

1 SAMIR DEGER-SEN*
samir.deger-sen@lw.com
2 WILLIAM M. FRIEDMAN*
william.friedman@lw.com
3 LATHAM & WATKINS LLP
555 Eleventh Street, NW
4 Suite 1000
Washington, D.C. 20004-1304
5 Tel: 202.637.2200
Fax: 202.637.2201

6 AMANDA BARNETT (SBN 319046)
amanda.barnett@lw.com
7 JESSIE CAMMACK (SBN 329794)
jessie.cammack@lw.com
8 LATHAM & WATKINS LLP
9 355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
10 Tel: 213.485.1234
Fax: 213.891.8763

11 Attorneys for Plaintiffs-Petitioners
12 *Pro hac vice application forthcoming

AHILAN ARULANANTHAM
(SBN 237841)
aarulanantham@aclusocal.org
MICHAEL KAUFMAN
(SBN 254575)
mkaufman@aclusocal.org
JESSICA KARP BANSAL
(SBN 277347)
jbansal@aclusocal.org
MICHELLE (MINJU) CHO
(SBN 321939)
mcho@aclusocal.org
ACLU Foundation of Southern
California
1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-9500

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.

20 CHAD F. WOLF, Acting Secretary, U.S.
21 Department of Homeland Security;
MATTHEW T. ALBENCE, Deputy
22 Director and Senior Official Performing
the Duties of the Director, U.S.
23 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. 5:20-cv-00768

) **ADELANTO COVID**

) **MIGUEL ANGEL AGUILAR**
) **ESTRADA'S EX PARTE**
) **APPLICATION FOR**
) **TEMPORARY RESTRAINING**
) **ORDER**

1 Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Local
2 Rule 65-1, Plaintiff-Petitioner Miguel Angel Aguilar Estrada hereby moves this
3 court for emergency relief in the form of a temporary restraining order directing
4 that he be immediately released from his current confinement at the Adelanto ICE
5 Processing Center, under appropriate conditions as may be deemed necessary by
6 the Court, in light of the serious risks to his health and safety posed by the current
7 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 Dated: April 13, 2020

Respectfully submitted,

17
18 /s/ Amanda Barnett
AMANDA BARNETT

19 Counsel for Plaintiffs-Petitioners
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1 SAMIR DEGER-SEN*
samir.deger-sen@lw.com
2 WILLIAM M. FRIEDMAN*
william.friedman@lw.com
3 LATHAM & WATKINS LLP
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4 Suite 1000
Washington, D.C. 20004-1304
5 Tel: 202.637.2200
Fax: 202.637.2201

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amanda.barnett@lw.com
7 JESSIE CAMMACK (SBN 329794)
jessie.cammack@lw.com
8 LATHAM & WATKINS LLP
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Los Angeles, California 90071-1560
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(SBN 254575)
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(SBN 277347)
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26 JANECKA, Warden, Adelanto ICE
Processing Center,

27 Respondents-Defendants.
28

) Case No. 5:20-cv-00768

) **ADELANTO COVID**

) **PLAINTIFF MIGUEL ANGEL**
) **AGUILAR ESTRADA'S**
) **MEMORANDUM OF POINTS**
) **AND AUTHORITIES IN**
) **SUPPORT OF MOTION FOR**
) **TEMPORARY RESTRAINING**
) **ORDER**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. FACTS.....	2
A. COVID-19 Poses Grave Risk Of Harm To Plaintiff	2
B. Plaintiff Miguel Angel Aguilar Estrada Faces an Imminent and Substantial Risk of Contracting COVID- 19 in Adelanto.....	3
C. Plaintiff Aguilar Estrada	6
III. LEGAL STANDARD	7
IV. ARGUMENT	8
A. Plaintiff is Likely to Succeed on the Merits	8
1. Plaintiff’s Continued Detention at Adelanto Violates The Fifth Amendment Right to Reasonable Safety in Government Custody	8
2. Defendants’ COVID-19 Response Subjects Plaintiff to Punitive Conditions in Violation of the Fifth Amendment.....	10
3. The Court Has Authority to Order Plaintiff’s Release	13
B. Plaintiff Satisfies the Remaining Factors for a Temporary Restraining Order.....	14
1. Exposure to a Lethal Virus Which Lacks Any Vaccine, Treatment, or Cure Constitutes Irreparable Harm.....	14
2. The Public Interest and Balance of Equities Weigh Heavily in Plaintiff’s Favor	15
V. CONCLUSION	16

