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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

16 NWANA ELVIRA EYERE, MARIA
DE LOS ANGELES SANTIBANEZ
17 BRAVO LEPE, WENDY LIZETTE
ORDONEZ, and AGUSTINA PINEDA
18 ORTUNO,

19 Petitioners-Plaintiffs,

20 vs.

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

27 Respondents-Defendants.
28

Case No.

ADELANTO COVID

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

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10 **Pro hac vice* application forthcoming
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1 **I. INTRODUCTION**

2 COVID-19 threatens human health and safety on a scale never before seen in
3 our lifetimes. Before this Court is the question of whether the government can
4 detain four women with pre-existing health conditions and increased vulnerability
5 to serious illness or death from COVID-19 in violation of the Fifth and Eighth
6 Amendments of the United States Constitution. Petitioners-Plaintiffs Agustina
7 Pineda Ortuno, Wendy Ordonez, Nwana Elvira Eyere, and Angeles Lepe
8 (“Plaintiffs”) are women currently detained at the Adelanto ICE Processing Center
9 (“Adelanto”) who are particularly vulnerable to the COVID-19 global pandemic.
10 As this Court has observed, COVID-19 has spread rapidly around the globe and the
11 number of confirmed cases and deaths rises exponentially by the day, including in
12 San Bernardino County and surrounding areas. To date, ***COVID-19 has infected***
13 ***nearly 1 million people worldwide***, with many more unconfirmed cases.

14 The gravity of the COVID-19 threat has led this Court, over the past several
15 days, to grant emergency injunctive relief and order the immediate release of nine
16 individuals in immigration detention at Adelanto. *See Castillo v. Barr*, TRO and
17 Order to Show Cause, No. CV 20-00605 TJH, Dkt No. 32 (C.D. Cal. Mar. 27,
18 2020) (“*Castillo TRO*”); *Hernandez v. Wolf*, TRO and Order to Show Cause, No.
19 CV 20-00617 TJH, Dkt No. 17 (C.D. Cal. Apr. 1, 2020) (“*Hernandez TRO*”);
20 *Rodriguez v. Wolf*, TROs and Orders to Show Cause, No. 20-00627 TJH, Dkt Nos.
21 32, 35-39 (C.D. Cal. Apr. 2, 2020) (“*Rodriguez TRO*”). The Court observed that
22 the Due Process Clause prohibits subjecting a civil detainee to the “current
23 conditions of confinement at Adelanto” where the government has failed to
24 implement sufficient procedures, such as social distancing and hygiene protocols, to
25 protect detainees from the risk of infection from COVID-19.

26 Like the plaintiffs in *Castillo*, *Hernandez*, and *Rodriguez*, Plaintiffs here are
27 older adults and/or have medical conditions that lead to high risk of serious
28 COVID-19 infection or make them particularly vulnerable, including asthma,

1 hypertension, lung disease, autoimmune disorders, serious mental illness, and
2 physical limitations that require personal assistance with intimate tasks like bathing
3 or using the restroom. In the Adelanto women’s facility, numerous women in
4 dormitories—including Plaintiffs—are coughing, having breathing problems, and
5 exhibiting other symptoms of COVID-19, yet the detention center has done nothing
6 to provide these women with medical examinations, treatment, or protective
7 measures to reduce transmission of infection. Rather, the staff only instructed the
8 women to cover their mouths while coughing, and when they complained they did
9 not have enough toilet paper or tissue to do so, they were told to resort to using
10 sanitary napkins. The women—up to 100 in a single dorm unit—continue to sleep,
11 eat, use the bathrooms, and otherwise reside together in close confined spaces,
12 sometimes only inches apart.

13 Given the existing conditions and rapid spread of the disease, there is a
14 serious danger of an imminent COVID-19 outbreak in Adelanto, where the disease
15 “can spread uncontrollably with devastating results.” *Castillo* TRO at 3. Because
16 of their ages and serious underlying medical conditions, Plaintiffs are acutely
17 vulnerable to COVID-19 infections, including a risk of death. The State of
18 California’s emergency shelter-in-place order and the Centers for Disease Control
19 and Prevention’s (“CDC”) guidelines emphasize the need for social distancing,
20 vigilant hygiene practices, and other preventive measures particularly for at-risk
21 individuals with underlying medical conditions, yet there is little to no adherence to
22 these practices at Adelanto.

23 As this Court and the Supreme Court recognized, “[a] remedy for unsafe
24 conditions need not await a tragic event.” *Hernandez* TRO at 10 (citing *Helling v.*
25 *McKinney*, 509 U.S. 25, 33 (1993)). Plaintiffs request that the Court enter a
26 temporary restraining order for their immediate release from detention.

