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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 KELVIN HERNANDEZ ROMAN,  
16 BEATRIZ ANDREA FORERO  
CHAVEZ, MIGUEL AGUILAR  
17 ESTRADA, on behalf of themselves and  
all others similarly situated,  
18 Petitioners-Plaintiffs,  
19 v.

) Case No. 5:20-cv-00768  
) **ADELANTO COVID**  
) **BEATRIZ ANDREA FORERO**  
) **CHAVEZ'S EX PARTE**  
) **APPLICATION FOR**  
) **TEMPORARY RESTRAINING**  
) **ORDER**

20 CHAD F. WOLF, Acting Secretary, U.S.  
Department of Homeland Security;  
21 MATTHEW T. ALBENCE, Deputy  
Director and Senior Official Performing  
22 the Duties of the Director, U.S.  
Immigration and Customs Enforcement;  
23 DAVID MARIN, Director of the Los  
Angeles Field Office, Enforcement and  
24 Removal Operations, U.S. Immigration  
and Customs Enforcement; and JAMES  
25 JANECKA, Warden, Adelanto ICE  
Processing Center,  
26 Respondents-Defendants.  
27

1 Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Local  
2 Rule 65-1, Plaintiff-Petitioner Beatriz Andrea Forero Chavez hereby moves this  
3 court for emergency relief in the form of a temporary restraining order directing  
4 that she be immediately released from her current confinement at the Adelanto  
5 ICE Processing Center, under appropriate conditions as may be deemed necessary  
6 by the Court, in light of the serious risks to her health and safety posed by the  
7 current COVID-19 pandemic. This Application is supported by the accompanying  
8 Memorandum of Points and Authorities, Petition for Writ of Habeas Corpus and  
9 Complaint for Injunctive and Declaratory Relief, and by Declarations and Exhibits  
10 filed contemporaneously.

11 On April 13, at 10:13 am, counsel for Plaintiffs emailed Assistant United  
12 States Attorney Joanne Osinoff to advise of this Ex Parte Application for  
13 Temporary Restraining Order. Ms. Osinoff informed counsel for Plaintiffs that the  
14 United States Attorney’s Office intends to oppose this application.

15  
16 Respectfully submitted,

17  
18 Dated: April 13, 2020

/s/ Amanda Barnett  
AMANDA BARNETT  
Counsel for Plaintiffs-Petitioners

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26 JANECKA, Warden, Adelanto ICE  
Processing Center,

27 Respondents-Defendants.  
28

) Case No. 5:20-cv-00768

) **ADELANTO COVID**

) **PLAINTIFF BEATRIZ ANDREA**  
) **FORERO CHAVEZ'S**  
) **MEMORANDUM OF POINTS**  
) **AND AUTHORITIES IN**  
) **SUPPORT OF MOTION FOR**  
) **TEMPORARY RESTRAINING**  
) **ORDER**

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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff Beatriz Andrea Forero Chavez (“Plaintiff”) is a civil  
3 detainee in the Adelanto ICE Processing Center (“Adelanto”). Plaintiff is a class  
4 representative of the Proposed Class seeking a preliminary injunction. While the  
5 motion for preliminary class-wide relief is pending, Plaintiff seeks a temporary  
6 restraining order granting her release from Adelanto.

7 This Court has recognized the gravity of the threat posed by continued  
8 detention at Adelanto and held that “[u]nder the Due Process Clause, a civil detainee  
9 cannot be subject to the current conditions of confinement at Adelanto.” *Castillo v.*  
10 *Barr*, No. CV 20-00605 TJH, 2020 WL 1502864 (“*Castillo TRO*”), at \*5 (C.D. Cal.  
11 Mar. 27, 2020). Accordingly, the Court has issued temporary restraining orders and  
12 released at least two dozen individuals and placed them under appropriate conditions  
13 of confinement outside of Adelanto.<sup>1</sup>

14 \_\_\_\_\_  
15 <sup>1</sup> See, e.g., *Castillo v. Barr* (“*Castillo TRO*”), No. CV 20-00605 TJH (AFMx),  
16 2020 WL 1502864, at \*11 (C.D. Cal. Mar. 27, 2020) (ordering two detainees  
17 released); TRO and Order to Show Cause at 12, *Fraihat v. Wolf* (“*Fraihat TRO*”),  
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24 2020), ECF No. 14; *Robles Rodriguez v. Wolf*, No. 5:20-CV-00527 (C.D. Cal. Apr.  
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26 of six Adelanto detainees); TRO and Order to Show Cause at 2, *Perez Cruz v.*  
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1 Plaintiff is similarly situated to these other Adelanto detainees. She also  
2 suffers from hypertension and human papilloma virus, making her at particular risk  
3 if she contracts COVID-19. The Court should grant Plaintiff's release pending the  
4 determination of the class-wide preliminary injunction.