TABLE OF AUTHORITIES

		Page(s)
1		
2		
3	CASES	
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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff Miguel Angel Aguilar Estrada (“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 his 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, at *5 (C.D. Cal. Mar. 27, 2020).
11 Accordingly, the Court has issued temporary restraining orders and released at least
12 two dozen individuals and placed them under appropriate conditions of confinement
13 outside of Adelanto.¹

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15
16 ¹ See, e.g., *Castillo v. Barr* (“*Castillo TRO*”), No. CV 20-00605 TJH (AFMx), 2020
17 WL 1502864, at *11 (C.D. Cal. Mar. 27, 2020) (ordering two detainees released);
18 TRO and Order to Show Cause at 12, *Fraihat v. Wolf* (“*Fraihat TRO*”), No. ED-
19 CV2000590-TJH (C.D. Cal. Mar. 30, 2020) (ordering a detainee released); TRO and
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23 Cal. Apr. 2, 2020), ECF No. 12; TRO and Order to Show Cause at 2, *Munoz v. Wolf*,
24 Case No. EDCV 20-00625 TJH (SHKx) (C.D. Cal. Apr. 2, 2020), ECF No. 14;
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26 35-39, 42-43 (granting temporary restraining orders on behalf of six Adelanto
27 detainees); TRO and Order to Show Cause at 2, *Perez Cruz v. Barr*, Case No. EDCV
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Show Cause, *Zendejas Lopez v. Wolf*, Case No. 5:20-cv-00702 (TJH) (C.D. Cal.
Apr. 8, 2020), ECF No. 12; TRO and Order to Show Cause, *Moreno v. Wolf*, Case
No. 5:20-cv-00718 (TJH) (C.D. Cal. Apr. 9, 2020), ECF No. 13.

1 Plaintiff is similarly situated to these other Adelanto detainees. He also suffers
2 from diabetes, hypertension and high cholesterol, making him at particular risk if he
3 contracts COVID-19. The Court should grant Plaintiff’s release pending the
4 determination of the class-wide preliminary injunction.

5 **II. FACTS²**

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.³ 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.⁴

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
22 interpersonal contact of about six feet. Decl. of Dr. Robert B. Greifinger in Supp. of

23 ² Plaintiff incorporates by reference the factual background discussed in the
24 accompanying Memorandum in Support of Plaintiffs’ Motion for a Preliminary
Injunction.

25 ³ See Melissa Davey, *What is a pandemic and does it change the approach to*
26 *coronavirus?*, The Guardian (Mar. 14, 2020), <https://www.theguardian.com/world/2020/mar/14/what-is-a-pandemic-coronavirus-covid-19>.

27 ⁴ Chris Mooney, Brady Dennis and Sarah Kaplan, *Hundreds of young Americans*
28 *have now been killed by the coronavirus, data shows*, Washington Post (Apr. 8,
2020), <https://www.washingtonpost.com/health/2020/04/08/young-people-coronavirus-deaths/>.