1 **II. RELEVANT BACKGROUND**

2 **A. COVID-19 Poses Grave Risk of Harm, Including Serious Illness or**
3 **Death, to Individuals with Certain Medical Conditions.**

4 COVID-19 is a global crisis that continues to escalate drastically. On March
5 1, 2020, there were just 30 confirmed COVID-19 cases in this country.¹
6 Approximately one month later, as of April 3, 2020, the United States leads the
7 world in total COVID-19 infections with 239,279 confirmed cases.² Worldwide, as
8 of April 3, 2020, there are 972,303 confirmed COVID-19 cases and 50,322
9 confirmed deaths.³

10 People over the age of fifty and those of any age with certain medical
11 conditions face even greater chances of serious illness or death from COVID-19.
12 Parmar Decl. ¶¶ 17-22. Medical conditions that increase the risk of serious
13 complications from COVID-19 include asthma, hypertension, chronic liver disease,
14 health or physical conditions that make them much more likely to get infections
15 (including physical disabilities), illnesses leading to a compromised immune
16 system, chronic neurological conditions, lung disease, heart disease, and diabetes.⁴
17 *Id.* Individuals with serious mental illness are a particularly vulnerable population
18 that need protection from potential infection and other impacts of COVID-19.
19 Nguyen Decl., Ex. D (Open Letter to ICE From Medical Professionals Regarding
20 COVID-19). Each of the Plaintiffs has one or more of these conditions, is at an
21 increased risk of developing serious complications or dying from COVID-19, and is
22 part of a particularly vulnerable group needing protection. Parmar Decl. ¶¶ 17-22.

23 ¹ *Cumulative total number of COVID-19 cases in the United States by report date, January*
24 *12, 2020, to April 2, 2020, at 4pm ET*, CDC (last updated Apr. 3, 2020),
<https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html#cumulative>.

25 ² *Id.*; Nguyen Decl., Ex. A (*Coronavirus disease 2019 (COVID-19) Situation Report – 74*,
World Health Organization (Apr. 3, 2020)); United States Coronavirus Cases, Worldometer (last
26 updated Apr. 3, 2020), <https://www.worldometers.info/coronavirus/country/us/>.

27 ³ Nguyen Decl., Ex. A (*Coronavirus disease 2019 (COVID-19) Situation Report – 74*, World
Health Organization (Apr. 3, 2020)).

28 ⁴ *People Who Are at Higher Risk for Severe Illness*, CDC (last visited Apr. 3, 2020),
<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>;
Advice for people at higher risk, NHS (last visited Apr. 3, 2020),
<https://www.nhs.uk/conditions/coronavirus-covid-19/advice-for-people-at-high-risk/>.

1 Because of COVID-19’s highly contagious nature without any available
 2 vaccine, the only known effective measure to reduce the risk of resulting injury or
 3 death is to prevent the infection from occurring in the first place. Haney Decl. ¶ 5.
 4 Social distancing – remaining physically separated from known or potentially
 5 infected individuals – and vigilant hygiene, including washing hands with soap and
 6 water or using hand sanitizer, are the only ways to protect people from COVID-19.⁵
 7 Parmar Decl. ¶ 12; Haney Decl. ¶ 5.

8 The Centers for Disease Control and Prevention (“CDC”) projects that
 9 COVID-19 could infect over 200 million people and kill over 1.5 million in the
 10 United States over the course of the epidemic without effective public health
 11 intervention. Haney Decl. ¶ 3. On March 19, 2020, Governor Gavin Newsom
 12 ordered all California residents to stay at home unless they are getting food, caring
 13 for a relative or friend, obtaining healthcare, or working in an occupation deemed
 14 “essential.”⁶ While outside, residents must keep at least six feet of distance from
 15 each other.⁷

16 In San Bernardino County in particular, COVID-19 diagnoses have grown
 17 exponentially. On April 1, 2020, this Court recently noted that “the number of
 18 confirmed cases [in San Bernardino County] has more than tripled over the past
 19 week.” *Hernandez* TRO at 12. Since then, as of April 3, 2020, the number of cases
 20 has quintupled.⁸

21 **B. Adelanto ICE Detainees Face an Imminent and Substantial Risk of**
 22 **Contracting COVID-19.**

23 COVID-19 already has begun to afflict ICE facilities, which the Department

24 ⁵ *Coronavirus Disease 2019 (COVID-19), How to Protect Yourself & Others*, CDC (last
 25 updated Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

26 ⁶ Nguyen Decl., Ex. B (Cal. Executive Order N-33-20 (Mar. 19, 2020)); *see California*
 27 *Coronavirus (COVID-19 Response*, State of California (updated Apr. 3, 2020),
 28 <https://covid19.ca.gov/>.

⁷ *Id.*

⁸ *COVID-19 Surveillance Dashboard*, San Bernardino County Department of Public Health
 (last visited Apr. 3, 2020), <http://wp.sbcounty.gov/dph/coronavirus/>.