## 5 **II. FACTS<sup>2</sup>**

### 6 **A. COVID-19 Poses Grave Risk Of Harm To Plaintiff**

7 COVID-19 is a deadly pandemic. In the short time since the first cases  
8 emerged in Wuhan, China, late last year, COVID-19 has spread around the globe at  
9 breakneck speed. Because humans have never been exposed to this virus, they have  
10 not developed any immunities or protective responses, and thus everyone is at risk  
11 of infection.<sup>3</sup> In fact, although certain characteristics such as advanced age or  
12 underlying health conditions exacerbate the risk of death or serious illness from  
13 COVID-19, early CDC data shows nearly 40% of COVID-19 patients hospitalized  
14 in the U.S. have been between the ages of 18 and 54. Decl. of Dr. Todd Schneberk  
15 in Supp. of Mot. for a Prelim. Inj. ("Schneberk Decl.") ¶¶ 14, 16. In New York,  
16 approximately one-third of the patients between the ages of 30 and 39 who died from  
17 COVID-19 did not appear to have any risk factors, Schneberk Decl. ¶ 17, and  
18 physicians treating COVID-19 have noted the "randomness" with regard to which  
19 young people are unable to survive contraction of the illness.<sup>4</sup>

20 There is no vaccine, antiviral treatment, or cure for COVID-19. The disease  
21 is believed to spread through "droplets" that can be transmitted during close

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22  
23 <sup>2</sup> Plaintiff incorporates by reference the factual background discussed in the  
24 accompanying Memorandum in Support of Plaintiffs' Motion for a Preliminary  
Injunction.

25 <sup>3</sup> See Melissa Davey, *What is a pandemic and does it change the approach to*  
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26 [https://www.theguardian.com/world/2020/mar/14/what-is-a-pandemic-](https://www.theguardian.com/world/2020/mar/14/what-is-a-pandemic-coronavirus-covid-19)  
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27 <sup>4</sup> Chris Mooney, Brady Dennis and Sarah Kaplan, *Hundreds of young Americans*  
*have now been killed by the coronavirus, data shows*, Washington Post (Apr. 8,  
28 2020), [https://www.washingtonpost.com/health/2020/04/08/young-people-](https://www.washingtonpost.com/health/2020/04/08/young-people-coronavirus-deaths/)  
[coronavirus-deaths/](https://www.washingtonpost.com/health/2020/04/08/young-people-coronavirus-deaths/).

1 interpersonal contact of about six feet. Decl. of Dr. Robert B. Greifinger in Supp. of  
2 Mot. for a Prelim. Inj. (“Greifinger Decl.”) ¶ 5; Schneberk Decl. ¶¶ 7–8. And  
3 evidence shows individuals infected with COVID-19 can transmit it to others even  
4 if they have no symptoms. Schneberk Decl. ¶ 9. Because of its highly contagious  
5 nature, the only known effective measure to reduce the risk of injury or death from  
6 COVID-19 is to prevent people from being infected in the first place. Greifinger  
7 Decl. ¶ 4. In the absence of a comprehensive testing regime, “social distancing,” or  
8 maintaining six feet of separation at all times from other people, is the *only* effective  
9 means of stopping the spread of the disease in the long run. Greifinger Decl. ¶ 4;  
10 Schneberk Decl. ¶ 39.

11 **B. Plaintiff Beatriz Andrea Forero Chavez Faces an Imminent and**  
12 **Substantial Risk of Contracting COVID-19 in Adelanto**

13 Dr. Greifinger explains that “[j]ails and detention centers are congregate  
14 environments where the risk of infection and infectious spread is extremely high.”  
15 Greifinger Decl. ¶ 12. At Adelanto, as in other similar environments, there is a  
16 heightened risk of infection due to the lack of adequate hygiene and the inability of  
17 detainees to practice social distancing. *Id.* ¶¶ 13–15; *see also* Schneberk Decl. ¶ 38  
18 (“Because of the structure and conditions at Adelanto, detainees face a dramatically  
19 reduced ability to protect themselves by social distancing than they would in the  
20 community, and therefore face a significantly higher risk of being exposed to and  
21 infected by contagious diseases like COVID-19.”). Defendants’ own medical subject  
22 matter experts have recognized that conditions like those present currently at  
23 Adelanto amount to a “tinderbox scenario” for the rapid spread of COVID-19. *See*  
24 Letter from Drs. Scott A. Allen & Josiah Rich to Rep. Bennie Thompson, et al. (Mar.  
25 19, 2020), available at [https://www.documentcloud.org/documents/6816336-](https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238)  
26 [032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238](https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238);  
27 *see also* Schneberk Decl. ¶¶ 23–35; Greifinger Decl. ¶¶ 12–18.

