them. Rather, the point is that historically, ICE practice has been to release at-risk detainees.

1 effective tools at its disposal to ensure that individuals report for court hearings and
2 other appointments, including conditions of supervision. Schriro Decl. ¶ 24. For
3 example, ICE’s conditional supervision program, called ISAP (Intensive Supervision
4 Appearance Program), relies on the use of electronic ankle monitors, biometric voice
5 recognition software, unannounced home visits, employer verification, and in-person
6 reporting to supervise participants. A government-contracted evaluation of this
7 program reported a 99% attendance rate at all immigration court hearings and a 95%
8 attendance rate at final hearings. *See* Lorenzen-Strait Decl. ¶ 15.

9 **III. LEGAL STANDARD**

10 Plaintiffs are entitled to a temporary restraining order if they show: (1) a
11 likelihood of success on the merits; (2) they are likely to suffer irreparable harm in the
12 absence of relief; (3) the balance of equities tips in their favor; and, (4) an injunction
13 is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20
14 (2008); *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th
15 Cir. 2001) (noting that preliminary injunction and temporary restraining order
16 standards are “substantially identical”). The Ninth Circuit employs a sliding scale
17 approach, in which a stronger showing of one element may offset a weaker showing
18 of another. *See Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012). Thus, a
19 temporary restraining order may issue where “serious questions going to the merits
20 [are] raised and the balance of hardships tips sharply in [plaintiffs’] favor.” *All. for the*
21 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation omitted)
22 (alteration in original). To succeed under the “serious question” test, plaintiffs must
23 show that they are likely to suffer irreparable injury and that an injunction is in the
24 public’s interest. *Id.* at 1132.

25 **IV. ARGUMENT**

26 In *Castillo*, this Court squarely held that “[u]nder the Due Process Clause, a
27 civil detainee cannot be subject to the current conditions of confinement at Adelanto.”
28 *Castillo* TRO at 9. Those conditions include “sleeping rooms housing four or six

1 detainees with shared sinks, toilets and showers,” potentially infected guards who
2 “regularly rotate through the various holding areas several times a day” without
3 protective equipment, and “meal times” where detainees “line up together, sometimes
4 only inches apart, in the cafeteria.” *Id.* at 3.

5 Those conditions are unchanged from three days ago when this Court entered
6 its order in *Castillo*. And Plaintiffs here are in even greater danger than the plaintiffs
7 in *Castillo* because the spread of COVID-19 in the area has dramatically increased in
8 recent days and each Plaintiff has serious underlying medical conditions that leave
9 them acutely vulnerable if they are infected.

10 Plaintiffs are entitled to—and desperately require—the same relief as the
11 identically situated petitioners in *Castillo*. Their release is a matter of life-and-death
12 importance, and must be granted immediately.

13 **A. Plaintiffs are Likely to Succeed on the Merits.**

14 **1. Plaintiffs’ Continued Detention at Adelanto Violates Their Fifth**
15 **Amendment Right to Reasonable Safety in Government Custody.**

16 Plaintiffs are likely to establish a violation of their constitutional Due Process
17 rights because they are being detained under conditions that expose them to the
18 serious risks associated with COVID-19. As this Court explained in *Castillo*, “[t]he
19 law is clear”:

20 [T]he Government cannot put a civil detainee into a dangerous situation,
21 especially where that dangerous situation was created by the Government.
22 The Due Process Clause of the Fifth Amendment prohibits the
23 Government from exposing an individual to a danger which he would not
24 have otherwise faced. A civil detainee’s constitutional rights are violated
if a condition of his confinement places him at substantial risk of suffering
serious harm, such as the harm caused by a pandemic.