1 of Homeland Security’s (“DHS”) own medical experts have called a “tinderbox”
 2 for the rapid spread of COVID-19. *See* Nguyen Decl., Ex. C (Letter from Drs.
 3 Scott A. Allen & Josiah Rich to Rep. Bennie Thompson, et al., Mar. 19, 2020) at 4.
 4 A third party leaked an internal DHS report, which shows that as of March 18,
 5 2020, nine detainees had been isolated and 24 were being monitored across 10
 6 different ICE facilities.⁹ Moreover, 120 ICE employees were, at that time, self-
 7 quarantined.¹⁰ ICE reported its first COVID-19 case at a detention center on March
 8 24, 2020.¹¹ Since then, as of April 3, 2020, the number has grown to at least 16
 9 reported cases connected to ICE facilities in California, New Jersey, Arizona,
 10 Colorado, Texas, Georgia, and Massachusetts—including three confirmed cases of
 11 an immigrant detainee and two facility employees at the ICE Otay Mesa Detention
 12 Center in San Diego.¹²

13 **1. Up to 100 Detained Women Closely Share the Same Living**
 14 **Areas Without Means to Prevent COVID-19 Transmission.**

15 The Adelanto Detention Center is precisely the type of congregate setting
 16 that the DHS’ medical experts have warned are at high risk for a mass COVID-19
 17 outbreak that would overwhelm local hospitals and spread to the public at large.
 18 *See* Nguyen Decl., Ex. C at 4. For example, the Cook County jail in Illinois
 19 reported its first two cases on March 23, 2020, and by April 3, 2020, that number

20 ⁹ Ken Klippenstein, *Exclusive: ICE Detainees Are Being Quarantined*, *The Nation* (Mar. 24,
 2020), <https://www.thenation.com/article/society/corona-covid-immigration-detention/>.

21 ¹⁰ *Id.*

22 ¹¹ *First Immigrant Detained By ICE Tests Positive For Coronavirus At New Jersey Jail*, NPR
 (Mar. 24, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/24/821105793/first-immigrant-detained-by-ice-tests-positive-for-coronavirus-at-new-jersey-jail>.

23 ¹² *ICE Guidance on COVID-19, Confirmed Cases*, ICE (last visited April 3, 2020),
 24 <https://www.ice.gov/coronavirus>; *Immigration attorneys concerned for safety after Stewart Co.*
 25 *Detention Center employee tests positive for COVID-19*, WTVM News (Apr. 1, 2020),
 26 <https://www.wtvm.com/2020/04/02/immigration-attorneys-concerned-safety-after-stewart-co-detention-center-employee-tests-positive-covid-19/>; Jennette Barnes, *Nurse Working in Immigration*
 27 *Detention Tests Positive for COVID-19*, WCAI (Apr. 2, 2020)
 28 <https://www.capeandislands.org/post/nurse-working-immigration-detention-tests-positive-covid-19/>; Kate Morrissey, *Immigrant detainee, second employee at Otay Mesa Detention Center test positive for COVID-19*, *The San Diego Union-Tribune* (Apr. 3, 2020),
<https://www.sandiegouniontribune.com/news/immigration/story/2020-04-03/immigrant-detainee-and-second-employee-at-otay-mesa-detention-center-test-positive-for-covid-19>.

1 had exploded to confirmed COVID-19 infection among 167 detainees and 46 staff
 2 members.¹³ The rapid outbreaks in Illinois detention centers are wreaking havoc on
 3 the local hospital system, causing a shortage of ventilators for patients, personal
 4 protective equipment for nurses, and available medical staff.¹⁴ An outbreak at
 5 Adelanto presents the same threat. Haney Decl. ¶ 13.

6 At Adelanto, Plaintiffs and other detainees live with up to 100 people in their
 7 dorms, and sleep on bunk beds separated by less than 3 feet, and in some areas
 8 within arm-distance.¹⁵ See Eyere Decl. ¶ 10; Ordonez Decl. ¶ 14; Ortuno Decl. ¶
 9 11. Women in a single dorm share the same toilets, sinks, showers, telephones, and
 10 microwaves, without cleaning or disinfection between each use. Ortuno Decl. ¶ 11;
 11 Ordonez Decl. ¶ 14; Eyere Decl. ¶ 10, 12; Lepe Decl. ¶ 8. Food preparation and
 12 service is communal with entire dorm units or multiple dorm units eating at the
 13 same time and at crowded tables. Ortuno Decl. ¶ 12; Ordonez Decl. ¶ 15; Eyere
 14 Decl. ¶ 10; Lepe Decl. ¶ 9. The women, including the at-risk Plaintiffs, are
 15 responsible for cleaning all of the communal areas in their dorms without masks or
 16 eye coverings, and in some dorms without gloves. Ortuno Decl. ¶ 14; Ordonez
 17 Decl. ¶ 13; Eyere Decl. ¶ 12; Lepe Decl. ¶ 11.

18 Despite the crowded communal facilities, Plaintiffs and other detained
 19 women have no access to masks, hand sanitizer, gloves, or disinfecting wipes for
 20 general use in the detention center. Ortuno Decl. ¶ 14; Ordonez Decl. ¶ 13; Eyere
 21 Decl. ¶ 12; Lepe Decl. ¶ 11. Guards and medical staff also generally do not wear
 22 masks, despite coming in and out of the facility all day, and frequently stand in
 23 close proximity to or physically touching detained individuals. Ortuno Decl. ¶ 16;
 24 Ordonez Decl. ¶ 12; Eyere Decl. ¶ 14; Lepe Decl. ¶ 9. Detainees are surrounded by

25 ¹³ Josh McGhee, *Stateville prison outbreak signals COVID-19 threat to inmates, surrounding*
 26 *hospital systems*, The Chicago Reporter (Apr. 3, 2020),
 27 <https://www.chicagoreporter.com/stateville-prison-outbreak-signals-covid-19-threat-to-inmates-surrounding-hospital-systems/>.