28 Similar conditions have led to disastrous results in other congregate facilities.

1 In three weeks across March and April, the jail at Rikers Island in New York jumped  
2 from no cases among inmates to 273 cases, a higher rate of infection than in the most  
3 infected places in the world; four corrections staff members and one inmate have  
4 died. Suppl. Greifinger Decl. ¶ 13. The Cook County Jail has likewise seen an  
5 alarming rise in cases: the Jail went from two confirmed inmate cases on March 23,  
6 2020, to 234 confirmed inmate cases on April 7, 2020; one inmate has died. *Id.* ¶ 14.  
7 As of April 13, 2020, there were at least 72 confirmed cases among detainees in ICE  
8 custody, including twelve at the Otay Mesa Detention Center in San Diego.<sup>5</sup>  
9 According to detainees and their lawyers, officials at Otay Mesa initially refused to  
10 give masks to detainees unless they signed a waiver releasing the prison contractor  
11 from liability.<sup>6</sup>

12 Dr. Greifinger details the numerous ways in which ICE’s response to the  
13 significant challenge of dealing with a pandemic in a detention setting has been  
14 “wholly inadequate.” Greifinger Decl. ¶¶ 17–24. The descriptions of other class  
15 members and individuals recently released from Adelanto confirm ICE’s utter  
16 failure to protect those who are detained there. Despite the crowded, communal  
17 facilities, detainees have no access to masks. *See* Decl. of Paola Rayon Vite in Supp.  
18 of Mot. for a Prelim. Inj. (“Rayon Vite Decl.”) ¶ 13; Decl. of Luis Lopez Salgado in  
19 Supp. of Mot. for a Prelim. Inj. (“Lopez Salgado Decl.”) ¶¶ 20, 21; Decl. of  
20 Charleston Edward Dacoff in Supp. of Mot. for a Prelim. Inj. (“Dacoff Decl.”) ¶¶  
21 28, 29; Decl. of Ruth Calvillo in Supp. of Mot. for a Prelim. Inj. (“Calvillo Decl.”)  
22 ¶¶ 20, 22.<sup>7</sup> Guards and medical staff generally do not wear masks, though they

23  
24 <sup>5</sup> U.S. Immigration and Customs Enforcement, *Confirmed Cases*, ICE Guidance on  
COVID-19 (last updated Apr. 13, 2020, 11:43 a.m.),  
<https://www.ice.gov/coronavirus> (click on “Confirmed Cases”).

25 <sup>6</sup> Kate Morissey, *Detainees at Otay Mesa Detention Centers were offered masks,*  
*but only if they signed contracts*, San Diego Tribune (Apr. 10, 2020),  
26 [https://www.sandiegouniontribune.com/news/immigration/story/2020-04-10/otay-](https://www.sandiegouniontribune.com/news/immigration/story/2020-04-10/otay-mesa-detention-center-gets-masks-but-asks-detainees-to-sign-contract-first)  
27 [mesa-detention-center-gets-masks-but-asks-detainees-to-sign-contract-first](https://www.sandiegouniontribune.com/news/immigration/story/2020-04-10/otay-mesa-detention-center-gets-masks-but-asks-detainees-to-sign-contract-first).

28 <sup>7</sup> ICE has placed severe restrictions on attorneys’ ability to access their clients at  
Adelanto, including limitations on in-person visits unless attorneys bring their own

1 frequently stand in close proximity to detained individuals. *See* Calvillo Decl. ¶¶ 13,  
2 20–21; Lopez Salgado Decl. ¶ 19; Rayon Vite Decl. ¶ 13; *see also* Schneberk Decl.  
3 ¶ 29. Staff arrive and leave on a shift basis, and new detainees continue to arrive at  
4 the facility, but there is no attempt to test staff or detainees for asymptomatic  
5 infection. Schneberk Decl. ¶ 29; Greifinger Decl. ¶ 22; Dacoff Decl. ¶ 32; *see also*  
6 Valdez Decl. ¶ 14. Even detainees who are experiencing symptoms of COVID-19,  
7 such as fever and cough, are not tested. Declaration of Jose Hernandez Velasquez  
8 (“Hernandez Velasquez Decl.”) ¶ 18; *accord* Rayon Vite Decl. ¶¶ 18–19; Dacoff  
9 Decl. ¶ 32.

10 Plaintiff’s experience has been no different. Plaintiff reports that no  
11 precautions are being taken by the guards, for themselves or for detainees. Decl. of  
12 Christina Avalos in Supp. of Mot. for a Prelim. Inj. (“Avalos Decl.”) ¶ 11.  
13 Moreover, all detainees, including Plaintiff, share toilets, sinks, and showers with  
14 others in their dormitories and pods, without disinfection after each use. Schneberk  
15 Decl. ¶ 28; Rayon Vite Decl. ¶¶ 9–11; Lopez Salgado Decl. ¶¶ 11–14; Dacoff Decl.  
16 ¶¶ 8–13; Robles Rodriguez Decl. ¶¶ 9–11. Showers are typically crowded with  
17 people and placed so closely together that, when standing in one shower stall, “you  
18 could reach out your hand and press the button for the shower adjacent to yours.”  
19 Dacoff Decl. ¶¶ 14; 18. Again, in the opinions of Plaintiffs’ medical experts, it is not