25 *Id.* at 6 (internal citations omitted). After carefully surveying the conditions at
26 Adelanto, this Court held that “[u]nder the Due Process Clause, a civil detainee cannot
27 be subject to the current conditions of confinement at [the facility].” *Id.* at 10,

28 At this moment, Plaintiffs are exposed to these *identical* conditions. Plaintiffs

1 are detained without adequate CDC-mandated social distancing, dramatically
 2 increasing the likelihood they will contract COVID-19 and fall gravely ill. *See supra*
 3 Pt. II.B. Detainees at Adelanto sleep on bunk beds in crowded cells. *Id.* They take
 4 meals at packed tables placed close together, seated shoulder to shoulder. *Id.* They use
 5 communal bathrooms with limited sinks and showers, which are not frequently
 6 cleaned. *Id.* They have little or no access to hand sanitizer, gloves, or masks. *Id.*

7 Moreover, Plaintiffs have medical diagnoses that put them at particular risk of
 8 serious complications or death if they are infected with COVID-19. In the face of
 9 ample medical evidence that social distancing and hygiene are the only way to avoid
 10 COVID-19, detaining medically vulnerable Plaintiffs in close proximity to one
 11 another and without the sanitation necessary to combat the spread of the virus serves
 12 *no* legitimate purpose. Nor is detention under these circumstances reasonably related
 13 to the enforcement of immigration laws.¹¹ *See Unknown Parties v. Johnson*, No. CV-
 14 15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016), *aff'd sub*
 15 *nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017). In *Zadvydas v. Davis*, the Supreme
 16 Court held that “[t]here is no sufficiently strong special justification . . . for indefinite
 17 civil detention.” 533 U.S. 678, 690 (2001). If the government’s interest in effectuating
 18 removal and protecting the community cannot justify indefinite detention, it also
 19 cannot justify the similarly “potentially permanent” medical harm and death that
 20 Plaintiffs could well face. *See id.* at 690–91; *see also Castillo* TRO at 6 (“If the
 21 Government fails to provide for a detainee’s basic human needs, including medical
 22 care and reasonable safety, the Due Process Clause is violated.”).

23 **2. Defendants’ Deliberate Indifference to Plaintiffs’ Health and**
 24 **Safety Violates Even the Stricter Eighth Amendment Standards.**

25 Civil detainees can also independently establish a due process violation by

26 _____
 27 ¹¹ ICE has a number of tools available—beyond physical detention—to meet its
 28 enforcement goals, as demonstrated by the enforcement measures already used when
 individuals with serious medical conditions are released from detention. Schriro Decl.
 ¶ 24; Lorenzen-Strait Decl. ¶¶ 14-15. The situation presented by COVID-19 is no
 different.

1 demonstrating that the challenged conditions would violate the Eighth Amendment’s
2 prohibition on cruel and unusual punishment. *Jones v. Blanas*, 393 F.3d 918, 933-34
3 (9th Cir. 2004). Here, Plaintiffs are likely to establish that Defendants violated—and
4 continue to violate—Plaintiffs’ constitutional rights by condemning them to living in
5 conditions of confinement that expose them to infectious disease with life-threatening
6 potential complications. *See Castillo* TRO at 6. Such conditions would plainly amount
7 to a violation of the Eighth Amendment in a prison setting, and *a fortiori* violate the
8 Fifth Amendment as to civil detainees.

9 The Supreme Court has recognized that the government violates the Eighth
10 Amendment when it crowds prisoners into cells with others who have “infectious
11 maladies,” “even though the possible infection might not affect all of those exposed.”
12 *Helling*, 509 U.S. at 33 (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978) (affirming
13 injunction imposing limits on “punitive isolation” where “infectious diseases such as
14 hepatitis and venereal disease” were common)). As this Court explained in *Castillo*,
15 “[t]he Government violates the [Constitution] if it confines [a person] in unsafe
16 conditions” or “ignore[s] a condition of confinement that is sure or very likely to
17 cause serious illness.” *Castillo*, at 6 (quoting *Helling*, 509 U.S. at 32, 33). That is the
18 case even if “the complaining detainee shows no serious current symptoms.” *Id.* at 9
19 (citing *Helling*, 509 U.S. at 32)). As discussed above, here, the overwhelming
20 evidence shows that COVID-19 poses a serious risk to Plaintiffs and that continued
21 detention would amount to a cruel and unusual punishment under the circumstances.
22 As this Court explained:

23 Civil detainees must be protected by the Government. Petitioners [at
24 Adelanto] have not been protected. They are not kept at least 6 feet apart
25 from others at all times. They have been put into a situation where they are
26 forced to touch surfaces touched by other detainees, such as with common
27 sinks, toilets and showers. Moreover, the Government cannot deny the fact
28 that the risk of infection in immigration detention facilities – and jails – is
particularly high if an asymptomatic guard, or other employee, enters a
facility.