28 ¹⁴ *Id.*

¹⁵ *Report on Immigration Detention in California*, Cal. Dept. of Justice, at 22 (Feb. 2019),
<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>.

1 and enveloped in hard metal surfaces, “precisely the kind on which the COVID-19
2 virus lives longest.” Haney Decl. ¶12.

3 Indeed, the DHS’ own Office of Inspector General (“OIG”) found that at
4 Adelanto there were “detainee bathrooms that were in poor condition, including
5 mold and peeling paint on walls, floors, and showers, and unusable toilets.”¹⁶ In
6 noting the failure to provide timely and adequate medical care for detainees
7 increases health risks for them, the DHS OIG determined “ICE has not ensured that
8 Adelanto Center general population and segregated detainees receive appropriate
9 and necessary medical and dental care, as required by ICE standards.”¹⁷

10 **2. ICE Practices Fail to Adhere to Federal, State, and CDC** 11 **Guidelines.**

12 The Honorable Dolly M. Gee has recognized that ICE’s own COVID-19
13 Guidance, on its face, is deficient:

14 The ICE Guidance asserts that it was updated on March 26,
15 2020 and that ICE implements CDC recommendations, but the
16 section on its website about how it is specifically addressing
17 conditions in detention has not been updated since March 15,
18 2020, and does not mention social distancing, increased personal
19 hygiene, or increased testing and medical care.

20 *See Flores v. Barr*, Order re Ex Parte Application, No. CV 85-4544-DMG, Dkt No.
21 740 (C.D. Cal. Mar. 28, 2020) at 7. While ICE since has updated its Guidance on
22 April 2, 2020, many of the relevant portions—regarding protections for detainees—
23 still have not been updated from the March 15, 2020 version Judge Gee cites.¹⁸

24 The ICE Guidance is impractical, does not reflect the reality of the
25 overcrowded conditions at Adelanto, and indicates Adelanto is “poorly equipped to
26 deal with” the significant threat of COVID-19—even if the guidance were being

27 ¹⁶ *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, DHS
28 Office of Inspector General, at 8 (June 3, 2019),
<https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

¹⁷ *Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in
Adelanto, California*, DHS Office of Inspector General, at 7 (Sep. 27, 2018),
<https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf>.

¹⁸ *ICE Guidance on COVID-19, Detention*, ICE (last visited Apr. 3, 2020),
<https://www.ice.gov/coronavirus>.

1 followed, which, as described above, it is not. Parmar Decl. ¶ 10. ICE’s Guidance
2 fails to address the fundamental issues of close quarters, lack of testing, and
3 inability to enforce social distancing that are the source of the problem. Parmar
4 Decl. ¶¶ 10-12; Haney Decl. ¶¶ 6, 9. For example, although ICE suggests that
5 “[d]etainees who meet CDC criteria for epidemiologic risk of exposure to COVID-
6 19 are housed separately from the general population,” the reality is that this is
7 practically impossible and, in fact, high-risk individuals like Plaintiffs remain
8 housed in the general population. Parmar Decl. ¶¶ 10, 12; Haney Decl. ¶¶ 6, 9. As
9 described above, Plaintiffs and other detainees continue to live and eat communally
10 and use communal hygiene facilities with little or no access to hand sanitizer,
11 masks, gloves, or other protection against COVID-19.

12 Moreover, the current ICE Guidance will not prevent outbreaks at Adelanto,
13 or other detention centers. ICE purports to isolate and/or monitor detainees who are
14 symptomatic of COVID-19.¹⁹ However, medical studies have shown that a
15 significant portion of the current pandemic is driven by *asymptomatic carriers*
16 passing the virus in close quarters. Parmar Decl. ¶ 10. That means the current ICE
17 Guidance leaves “a *substantial* proportion of COVID-19 cases free to roam without
18 restrictions in close quarters, with limited access to soap and hand hygiene, and no
19 masks.” *Id.* ¶ 11 (emphasis in original). Indeed, there is little to no COVID-19
20 testing of Adelanto detainees, such that it is impossible to know who may be
21 carrying the disease. Parmar Decl. ¶ 11; Ortuno Decl. ¶ 15; Ordonez Decl. ¶ 16.
22 Staff arrive and leave on a shift basis, and there is limited ability to adequately
23 screen staff for new, asymptomatic infection. *Id.*; Haney Decl. ¶ 14; *see also*
24 Ortuno Decl. ¶ 18; Ordonez Decl. ¶ 12.