20  
21 personal protective equipment, which is obviously in very short supply. *See*  
22 Motion for TRO at 10-17, *Torres v. Nielsen*, Case No. 18-cv-02602 (C.D. Cal),  
23 Dkt. No. 127-1 (describing current limitations on attorney-client communication at  
24 Adelanto and seeking emergency relief to ensure detainees maintain basic access to  
25 counsel during the COVID-19 pandemic); Decl. of Gabriel Valdez (“Valdez  
26 Decl.”) ¶ 26, *Robles Rodriguez v. Wolf*, Case No. 5:20-cv-00627-TJH-GJS (C.D.  
27 Cal. Apr. 7, 2020), ECF No. 45-1. In addition, ICE currently provides no effective  
28 way for attorneys to conduct confidential calls with clients detained at Adelanto.  
*See* Mot. for TRO at 10-17, *Torres v. Nielsen*, Case No. 18-cv-02602 (C.D. Cal.  
Mar. 26, 2020), ECF No. 127-1. 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. A  
temporary restraining order requiring that the government take steps to improve  
access to counsel at Adelanto was granted on April 11, 2020. *Torres v. Nielsen*,  
Case No. 18-cv-02602 (C.D. Cal. Apr. 11, 2020), ECF No. 144.

1 possible “to achieve adequate social distancing and hygiene in communal  
2 bathroom[s]” unless “people [are] at least six feet apart at all times” and the  
3 “facilities [are] thoroughly disinfected after each use”—which is impossible if 72  
4 people are confined to single shower area. Schneberk Decl. ¶ 28; *see also* Greifinger  
5 Decl. ¶ 26.

6 Absent Court intervention, Plaintiff will not be able to practice social  
7 distancing while detained in Adelanto. The Government has expressed in numerous  
8 filings before this Court that it has no intention of engaging in meaningful social  
9 distancing at Adelanto, dismissing such practices as “idealized safety  
10 precaution[s].”<sup>8</sup> ICE’s practice and attitude is an aberration. Multiple jurisdictions,  
11 including Los Angeles, CA, Chicago, IL, Harris County, TX, New York City, and  
12 the entire states of New Jersey and Iowa have released thousands of people from  
13 *criminal* custody, acknowledging the grave threat that an outbreak in jails and  
14 detention centers poses.<sup>9</sup> Other public officials have likewise called for the release  
15 of eligible individuals from detention. For example, the former Acting Director of  
16 ICE, John Sandweg, has advocated releasing individuals to combat the spread of  
17 COVID-19 in detention centers, and has stated “ICE has the operational capacity to  
18 quickly and drastically reduce the population of civil immigration detainees.”  
19 Motion for TRO Ex. 19, Sandweg Decl. ¶ 9, *Thompson v. Tsoukaris*, Case No. 1:20-  
20 cv-01449-SDG (N.D. Ga. Apr. 3, 2020), ECF No. 4-20.

### 21 **C. Plaintiff Forero Chavez**

22 Beatriz Andrea Forero Chavez is a 31-year old citizen of Colombia. Avalos  
23 Decl. ¶ 8. She has been detained in Adelanto since September 2019. *Id.* ¶ 7. Ms.  
24 Forero Chavez has never been charged with or convicted of any crime, in the United  
25 States or in any other country. *Id.* ¶ 10. She was a vocal supporter of women’s rights

26 <sup>8</sup> Reply to Order to Show Cause (“*Robles Rodriguez Gov’t Reply*”) at 12, *Robles*  
27 *Rodriguez v. Wolf*, No. 5:20-cv-00627-TJH (C.D. Cal. Apr. 8, 2020), ECF No. 45.

28 <sup>9</sup> *See Responses to COVID-19 pandemic*, Prison Policy Initiative (Apr. 10, 2020),  
<https://www.prisonpolicy.org/virus/virusresponse.html#releases> (collecting  
instances where jails and prisons have released detainees due to COVID-19).

1 in Colombia, for which she faced emotional, mental, physical, and sexual abuse from  
2 her ex-partner and others. *Id.* ¶ 8. She fled to the United States to seek asylum in  
3 2019, and in September, an asylum officer found that she has a credible fear of  
4 returning to Colombia. *Id.*

5 Ms. Forero Chavez has been diagnosed with human papilloma virus, with  
6 possible precancerous cells detected, and hypertension. *Id.* ¶ 9. She has not been  
7 receiving medication for her hypertension. *Id.* ¶ 11. She also has been suffering from  
8 recent severe headaches, for which she has been prescribed only ibuprofen, which  
9 has not controlled the headaches. *Id.* She was frightened by a recent incident in  
10 which another detainee, who had been suffering from headaches for several days,  
11 convulsed on the floor until “someone in a hazmat suit” took the detainee away. *Id.*  
12 If Ms. Forero Chavez is released, she will live with her U.S. citizen sponsor in  
13 Ontario, California. *Id.* ¶ 14. She will be able to social-distance and otherwise  
14 comply with public health recommendations to prevent the spread of COVID-19. *Id.*

### 15 **III. LEGAL STANDARD**

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

1 plaintiffs must show that they are likely to suffer irreparable injury and that an  
2 injunction is in the public’s interest. *Id.* at 1132.