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

10 **B. Plaintiff Miguel Angel Aguilar Estrada Faces an Imminent and**
11 **Substantial Risk of Contracting COVID-19 in Adelanto**

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

27 Similar conditions have led to disastrous results in other congregate facilities.
28 In three weeks across March and April, the jail at Rikers Island in New York jumped

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

11 Dr. Greifinger details the numerous ways in which ICE’s response to the
12 significant challenge of dealing with a pandemic in a detention setting has been
13 “wholly inadequate.” Greifinger Decl. ¶¶ 17–24. The descriptions of other class
14 members and individuals recently released from Adelanto confirm ICE’s utter
15 failure to protect those who are detained there. Despite the crowded, communal
16 facilities, detainees have no access to masks. *See* Decl. of Paola Rayon Vite in Supp.
17 of Mot. for a Prelim. Inj. (“Rayon Vite Decl.”) ¶ 13; Decl. of Luis Lopez Salgado in
18 Supp. of Mot. for a Prelim. Inj. (“Lopez Salgado Decl.”) ¶¶ 20, 21; Decl. of
19 Charleston Edward Dacoff in Supp. of Mot. for a Prelim. Inj. (“Dacoff Decl.”) ¶¶
20 28, 29; Decl. of Ruth Calvillo in Supp. of Mot. for a Prelim. Inj. (“Calvillo Decl.”)
21 ¶¶ 20, 22.⁷ Guards and medical staff generally do not wear masks, though they

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

24 ⁶ Kate Morrissey, *Detainees at Otay Mesa Detention Centers were offered masks, but*
25 *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)
[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).

27 ⁷ ICE has placed severe restrictions on attorneys’ ability to access their clients at
28 Adelanto, including limitations on in-person visits unless attorneys bring their own
personal protective equipment, which is obviously in very short supply. *See* Motion
for TRO at 10-17, *Torres v. Nielsen*, Case No. 18-cv-02602 (C.D. Cal), Dkt. No.

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 has not been able to
11 practice social distancing because he shares a cell with three other men. Calvillo
12 Decl. ¶ 17. Adelanto staff do not consistently wear masks, and masks are not
13 available for detainees. *Id.* ¶¶ 20–21. Hand sanitizer dispensers are empty. *Id.* ¶ 22.
14 Moreover, all detainees, including Plaintiff, share toilets, sinks, and showers with
15 others in their dormitories and pods, without disinfection after each use. Schneberk
16 Decl. ¶ 28; Rayon Vite Decl. ¶¶ 9–11; Lopez Salgado Decl. ¶¶ 11–14; Dacoff Decl.
17 ¶¶ 8–13; Robles Rodriguez Decl. ¶¶ 9–11. Showers are typically crowded with
18 people and placed so closely together that, when standing in one shower stall, “you
19 could reach out your hand and press the button for the shower adjacent to yours,”
20 Dacoff Decl. ¶¶ 14; 18. Again, in the opinions of Plaintiffs’ medical experts, it is not

21
22 _____
23 127-1 (describing current limitations on attorney-client communication at Adelanto
24 and seeking emergency relief to ensure detainees maintain basic access to counsel
25 during the COVID-19 pandemic); Decl. of Gabriel Valdez (“Valdez Decl.”) ¶ 26,
26 *Robles Rodriguez v. Wolf*, Case No. 5:20-cv-00627-TJH-GJS (C.D. Cal. Apr. 7,
27 2020), ECF No. 45-1. In addition, ICE currently provides no effective way for
28 attorneys to conduct confidential calls with clients detained at Adelanto. *See* Mot.
for TRO at 10-17, *Torres v. Nielson*, Case No. 18-cv-02602 (C.D. Cal. Mar. 26,
2020), ECF No. 127-1. 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. Nielson, Case No. 18-cv-02602 (C.D. Cal. Apr. 11, 2020), ECF No. 144.
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 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].”⁸ 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.⁹ 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 Aguilar Estrada

22 Miguel Angel Aguilar Estrada is a 52-year old citizen of Mexico. Calvillo
 23 Decl. ¶ 8. He has been detained in Adelanto since December 2019. *Id.* ¶ 6. Mr.
 24 Aguilar Estrada has been diagnosed with diabetes, hypertension, and high
 25 cholesterol. *Id.* ¶ 7. Although his records show that he is diabetic, he was not given