25 Compounding the lack of effective COVID-19 protective measures is the
26 reality that Adelanto is not even carrying out the minimal ICE protocols currently in
27 place. Plaintiffs and other detained women report experiencing and complaining to

28 ¹⁹ *Id.*

1 Adelanto officers about symptoms associated with COVID-19 or at-risk factors, yet
 2 Adelanto staff have failed to examine or treat those individuals. For example, many
 3 women, including elderly women, have been coughing but they do not have masks
 4 and there is not enough toilet paper for them to use to cover their mouths and
 5 prevent transmitting airborne particles. Ortuno Decl. ¶ 13. In response, Adelanto
 6 guards told the women to cough into a sanitary napkin and gargle salt water to treat
 7 the symptoms. *Id.* ¶¶ 8, 13. Plaintiff Eyere, who has asthma, has had breathing
 8 problems for the past month but her multiple requests to see a doctor or nurse have
 9 gone unanswered. Eyere Decl. ¶¶ 5, 16.

10 The conditions at Adelanto and Defendants' failure to comply with the CDC
 11 guidelines only exacerbate the risk to detainees, including Plaintiffs.

12 **C. Continued Detention is Unsafe for Those at Higher Risk for Severe**
 13 **Illness from COVID-19.**

14 Release from detention is the only option to protect Plaintiffs from COVID-
 15 19 under the current conditions at Adelanto. Public health experts and prison
 16 administrators alike have recommended the release of vulnerable detainees from
 17 custody because risk mitigation is the only known strategy that can protect
 18 vulnerable groups from COVID-19. Parmar Decl. ¶¶ 12, 15; Nguyen Decl., Exs. C-
 19 D, F. "Immigration detention centers lack the operational capacity to address the
 20 needs of persons in custody in a crisis of this magnitude." Haney Decl. ¶ 12. The
 21 "only means of reducing transmission of COVID-19 is social distancing, which
 22 cannot be done in crowded ICE detention facilities" like Adelanto. Parmar Decl. ¶
 23 12. As such, the "only way to assure the safety of vulnerable individuals," such as
 24 Plaintiffs, "is to immediately release them from detention." *Id.*

25 As the virus spreads, state and local governments have conceded the risks
 26 COVID-19 poses to confined populations. This concern prompted the release of
 27 low-level convicted offenders across the country, including 1,700 in Los Angeles,
 28

1 800 in New Jersey, and 275 in New York.²⁰ Other public officials likewise have
 2 called for the release of eligible individuals from detention. Former Acting
 3 Director of ICE John Sandweg stated that “ICE can, and must, reduce the risk
 4 [COVID-19] poses to so many people, and the most effective way to do so is to
 5 drastically reduce the number of people it is currently holding.”²¹

6 Moreover, DHS is well aware of the dangers of continuing to detain
 7 individuals in light of COVID-19. As early as February 25, 2020, DHS’ own
 8 medical experts Dr. Scott Allen and Dr. Josiah Rich specifically warned the agency
 9 of the danger of a rapid COVID-19 spread in immigration detention centers. In a
 10 March 19, 2020 whistleblower letter to Congress, Drs. Allen and Rich urged that “*it*
 11 *is essential to consider releasing all detainees who do not pose an immediate risk*
 12 *to public safety*” and recommended that at the *minimum*, “DHS should consider
 13 releasing all detainees in high risk medical groups such as older people and those
 14 with chronic diseases.” Nguyen Decl., Ex. C at 5-6 (emphasis in original). As they
 15 concluded, “acting immediately will save lives not of only those detained, but also
 16 detention staff and their families, and the community-at-large.” *Id.* at 6.

17 **D. Plaintiffs are Vulnerable to Serious Illness or Death if They**
 18 **Contract COVID-19.**

19 All Plaintiffs are older or have underlying medical conditions that increase
 20 their risk of serious illness or death if exposed to COVID-19. Parmar Decl. ¶¶ 16-
 21 23. They currently are detained at Adelanto as they await adjudication of their civil
 22 immigration cases.

- 23 • **Plaintiff Agustina Pineda Ortuno** is 56 years-old and has asthma,
 24 abnormal liver function, high blood pressure, arthritis, hypertension, enlarged
 25 lymph nodes, and a history of traumatic brain and head injuries. She
 underwent a craniotomy to remove a brain tumor and had two subsequent

26 ²⁰ Chris Francescani, et al., *Releases, Infections, Fear: U.S. Coronavirus Crisis in Jails and*
Prisons Looms, ABC News (Mar. 26, 2020), [https://abcnews.go.com/US/releases-infections-fear-](https://abcnews.go.com/US/releases-infections-fear-us-coronavirus-crisis-jails-prisons/story?id=69803066)
 27 [us-coronavirus-crisis-jails-prisons/story?id=69803066](https://abcnews.go.com/US/releases-infections-fear-us-coronavirus-crisis-jails-prisons/story?id=69803066).

28 ²¹ John Sandweg, *I Used to Run ICE. We Need to Release the Nonviolent Detainees*, *The*
Atlantic (Mar. 22, 2020), [https://www.theatlantic.com/ideas/archive/2020/03/release-ice-](https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/)
[detainees/608536/](https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/) (Nguyen Decl., Ex. E).

1 brain surgeries to treat post-operative complications and infections. She also
2 has PTSD, depression, and cognitive impairment with memory loss and
3 comprehension issues. Plaintiff Ortuno has had a cough and sore throat,
4 consistent with COVID-19 symptoms, but has not received treatment or
5 testing and simply was told to “gargle saltwater.” Ortuno Decl. ¶¶ 1, 4, 7-8;
6 Parmar Decl. ¶ 17.