### 3 **IV. ARGUMENT**

4 In multiple orders over the past two weeks, this Court has recognized that  
5 “[u]nder the Due Process Clause, a civil detainee cannot be subject to the current  
6 conditions of confinement at Adelanto.” *Castillo* TRO, at \*5. Those conditions  
7 include “sleeping rooms housing four or six detainees with shared sinks, toilets and  
8 showers,” potentially infected guards who “regularly rotate through the various  
9 holding areas several times a day” without always donning protective equipment,  
10 and “meal times” where detainees “line up together, sometimes only inches apart, in  
11 the cafeteria.” *Castillo* TRO at \*2, *see also Fraihat* TRO at 4–5.

12 The conditions within Adelanto are fundamentally unchanged. Plaintiff here  
13 is in even greater danger today than the detainees this Court has already released  
14 because the spread of COVID-19 in the area—where facility staff commute from  
15 daily—has dramatically increased in recent days. Plaintiff is entitled to—and  
16 desperately requires—relief for the same reasons as the individuals this Court has  
17 already released. The TRO should be granted.

#### 18 **A. Plaintiff is Likely to Succeed on the Merits**

##### 19 **1. Plaintiff’s Continued Detention at Adelanto Violates The** 20 **Fifth Amendment Right to Reasonable Safety in** 21 **Government Custody**

22 Individuals confined by the government have a right to health and safety. *See*  
23 *Youngberg v. Romeo*, 457 U.S. 307, 315–16 (1982). “The rationale for this principle  
24 is simple enough: when the State by the affirmative exercise of its power so restrains  
25 an individual’s liberty that it renders him unable to care for himself, and at the same  
26 time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical  
27 care, and reasonable safety—it transgresses the substantive limits on state action set  
28 by the Eighth Amendment and the Due Process Clause.” *DeShaney v. Winnebago*  
*Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989).



1           Thus, a plaintiff establishes “a due process violation” if the Government  
2 “affirmatively placed them in danger,” and “acted with deliberate indifference to a  
3 known or obvious danger in subjecting them to that danger.” *Hernandez v. City of*  
4 *San Jose*, 897 F.3d 1125, 1137 (9th Cir. 2018). A plaintiff need not show that the  
5 relevant government officials are “subjectively aware that their [actions are]  
6 unreasonable,” only that “a reasonable official in the circumstances would have  
7 appreciated the high degree of risk involved.” *Gordon v. Cty. of Orange*, 888 F.3d  
8 1118, 1124–25 (9th Cir. 2018). This standard requires “something akin to reckless  
9 disregard.” *Id.* In systemic cases, such as this, deliberate indifference can be shown  
10 by evidence of “systematic or gross deficiencies in staffing, facilities, equipment, or  
11 procedures.” *Hernandez v. County of Monterey*, 305 F.R.D. 132, 152–53, 155 n. 138  
12 (N.D. Cal. 2015). The key question in such cases is whether systemic deficiencies  
13 “taken as whole” subject people to a “substantial risk of serious harm.” *See Brown*  
14 *v. Plata*, 563 U.S. 493, 505 n.3 (2011).

15           Furthermore, it is well-settled that a detainee’s constitutional protections  
16 extend to “future harm,” including a “condition of confinement that is sure or very  
17 likely to cause serious illness and needless suffering the next week or month or year.”  
18 *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Constitutional violations therefore can  
19 arise from “the exposure of inmates to a serious, communicable disease” even if “the  
20 complaining inmate shows no serious current symptoms” and “even though the  
21 possible infection might not affect all those exposed.” *Id.*; *see also Castillo* TRO, at  
22 \*4; *Hutto v. Finney*, 437 U.S. 678, 682–83, 687 (1978) (risk of exposing inmates to  
23 communicable diseases such as hepatitis and venereal disease violates the Eighth  
24 Amendment); *DeGidio v. Pung*, 920 F.2d 525, 526, 533 (8th Cir. 1990) (inadequate  
25 screening and control procedures in response to tuberculosis outbreak violated the  
26 Eighth Amendment).