1 *Castillo* TRO at 10. Nothing has changed since this Court’s order in *Castillo* and, in
2 fact, Plaintiffs’ declarations vividly describe how Defendants have done little to
3 alleviate or minimize their risk of harm to COVID-19.

4 **3. The Court Has Authority to Order Plaintiffs’ Release as the Sole**
5 **Effective Remedy for the Constitutional Violation.**

6 As this Court recognized in *Castillo*, Plaintiffs’ immediate release is within this
7 Court’s power and is the sole effective remedy for the constitutional violation that
8 Plaintiffs are experiencing. “Federal courts possess whatever powers are necessary to
9 remedy constitutional violations because they are charged with protecting these
10 rights.” *Stone v. City & Cty. of San Francisco*, 968 F.2d 850, 861 (9th Cir. 1992). As a
11 result, “[w]hen necessary to ensure compliance with a constitutional mandate, courts
12 may enter orders placing limits on a prison’s population.” *Brown v. Plata*, 563 U.S.
13 493, 511 (2011). This falls within the Court’s broad power to fashion equitable
14 remedies to address constitutional violations in government confinement. *Hutto*, 437
15 U.S. at 687 n.9.

16 Over the last two weeks, a growing number of courts across the country have
17 ordered the release of detained individuals in light of the grave threat posed by
18 COVID-19. *See, e.g., Coronel v. Decker*, No. 20-cv-2472, 2020 WL 1487274
19 (S.D.N.Y. Mar. 27, 2020) (ordering release of four medically vulnerable immigrant
20 plaintiffs held in New York and New Jersey detention centers due to threat of
21 COVID-19); *Basank v. Decker*, No. 20-cv-2518, 2020 WL 1481503, at *1 (S.D.N.Y.
22 Mar. 26, 2020) (same, for ten immigrant plaintiffs who “suffer[] from chronic medical
23 conditions, and face[] an imminent risk of death or serious injury in immigration
24 detention if exposed to COVID-19”); *Calderon Jimenez v. Wolf*, No. 18-10225-MLW,
25 Dkt. 507 (D. Mass. Mar. 26, 2020) (Att. B) (ordering grant of bail for an immigrant
26 detainee held in Plymouth County, Massachusetts because “being in jail enhances
27
28

1 risk”).¹² On March 23, 2020, the Ninth Circuit ordered, *sua sponte*, the release of an
 2 immigrant petitioner “[i]n light of the rapidly escalating public health crisis, which
 3 public health authorities predict will especially impact immigration detention centers.”
 4 *Xochihua-Jaimes v. Barr*, No. 18-71460, 2020 WL 1429877, at *1 (9th Cir. Mar. 24,
 5 2020).

6 In this case, the release of Plaintiffs from detention is the only effective remedy
 7 for the constitutional violation they are suffering. Preventive measures that may be
 8 effective in the community, such as remaining at a distance from other persons and
 9 frequent disinfection after occasional contact with other persons, are simply not
 10 possible in the detention setting. *See supra* Pt. II.B.