26 ⁸ 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 ⁹ *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 any medication for his diabetes until after he visited the infirmary with pain in his
2 chest, numb hands, and swollen feet at the end of March 2020. *Id.* ¶ 13. Even after
3 that visit, he did not receive outside follow-up care ordered by medical staff. *Id.* ¶
4 14. If Mr. Aguilar Estrada is released, he will live with his long-term partner, Maria
5 Calvillo, and their children at their home in Compton, California. *Id.* ¶ 25. He will
6 be able to self-isolate at home and practice social distancing. *Id.*

7 Mr. Aguilar Estrada’s criminal history consists of two convictions for driving
8 under the influence, for incidents occurring in 2015 and 2017 in which no one was
9 injured. Calvillo Decl. ¶ 11. He has since made significant efforts to change his life,
10 and has been sober for three years. *Id.* Before he was detained, he was attending
11 Alcoholics Anonymous voluntarily, and was enrolled in and near completing an
12 alcohol rehabilitation program. *Id.*

13 **III. LEGAL STANDARD**

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

1 **IV. ARGUMENT**

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

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

16 **A. Plaintiff is Likely to Succeed on the Merits**

17 **1. Plaintiff’s Continued Detention at Adelanto Violates The**
18 **Fifth Amendment Right to Reasonable Safety in**
Government Custody

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

27 Thus, a plaintiff establishes “a due process violation” if the Government
28 “affirmatively placed them in danger,” and “acted with deliberate indifference to a

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

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

25 Here, as this Court has already recognized, COVID-19 poses a substantial risk
26 of serious harm to Plaintiffs, and Defendants’ response to that imminent risk
27 constitutes reckless disregard for their safety. As this Court explained in its *Castillo*
28 TRO order, “[t]he law is clear”:

1 [T]he Government cannot put a civil detainee into a dangerous
2 situation, especially where that dangerous situation was created by the
3 Government. The Due Process Clause of the Fifth Amendment
4 prohibits the Government from exposing an individual to a danger
5 which he would not have otherwise faced. A civil detainee’s
6 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.

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

13 In its TRO orders, this Court noted at least four specific conditions that made
14 detainees at Adelanto vulnerable to COVID-19: (1) detainees were not kept “at least
15 6 feet apart from others at all times”; (2) they lived in “sleeping rooms housing four
16 or six detainees with shared sinks, toilets and showers”; (3) they had “meal times”
17 where they “line[d] up together, sometimes only inches apart, in the cafeteria”; and
18 (4) they were forced to interact with potentially infected guards who “regularly rotate
19 through the various holding areas several times a day” without protective equipment.
20 *Castillo* TRO, at *2; *Frailhat* TRO at *11, *4–5. *None* of these conditions have been
21 remedied, and Plaintiff is still subject to them. Plaintiff’s continued detention is
22 necessarily unlawful.

23 **2. Defendants’ COVID-19 Response Subjects Plaintiff to** 24 **Punitive Conditions in Violation of the Fifth Amendment**

25 The conditions of Plaintiff’s detention during the COVID-19 pandemic also
26 constitute impermissible punishment in violation of the Fifth Amendment’s Due
27 Process Clause. Plaintiff is a civil detainee, and as such is entitled to “more
28 considerate treatment” and may not be subjected to punitive conditions. *See Jones*
v. Blanas, 393 F.3d 918, 931 (9th Cir. 2004) (citing *Youngberg v. Romeo*, 457 U.S.

1 307, 321–22 (1982)); *cf. Bell v. Wolfish*, 441 U.S. 520, 536–37 (1979) (holding that
2 pretrial detainees may be held in custody “so long as those conditions and
3 restrictions [of confinement] do not amount to punishment”).