27           Here, as this Court has already recognized, COVID-19 poses a substantial risk  
28 of serious harm to Plaintiffs, and Defendants’ response to that imminent risk

1 constitutes reckless disregard for their safety. As this Court explained in its *Castillo*  
2 TRO order, “[t]he law is clear”:

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

11 *Castillo* TRO, at \*6 (internal citations omitted). After carefully surveying the  
12 conditions at Adelanto, this Court held that “[u]nder the Due Process Clause, a civil  
13 detainee cannot be subject to the current conditions of confinement at [the facility].”  
14 *Id.* at \*5. Relying on this holding, this Court has subsequently granted release to  
15 more than two dozen additional detained individuals—recognizing the *continuing*  
16 inadequacy of the conditions of confinement at Adelanto.

17 In its TRO orders, this Court noted at least four specific conditions that made  
18 detainees at Adelanto vulnerable to COVID-19: (1) detainees were not kept “at least  
19 6 feet apart from others at all times”; (2) they lived in “sleeping rooms housing four  
20 or six detainees with shared sinks, toilets and showers”; (3) they had “meal times”  
21 where they “line[d] up together, sometimes only inches apart, in the cafeteria”; and  
22 (4) they were forced to interact with potentially infected guards who “regularly rotate  
23 through the various holding areas several times a day” without protective equipment.  
24 *Castillo* TRO, at \*2; *Fraihat* TRO at \*11, \*4–5. *None* of these conditions have been  
25 remedied, and Plaintiff is still subject to them. Plaintiff’s continued detention is  
26 necessarily unlawful.

## 27 **2. Defendants’ COVID-19 Response Subjects Plaintiff to** 28 **Punitive Conditions in Violation of the Fifth Amendment**

The conditions of Plaintiff’s detention during the COVID-19 pandemic also  
constitute impermissible punishment in violation of the Fifth Amendment’s Due  
Process Clause. Plaintiff is a civil detainee, and as such is entitled to “more

1 considerate treatment” and may not be subjected to punitive conditions. *See Jones*  
2 *v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (citing *Youngberg v. Romeo*, 457 U.S.  
3 307, 321–22 (1982)); *cf. Bell v. Wolfish*, 441 U.S. 520, 536–37 (1979) (holding that  
4 pretrial detainees may be held in custody “so long as those conditions and  
5 restrictions [of confinement] do not amount to punishment”).

6 To establish a violation of the Fifth Amendment under this doctrine, plaintiffs  
7 need not show that Respondents intended to subject them to punishment. *See Pierce*  
8 *v. Cty. of Orange*, 526 F.3d 1190, 1205 (9th Cir. 2008). Rather, a rebuttable  
9 presumption of punitiveness arises in two circumstances: (1) “where the individual  
10 is detained under conditions identical to, similar to, or more restrictive than those  
11 under which pretrial criminal detainees are held,” *Jones*, 393 F.3d at 934, or (2)  
12 where those conditions “are employed to achieve objectives that could be  
13 accomplished in so many alternative and less harsh methods,” *id.* at 932. If plaintiffs  
14 establish one of these presumptions, “the burden shifts to the defendant to show (1)  
15 legitimate, non-punitive interests justifying the conditions of [the detained person’s]  
16 confinement and (2) that the restrictions imposed . . . [are] not excessive in relation  
17 to these interests.” *King v. County of Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018)  
18 (internal quotation marks omitted).

19 Here, Plaintiff is likely to establish that Defendants violated—and continue to  
20 violate—Plaintiff’s constitutional rights. First, by systemically failing to implement  
21 the only known effective practice to reduce the risk of contracting COVID-19—  
22 effective social distancing—Defendants subjects Plaintiff to conditions that are  
23 “more restrictive than those under which pretrial criminal detainees are held.” *See*  
24 *Jones*, 393 F.3d at 934. Indeed, throughout the country, jails and prisons have  
25 released hundreds of *criminal* detainees for this reason.<sup>10</sup> In sharp contrast, the

26  
27 <sup>10</sup> *See, e.g., US Jails Begin Releasing Prisoners to Stem COVID-19 Infections*,  
28 BBC News (Mar. 19, 2020), <https://www.bbc.com/news/world-us-canada-51947802>; Salvador Hernandez, *Los Angeles is Releasing Inmates Early and Arresting Fewer People Over Fears of the Coronavirus in Jails*, BuzzFeed News

1 limited measures in place at Adelanto all but assure a COVID-19 outbreak will one  
2 day occur, and ICE has not sought to release *any* detainees at Adelanto based on the  
3 threat of COVID-19 transmission.

4 Second, Plaintiff also satisfies *Jones*'s alternative test for establishing  
5 unconstitutionally punitive conditions, because the "restrictions [imposed during the  
6 COVID-19 outbreak] are 'employed to achieve objectives that could be  
7 accomplished in so many alternative and less harsh methods.'" *See Torres v. U.S.*  
8 *Dep't of Homeland Sec.*, 411 F. Supp. 3d 1036, 1065 (C.D. Cal. 2019) (quoting  
9 *Jones*, 393 F.3d at 932). As this Court explained in *Castillo*, "[t]he risk that" those  
10 released from Adelanto "will flee, given the current global pandemic, is very low,  
11 and reasonable conditions can be fashioned to ensure their future appearance at  
12 deportation proceedings." *Castillo*, 2020 WL 1502854, at \*5.