7 • **Plaintiff Wendy Ordonez** is 49 years-old with significant disability
8 due to congenital birth defects in her right hand and chronic pain in her right
9 shoulder, for which she recently underwent extensive shoulder surgery on
10 March 2, 2020 and is still recovering. After her surgery, Adelanto medical
11 staff did not change her wound dressing for eleven days despite her repeated
12 requests and noting the wound had a foul order. She also has a painful
13 undiagnosed knee growth that has confined her to a wheelchair. Because of
14 her physical limitations, Plaintiff Ordonez needs help from other detainees to
15 push her wheelchair and to perform basic daily functions necessary for
16 personal hygiene, such as using the showers or toilet, making her bed, and
17 doing laundry. Ordonez Decl. ¶¶ 1, 8-11; Parmar Decl. ¶¶ 18-19.

18 • **Plaintiff Nwana Elvira Eyere** is 26 years-old and suffers from
19 asthma, for which she requires use of an inhaler. In the past month, she has
20 experienced increased difficulty breathing, but Adelanto staff have not
21 responded to her multiple requests to see a medical staff member. Plaintiff
22 Eyere is in a dormitory with 80-100 women who share multiple areas
23 including sleeping quarters with closely-placed bunk beds, showers, eating
24 areas, and common living spaces. Individuals with respiratory conditions
25 “do the worst” out of those presenting with COVID-19 symptoms, and Ms.
26 Eyere’s respiratory medical condition puts her extremely at-risk should she
27 contract the disease. Eyere Decl. ¶¶ 1, 5, 10; Parmar Decl. ¶¶ 20-21.

28 • **Plaintiff Angeles Lepe** (Maria de Los Angeles Santibanez Bravo) is
42 years-old and has been diagnosed with Schizophrenia, PTSD, and
fibromyalgia. She has a likelihood of suffering chronic sequelae resulting
from many years of alcohol abuse, which puts her at greater risk for a more
severe outcome from COVID-19 infection. Plaintiff Lepe has increased
anxiety regarding potential exposure to COVID-19 at Adelanto, and her
PTSD, depression, and history of suicidality combined with her continued
detention at Adelanto puts her at greater risk for deterioration of her mental
and physical health. Lepe Decl. ¶¶ 1, 2, 6; Parmar Decl. ¶ 22.

1 **III. LEGAL STANDARD**

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

18 **IV. ARGUMENT**

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

20 **1. Plaintiffs’ Continued Detention Violates Their Fifth**
 21 **Amendment Right to Reasonable Safety in Custody.**

22 Plaintiffs likely will establish a constitutional Due Process violation because
 23 they are being detained under conditions that expose them to the serious risks
 24 associated with COVID-19. Indeed, this Court has already concluded that “[u]nder
 25 the Due Process clause, a civil detainee cannot be subject to the current conditions
 26 of confinement at Adelanto.” *Hernandez TRO* at 11.

27 Here, all Plaintiffs are civil detainees. *See Hernandez TRO* at 8 (citing
 28 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“When the Government detains a

1 person for the violation of an immigration law, the person is a civil detainee, even if
2 he has a prior criminal conviction.”). This Court recognized that civil detainees
3 such as Plaintiffs are entitled to protection from a state-created danger:

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

12 *Castillo* TRO at 6 (internal citations omitted). Additionally, the Constitution
13 imposes on the Government a duty to assume responsibility for detainees’ safety
14 and general wellbeing while they are in custody. *See Helling*, 509 U.S. at 32.

15 After surveying the conditions at the same Adelanto facility where Plaintiffs
16 currently are detained, this Court held that the Government has failed to protect the
17 detainees from COVID-19. *Id.* at 10. Specifically, the Court explained:

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

27 *Castillo* TRO at 10; *see also* *Hernandez* TRO at 13.

28 Plaintiffs currently are exposed to the same conditions at the same detention
center as the *Castillo* and *Hernandez* plaintiffs. As described above, Plaintiffs
reside with up to 100 women sharing a large common area, sleeping in groups of
bunk beds within touching distance of one another, eating meals together only
inches apart, and using the same showers, toilets, sinks, microwaves, and
telephones without cleaning and disinfection between uses. Plaintiffs do not have
masks, gloves, protective eyewear, hand sanitizer, or disinfecting wipes available
for regular use. Plaintiffs, who are at-risk individuals, part of vulnerable population

1 groups, and potentially symptomatic individuals are not given adequate medical
2 examinations or treatment, and there are no adequate social distancing measures.

3 Critically, as described above, Plaintiffs are older and/or have medical
4 diagnoses that put them at particular risk of serious complications or death if they
5 contract COVID-19. As this Court stated, “[i]f the Government fails to provide for
6 a detainee’s basic human needs, including medical care and reasonable safety, the
7 Due Process Clause is violated.” *Castillo* TRO at 6; *see also Hernandez* TRO at 9.
8 In the face of ample medical evidence that social distancing and hygiene are the
9 only way to avoid COVID-19, detaining medically vulnerable Plaintiffs in close
10 proximity to one another and without the sanitation necessary to combat the spread
11 of the virus serves no legitimate purpose.