11 Moreover, as this Court has explained, “[t]he risk that [Plaintiffs], here, will
 12 flee, given the current global pandemic, is very low, and reasonable conditions can be
 13 fashioned to ensure their future appearance at deportation proceedings.” *Castillo TRO*

14 ¹² *See also United States v. Garlock.*, No. 18-CR-00418, 2020 WL 1439980, at *1
 15 (N.D. Cal. Mar. 25, 2020) (ordering, *sua sponte*, extension of convicted defendant’s
 16 surrender date and noting “[b]y now it almost goes without saying that we should not
 17 be adding to the prison population during the COVID-19 pandemic if it can be
 18 avoided”); *In re Extradition of Toledo Manrique*, No. 19-71055, 2020 WL 1307109,
 19 at *1 (N.D. Cal. Mar. 19, 2020) (granting bail for 74-year-old detainee subject to
 20 extradition proceedings due to concerns regarding COVID-19); *Umana Jovel v.*
 21 *Decker et al.*, 20 Civ. 308 (GBD)(SN), 2020 WL 1467397, at *1 (S.D.N.Y. Mar. 26,
 22 2020) (granting emergency request for release of petitioner from immigration
 23 detention in light of the COVID-19 crisis); *United States v. Stephens*, 15 Cr. 95
 24 (AJN), 2020 WL 1295155 (S.D.N.Y. Mar. 19, 2020) (granting motion for
 25 reconsideration of defendant’s bail conditions and releasing him from jail to home
 26 confinement, recognizing inmates may be at a heightened risk of contracting COVID-
 27 19); *United States v. Martin*, No. 19-cr-140-13, 2020 WL 1274857, at *2 (D. Md.
 28 Mar. 17, 2020) (explaining that exposure to COVID-19 can lead to “seriously
 (potentially fatal, if the detainee is elderly and with underlying medical complications)
 illness”); Att. C, *In re Request to Commute or Suspend County Jail Sentences*, Dkt.
 No. 084230 (N.J. Mar. 22, 2020) (ordering, based on the dangers posed by COVID-
 19, release of any inmate in New Jersey serving a county jail sentence as a condition
 of probation or as a result of a municipal court conviction); *People ex rel. Stoughton*
on behalf of Little et al. v. Brann, Index No. 260154/2020 (Bronx Sup. Ct. Mar. 25,
 2020) (releasing 106 individuals held at Rikers Island jail on parole violations who are
 particularly vulnerable to illness or death if infected by COVID-19); *People ex rel.*
Stoughton on behalf of Hogan et al. v. Brann, (N.Y. Sup. Ct. Mar. 27, 2020)
 (releasing 16 individuals held at Rikers Island jail on pre-trial detention who were
 particularly vulnerable to illness or death due to COVID-19); Memorandum from
 Donald W. Beatty, Chief Justice of South Carolina Supreme Court, to Magistrates,
 Municipal Judges, and Summary Court Staff (Mar. 16, 2020), Ngo Decl. Ex. C
 (ordering that everyone held on bond in a non-capital case be released, unless there
 exists an “unreasonable danger” or “extreme flight risk”).

1 at 10. Under the circumstances, there is no reasonable basis to continue their
 2 confinement during the height of the pandemic, risking their lives and the lives of
 3 others.

4 **B. Plaintiffs Satisfy the Remaining Factors for a Temporary**
 5 **Restraining Order.**

6 **1. Exposure to a Lethal Virus Which Lacks Any Vaccine,**
 7 **Treatment, or Cure Constitutes Irreparable Harm.**

8 As this Court explained in *Castillo*, “[i]t is well established that the deprivation
 9 of constitutional rights unquestionably constitutes irreparable injury.” *Id.* (citing
 10 *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)). That alone satisfies this
 11 factor.

12 Moreover, the Ninth Circuit recently recognized that the dangerous and unsafe
 13 conditions of detention that Plaintiffs face also constitute irreparable harm supporting
 14 injunctive relief. *Padilla v. U.S. Immigration & Customs Enforcement*, No. 19-35565,
 15 2020 WL 1482393, at *9 (9th Cir. Mar. 27, 2020) (recognizing that “substandard
 16 physical conditions, [and] low standards of medical care” in immigration detention
 17 constitute irreparable harm justifying injunctive relief). And the Ninth Circuit also has
 18 recognized that there is irreparable harm where government actions threaten to worsen
 19 an individual’s health. *See M.R. v. Dreyfus*, 663 F.3d 1100, 1111 (9th Cir. 2011), *as*
 20 *amended by* 697 F.3d 706 (9th Cir 2012); *see also, e.g., Indep. Living Cent. of S. Cal.,*
 21 *Inc. v. Shewry*, 543 F.3d 1047, 1050 (9th Cir. 2008) (recognizing that Medi-Cal
 22 beneficiaries would suffer irreparable harm where new policy would limit
 23 beneficiaries’ access to “much-needed pharmaceuticals”).