13 ICE has a range of highly effective tools at its disposal to ensure that  
14 individuals report for court hearings and other appointments, including conditions  
15 of supervision. *See Thaker v. Doll*, Case No. 20-cv-00480, \*20–\*21 (M.D. Pa. Mar.

16 \_\_\_\_\_  
(Mar. 16, 2020, 4:39 PM),  
17 [https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)  
18 [inmates-early-release](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release); Julia Marsh & Ben Feuerherd, *NYC to release 40*  
19 [coronavirus-prone inmates from Rikers as early as today](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release), New York Post (Mar.  
20 [19, 2020](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)), [https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)  
21 [prone-](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)  
22 [inmates-from-rikers-as-early-as-today/](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release); Ryan Autullo, *Travis County Judges*  
23 [Releasing Inmates to Limit Coronavirus Spread](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release), Statesman (Mar. 16, 2020, 6:12  
24 [PM](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)), [https://www.statesman.com/news/20200316/travis-county-judges-releasing-](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)  
25 [inmates-to-limit-coronavirus-spread](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release); *San Diego & Sheriff to Release Inmates to*  
26 [Reduce Vulnerable Jail Population](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release), CBS News 8 (Mar. 21, 2020, 11:33 AM),  
27 [https://www.cbs8.com/article/news/health/coronavirus/san-diego-da-sheriff-to-](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)  
28 [release-inmates-to-reduce-vulnerable-jail-population/509-75730ca5-445a-4811-](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)  
[9024-6aeb1d9c2777](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release); Letter from Mike McGrath, Chief Just., Sup. Ct. of Mont., to  
Mont. Dist. Ct. Judges (Mar. 20, 2020),  
[https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20C](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)  
[OVID-19%20032020.pdf?ver=2020-03-20-115517-333](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release); Ryan Deto & Ollie  
Gratzinger, *Allegheny County Jail plans to release some medically vulnerable*  
*inmates, but advocacy groups say it's not enough*, Pittsburgh City Paper (Mar. 19,  
2020), [https://www.pghcitypaper.com/pittsburgh/allegheny-county-jail-plans-to-](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)  
[releasesome-medically-vulnerable-inmates-but-advocacy-groups-say-its-](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)  
[notenough/Content?oid=16978582](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release); *Cook County Jail Releases Detainees "Highly*  
*Vulnerable" to Coronavirus*, NBC Chicago (Mar. 17, 2020),  
[https://www.nbcchicago.com/news/local/cookcounty-jail-releases-detainees-](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)  
[highly-vulnerable-to-coronavirus/2238813/](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release).

1 31, 2020) (noting “that ICE has a plethora of means *other than* physical detention at  
2 their disposal by which they may monitor civil detainees and ensure that they are  
3 present at removal proceedings, including remote monitoring and remote check-  
4 ins”); Decl. of Andrew Lorenzen-Strait in Supp. of Mot. for TRO ¶ 15, *Robles*  
5 *Rodriguez v. Wolf*, Case No. 5:20-cv-627-TJH-GJS (C.D. Cal. Mar. 30, 2020), ECF  
6 No. 22 (noting that a “government-contracted evaluation of [ICE’s Intensive  
7 Supervision Appearance Program<sup>11</sup>] reported a 99% attendance rate at all  
8 immigration court hearings and a 95% attendance rate at final hearings”). For  
9 example, ICE’s conditional supervision program, called ISAP (Intensive  
10 Supervision Appearance Program), “relies on the use of electronic ankle monitors,  
11 biometric voice recognition software, unannounced home visits, employer  
12 verification, and in-person reporting to supervise participants to ensure supervision.”  
13 *Id.* at 19. That program is so effective that a “government-contracted evaluation of  
14 this program reported a 99% attendance rate at all immigration court hearings.” *Id.*  
15 Under the circumstances, there is no reasonable basis to continue Plaintiff’s  
16 confinement during the height of the pandemic.

### 17 3. The Court Has Authority to Order Plaintiff’s Release

18 As this Court recognized in *Castillo*, Plaintiffs’ immediate release is within  
19 this Court’s power. “Federal courts possess whatever powers are necessary to  
20 remedy constitutional violations because they are charged with protecting these  
21 rights.” *Stone v. City & Cty. of San Francisco*, 968 F.2d 850, 861 (9th Cir. 1992).  
22 As a result, “[w]hen necessary to ensure compliance with a constitutional mandate,  
23 courts may enter orders placing limits on a prison’s population.” *Brown v. Plata*,  
24 563 U.S. 493, 511 (2011). This falls within the Court’s broad power to fashion

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26 <sup>11</sup> The Intensive Supervision Appearance Program, or ISAP, “relies on the use of  
27 electronic ankle monitors, biometric voice recognition software, unannounced  
28 home visits, employer verification, and in-person reporting to supervise  
participants.” Decl. of Andrew Lorenzen-Strait in Supp. of Mot. for TRO ¶ 15,  
*Robles Rodriguez v. Wolf*, Case No. 5:20-cv-627-TJH-GJS (C.D. Cal. Mar. 30,  
2020), ECF No. 22.