12 **2. Defendants’ Indifference to Plaintiffs’ Health and Safety** 13 **Violates Even the Stricter Eighth Amendment Standards.**

14 Civil detainees independently may establish a due process violation by
15 demonstrating that the challenged conditions would violate the Eighth
16 Amendment’s prohibition on cruel and unusual punishment. *Jones v. Blanas*, 393
17 F.3d 918, 933-34 (9th Cir. 2004). Here, Plaintiffs likely will establish that
18 Defendants violated—and continue to violate—Plaintiffs’ constitutional rights by
19 condemning them to living in conditions of confinement that expose them to
20 infectious disease with potentially life-threatening complications. *See Castillo*
21 TRO at 6; *Hernandez* TRO at 8-9. Such conditions would violate the Eighth
22 Amendment in a prison setting and would necessarily violate the Fifth Amendment
23 as to civil detainees. *See King v. Cty. of L.A.*, 885 F.3d 548, 556-557 (9th Cir.
24 2018) (“Under the Due Process Clause . . . an individual detained under civil
25 process . . . cannot be subjected to conditions that amount to punishment.” (internal
26 quotations and citations omitted)).

27 The Supreme Court has held that the Government violates the Eighth
28 Amendment when it crowds prisoners into cells with others who have “infectious

1 maladies,” even where the potential infection might not affect everyone who is
 2 exposed. *Helling*, 509 U.S. at 33 (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)
 3 (affirming injunction imposing limits on “punitive isolation” where “infectious
 4 diseases such as hepatitis and venereal disease” were common)).

5 That the Eighth Amended protects against future harm to inmates is not a
 6 novel proposition. The Amendment, as we have said, requires that inmates
 7 be furnished with the basic human needs, one of which is ‘reasonable safety.’
 8 . . . It would be odd to deny an injunction to inmates who plainly proved an
 9 unsafe, life-threatening condition in their prison on the ground that nothing
 10 yet had happened to them.

11 *Helling*, 509 U.S. at 33 (citation omitted).

12 The Government cannot “be deliberately indifferent to [Plaintiffs’] potential
 13 exposure to a serious, communicable disease on the ground that [Plaintiffs are] not,
 14 now, infected or showing current symptoms.” *Hernandez* TRO at 11 (citing
 15 *Helling*, 509 U.S. at 32). As this Court explained, “[i]nadequate health and safety
 16 measures at a detention center cause cognizable harm to every detainee at that
 17 center.” *Hernandez* TRO at 8-9 (citing *Parsons v. Ryan*, 754 F.3d 657, 679 (9th
 18 Cir. 2014)). As discussed above, here, the overwhelming evidence shows that
 19 COVID-19 poses a serious risk to Plaintiffs and that continued detention would
 20 amount to a cruel and unusual punishment under the circumstances, and therefore a
 21 violation of Plaintiffs’ due process rights.

22 **3. The Court Can and Should Order Plaintiffs’ Release as the 23 Sole Effective Remedy for Constitutional Violations.**

24 As this Court recognized in its prior TROs, Plaintiffs’ immediate release is
 25 within this Court’s power and is the sole effective remedy for the constitutional
 26 violation that Plaintiffs are experiencing. “Federal courts possess whatever powers
 27 are necessary to remedy constitutional violations because they are charged with
 28 protecting these rights.” *Stone v. City & Cty. of San Francisco*, 968 F.2d 850, 861
 (9th Cir. 1992). As a result, “[w]hen necessary to ensure compliance with a
 constitutional mandate, courts may enter orders placing limits on a prison’s
 population.” *Brown v. Plata*, 563 U.S. 493, 511 (2011). This falls within the

1 Court's broad power to fashion equitable remedies to address constitutional
2 violations in government confinement. *Hutto*, 437 U.S. at 687 n.9.

3 Over the last several weeks, a growing number of courts across the country
4 have ordered the release of detained individuals in light of the grave threat posed by
5 COVID-19. *See, e.g., Coronel v. Decker*, No. 20-cv-2472, 2020 WL 1487274
6 (S.D.N.Y. Mar. 27, 2020) (ordering release of four medically vulnerable immigrant
7 plaintiffs held in New York and New Jersey detention centers due to threat of
8 COVID-19); *Basank v. Decker*, No. 20-cv-2518, 2020 WL 1481503, at *1
9 (S.D.N.Y. Mar. 26, 2020) (same, for ten immigrant plaintiffs who "suffer[] from
10 chronic medical conditions, and face[] an imminent risk of death or serious injury
11 in immigration detention if exposed to COVID-19"); *Calderon Jimenez v. Wolf*,
12 No. 18-10225-MLW, Dkt. 507 (D. Mass. Mar. 26, 2020) (ordering grant of bail for
13 an immigrant detainee held in Plymouth County, Massachusetts because "being in
14 jail enhances risk"); *United States v. Stephens*, 1:15-cr-00095 (AJN), Doc. No.
15 2798 (S.D.N.Y. March 19, 2020) (explaining that "the unprecedented and
16 extraordinarily dangerous nature of the COVID-19 pandemic has become apparent"
17 and that "inmates may be at a heightened risk of contracting COVID-19 should an
18 outbreak develop"). On March 23, 2020, the Ninth Circuit ordered, *sua sponte*, the
19 release of an immigrant petitioner "[i]n light of the rapidly escalating public health
20 crisis, which public health authorities predict will especially impact immigration
21 detention centers." *Xochihua-Jaimes v. Barr*, No. 18-71460, 2020 WL 1429877, at
22 *1 (9th Cir. Mar. 23, 2020).