24 Each of these reasons supports immediate relief here. Plaintiffs are individuals
 25 with underlying medical conditions that increase their likelihood of severe illness or
 26 death if they contract COVID-19. Greifinger Decl. ¶ 13; Schneberk Decl. ¶¶ 34–38.
 27 The fatality rate for people infected with COVID-19 is about ten times higher than a
 28 severe seasonal influenza, even in advanced countries with highly effective health care

1 systems. Golob Decl. ¶ 4. The fatality rate is estimated to be about 15 percent for
2 people in the highest risk populations. *Id.* Patients in high-risk categories who do not
3 die from COVID-19 should expect a prolonged recovery, including the need for
4 extensive rehabilitation for profound reconditioning, loss of digits, neurologic
5 damage, and the loss of respiratory capacity. *Id.* For these reasons, public health
6 experts have concluded that people with these characteristics in institutional settings
7 such as immigration detention centers “are at grave risk of severe illness and death.”
8 *Id.* ¶ 14; *see* Greifinger Decl. ¶¶ 13–14. There is no serious dispute the irreparable
9 harm factor is satisfied.

10 **2. Public Interest and Balance of Equities Weigh Heavily in** 11 **Plaintiffs’ Favor.**

12 Here, as in *Castillo*, “[t]he balance of the equities tip sharply in favor” of
13 Plaintiffs. *Castillo* TRO at 10. While Plaintiffs “face irreparable harm to their
14 constitutional rights and health,” there is no harm to the Government when a court
15 prevents the Government from engaging in unlawful practices.” *Id.* Indeed, “[f]aced
16 with . . . preventable human suffering, [the Ninth Circuit] ha[s] little difficulty
17 concluding that the balance of hardships tips decidedly in plaintiffs’ favor.”
18 *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir.
19 1983)).

20 Moreover, it is in both the *Defendants’* and the broader public interest to release
21 Plaintiffs, given the prospect of an imminent COVID-19 outbreak at Adelanto. ICE
22 has an interest in preventing any potential spread of COVID-19 in its detention
23 facility, which may then affect guards, visitors, attorneys, and others who may
24 potentially interact with Plaintiffs. And an outbreak of COVID-19 at Adelanto would
25 doubtless put significant pressure on or exceed the capacity of local health
26 infrastructure. Greifinger Decl. ¶ 14; *see* Schneberk Decl. ¶ 26. As this Court
27 succinctly explained:

28 The public has a critical interest in preventing the further spread of the

1 coronavirus. An outbreak at Adelanto would, further, endanger all of us –
2 Adelanto detainees, Adelanto employees, residents of San Bernardino
3 County, residents of the State of California, and our nation as a whole.

4 *Castillo* TRO at 11.

5 Thus, Plaintiffs’ release would not only impose minimal harm to the
6 government, it would also reduce the health and economic burden on the local
7 community and health infrastructure at large. Schneberk Decl. ¶¶ 42, 48;
8 Greifinger Decl. ¶ 14; Golob Decl. ¶ 8; *see also Hernandez*, 872 F.3d at 996
9 (“[T]he general public’s interest in the efficient allocation of the government’s
10 fiscal resources favors granting [relief].”).

11 **V. CONCLUSION**

12 This Court should grant Plaintiffs’ motion for a temporary restraining order and
13 direct Plaintiffs’ immediate release from Adelanto.

14 Respectfully submitted,

15 ACLU FOUNDATION OF
16 SOUTHERN CALIFORNIA

17 Dated: March 30, 2020

18 /s/ Jessica Karp Bansal
19 JESSICA KARP BANSAL
20 Counsel for Plaintiffs
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