1 equitable remedies to address constitutional violations in government confinement.  
2 *Hutto*, 437 U.S. at 687 n.9. Moreover, as this Court has explained, “[t]he risk that  
3 [Plaintiffs], here, will flee, given the current global pandemic, is very low, and  
4 reasonable conditions can be fashioned to ensure their future appearance at  
5 deportation proceedings.” *Castillo* TRO, at \*5. It will be safer for everyone –  
6 Plaintiff, Adelanto detainees and staff, and the surrounding community – if Plaintiff  
7 is released.

8 **B. Plaintiff Satisfies the Remaining Factors for a Temporary**  
9 **Restraining Order**

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

12 As this Court explained in *Castillo* and *Fraihat*, “[i]t is well established that  
13 the deprivation of constitutional rights unquestionably constitutes irreparable  
14 injury.” *Castillo* TRO, at \*6 (citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th  
15 Cir. 2017)), *Fraihat* TRO at \*11 (citing same). That alone satisfies this factor.

16 Moreover, the Ninth Circuit recently recognized that dangerous and unsafe  
17 conditions of detention, such as those Plaintiff faces, also constitute irreparable harm  
18 supporting injunctive relief. *Padilla v. U.S. Immigration & Customs Enforcement*,  
19 No. 19-35565, 2020 WL 1482393, at \*9 (9th Cir. Mar. 27, 2020) (recognizing that  
20 “substandard physical conditions, [and] low standards of medical care” in  
21 immigration detention constitute irreparable harm justifying injunctive relief). And  
22 the Ninth Circuit has also recognized that there is irreparable harm where  
23 government actions threaten to worsen an individual’s health. *See M.R. v. Dreyfus*,  
24 663 F.3d 1100, 1111 (9th Cir. 2011), *as amended by* 697 F.3d 706 (9th Cir 2012).

25 Each of these reasons supports immediate relief here. The fatality rate for people  
26 infected with COVID-19 is estimated to be more than thirty times higher than the  
27 seasonal flu.<sup>12</sup> For those who survive, infection can permanently damage the lungs

28 <sup>12</sup> Jo Craven McGinty, *Why Doesn’t Flu Tank Economy Like Covid-19?*, Wall  
Street Journal (Apr. 10, 2020), <https://www.wsj.com/articles/why-doesnt-flu-tank-economy-like-covid-19-11586511000>.

1 and other major organs. Schneberk Decl. ¶ 22. Once COVID-19 is introduced into a  
2 congregate environment like a detention center, it spreads “like wildfire.” Greifinger  
3 Decl. ¶ 13; Schneberk Decl. ¶ 42. And the risk is getting closer. Experts have  
4 concluded that “[e]ach day we wait to act increases the danger of serious illness or  
5 death due to COVID-19 for not only detainees and staff at Adelanto, but for millions  
6 of Southern Californians.” Schneberk Decl. ¶ 43; *see* Greifinger Decl. ¶¶ 19, 23.  
7 There is no serious dispute the irreparable harm factor is satisfied.

## 8 **2. The Public Interest and Balance of Equities Weigh Heavily** 9 **in Plaintiff’s Favor**

10 Here, as in the cases where this Court has already granted relief, “[t]he balance  
11 of the equities tip sharply in favor” of Plaintiff. *Castillo* TRO, at \*6, *Fraihat* TRO  
12 at \*11. While plaintiffs “face irreparable harm to their constitutional rights and  
13 health,” “there is no harm to the Government when a court prevents the Government  
14 from engaging in unlawful practices.” *Castillo* TRO, at \*6, *Fraihat* TRO at \*11.  
15 Indeed, “[f]aced with . . . preventable human suffering, [the Ninth Circuit] ha[s] little  
16 difficulty concluding that the balance of hardships tips decidedly in plaintiffs’  
17 favor.” *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437  
18 (9th Cir. 1983)).

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

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

*Castillo* TRO, at \*6.

1 Thus, Plaintiff's release would not only impose minimal harm to the  
2 government, it would also reduce the healthcare and economic burden on the local  
3 community and health infrastructure at large.

4 **V. CONCLUSION**

5 The Court should grant Plaintiff's motion for a temporary restraining and  
6 direct Plaintiffs' immediate release from Adelanto.

7  
8 Dated: April 13, 2020

Respectfully submitted,

9  
10 LATHAM & WATKINS LLP

11 /s/ Amanda Barnett  
12 AMANDA BARNETT  
13 Counsel for Plaintiffs  
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