23 In this case, Plaintiffs' release from detention is the only effective remedy for
24 the constitutional violations they are suffering. As described above, preventive
25 measures that may be effective in the community, such as social distancing and
26 frequent disinfection after occasional contact with other persons, are simply not
27 possible in the detention setting. Moreover, as this Court has explained, the risks
28 that released detainees will flee is very low, given the current global pandemic and

1 the dire impact on their future immigration proceedings, and considering their ties
 2 to the community. *See Castillo* TRO at 10; *Hernandez* TRO at 12-13. Under the
 3 circumstances, there is no reasonable basis to continue Plaintiffs’ confinement
 4 during the height of the pandemic, risking their lives and the lives of others.

5 **B. Plaintiffs Will Be Irreparably Harmed Absent Injunctive Relief.**

6 This Court recognized that “[i]t is well established that the deprivation of
 7 constitutional rights unquestionably constitutes irreparable injury.” *Castillo* TRO at
 8 10; *Hernandez* TRO at 13(citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir.
 9 2017)). That alone satisfies the irreparable harm factor for injunctive relief.

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

23 Plaintiffs here are in immediate danger of irreparable harm. Plaintiffs are
 24 individuals with underlying medical conditions that increase their likelihood of
 25 severe illness or death if they contract COVID-19, or have serious health issues and
 26 mental illnesses that make them particularly vulnerable to COVID-19. Parmar
 27 Decl. ¶¶ 16-23. Plaintiffs “are at risk of death or permanent disability should they
 28 remain in ICE custody during the current COVID-19 pandemic” and “have a very

1 high likelihood of both contracting this virus in custody and decompensating as a
 2 result.” Parmar Decl. ¶ 9. There can be no dispute that Plaintiffs have established
 3 irreparable harm.

4 **C. The Balance of Hardships and Public Interest Both Favor**
 5 **Granting Plaintiffs Relief.**

6 Finally, as in *Castillo* and *Hernandez*, both the balance of equities and the
 7 public interest “tip sharply in favor” of Plaintiffs. *Castillo* TRO at 10; *Hernandez*
 8 TRO at 13. While Plaintiffs “face irreparable harm to [their] constitutional rights
 9 and health . . . there is no harm to the Government when a court prevents the
 10 Government from engaging in unlawful practices.” *Id.* Indeed, “[f]aced with . . .
 11 preventable human suffering, [the Ninth Circuit] ha[s] little difficulty concluding
 12 that the balance of hardships tips decidedly in plaintiffs’ favor.” *Hernandez*, 872
 13 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

14 Moreover, it is in both the Defendants’ and the broader public interest to
 15 release Plaintiffs, given the prospect of an imminent COVID-19 outbreak at
 16 Adelanto. ICE has an interest in preventing any potential spread of COVID-19 in
 17 its detention facility, which may then affect guards, detention staff, attorneys, and
 18 others who may potentially interact with Plaintiffs. A COVID-19 outbreak at
 19 Adelanto would doubtless put significant pressure on or exceed the capacity of
 20 local health infrastructure. Parmar Decl. ¶ 13; Haney Decl. 13. As this Court aptly
 21 explained:

22 The public has a critical interest in preventing the further spread
 23 of the coronavirus. An outbreak at Adelanto would, further,
 24 endanger all of us – Adelanto detainees, Adelanto employees,
 residents of San Bernardino County, residents of the State of
 California, and our nation as a whole.

25 *Castillo* TRO at 11; *Hernandez* TRO at 13. Thus, Plaintiffs’ release not only would
 26 impose minimal harm to the government, but also would reduce the health and
 27 economic burden on the local community and health infrastructure at large. Parmar
 28 Decl. ¶ 13; Haney Decl. 13; *see also* Nguyen Decl., Ex. C at 4-6.

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D. The Court Should Grant the TRO Without Requiring Security.

Federal Rule of Civil Procedure 65(c) provides that “The court may issue a . . . temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” However, Rule 65(c) also grants district courts the discretion to decide the amount of security required, if any is required at all. *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). District courts routinely exercise this discretion to require no security in cases brought by indigent and/or incarcerated people. *See, e.g., Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes–Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). As in the *Castillo, Hernandez, and Rodriguez* TROs, this Court should exercise its discretion and grant Plaintiffs the temporary restraining orders without requiring payment of security.

V. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs’ motion for a temporary restraining order and direct Plaintiffs’ immediate release from Adelanto.

Dated: April 3, 2020

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