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

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

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25 ¹⁰ *See, e.g., US Jails Begin Releasing Prisoners to Stem COVID-19 Infections*, BBC
26 News (Mar. 19, 2020), <https://www.bbc.com/news/world-us-canada-51947802>;
27 Salvador Hernandez, *Los Angeles is Releasing Inmates Early and Arresting Fewer*
28 *People Over Fears of the Coronavirus in Jails*, BuzzFeed News (Mar. 16, 2020,
4:39 PM),

[https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release)
[inmates-early-release](https://www.buzzfeednews.com/article/salvadorhernandez/los-angelescoronavirus-inmates-early-release); Julia Marsh & Ben Feuerherd, *NYC to release 40*

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 31, 2020) (noting "that ICE has a plethora of means *other than* physical detention at

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 18 *coronavirus-prone inmates from Rikers as early as today*, New York Post (Mar. 19,
 19 2020), [https://nypost.com/2020/03/19/nyc-to-release-40-coronavirus-prone-](https://nypost.com/2020/03/19/nyc-to-release-40-coronavirus-prone-inmates-from-rikers-as-early-as-today/)
 20 [https://www.statesman.com/news/20200316/travis-county-judges-releasing-](https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread)
 21 [https://www.cbs8.com/article/news/health/coronavirus/san-diego-da-sheriff-to-](https://www.cbs8.com/article/news/health/coronavirus/san-diego-da-sheriff-to-release-inmates-to-reduce-vulnerable-jail-population/509-75730ca5-445a-4811-9024-6aeb1d9c2777)
 22 [https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20C](https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333)
 23 [https://www.pghcitypaper.com/pittsburgh/allegheeny-county-jail-plans-to-](https://www.pghcitypaper.com/pittsburgh/allegheeny-county-jail-plans-to-releasesome-medically-vulnerable-inmates-but-advocacy-groups-say-its-notenough/Content?oid=16978582)
 24 [https://www.nbcchicago.com/news/local/cookcounty-jail-releases-detainees-](https://www.nbcchicago.com/news/local/cookcounty-jail-releases-detainees-highly-vulnerable-to-coronavirus/2238813/)
 25 [https://www.nbcchicago.com/news/local/cookcounty-jail-releases-detainees-](https://www.nbcchicago.com/news/local/cookcounty-jail-releases-detainees-highly-vulnerable-to-coronavirus/2238813/)
 26 [https://www.nbcchicago.com/news/local/cookcounty-jail-releases-detainees-](https://www.nbcchicago.com/news/local/cookcounty-jail-releases-detainees-highly-vulnerable-to-coronavirus/2238813/)
 27 [https://www.nbcchicago.com/news/local/cookcounty-jail-releases-detainees-](https://www.nbcchicago.com/news/local/cookcounty-jail-releases-detainees-highly-vulnerable-to-coronavirus/2238813/)
 28 [https://www.nbcchicago.com/news/local/cookcounty-jail-releases-detainees-](https://www.nbcchicago.com/news/local/cookcounty-jail-releases-detainees-highly-vulnerable-to-coronavirus/2238813/)
 highly-vulnerable-to-coronavirus/2238813/.

1 their disposal by which they may monitor civil detainees and ensure that they are
2 present at removal proceedings, including remote monitoring and remote check-
3 ins”); Decl. of Andrew Lorenzen-Strait in Supp. of Mot. for TRO ¶ 15 *Robles*
4 *Rodriguez v. Wolf*, Case No. 5:20-cv-627-TJH-GJS (C.D. Cal. Mar. 30, 2020), ECF
5 No. 22 (noting that a “government-contracted evaluation of [ICE’s Intensive
6 Supervision Appearance Program¹¹] reported a 99% attendance rate at all
7 immigration court hearings and a 95% attendance rate at final hearings”). For
8 example, ICE’s conditional supervision program, called ISAP (Intensive
9 Supervision Appearance Program), “relies on the use of electronic ankle monitors,
10 biometric voice recognition software, unannounced home visits, employer
11 verification, and in-person reporting to supervise participants to ensure supervision.”
12 *Id.* at 19. That program is so effective that a “government-contracted evaluation of
13 this program reported a 99% attendance rate at all immigration court hearings.” *Id.*
14 Under the circumstances, there is no reasonable basis to continue Plaintiff’s
15 confinement during the height of the pandemic.

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

17 As this Court recognized in *Castillo*, Plaintiffs’ immediate release is within
18 this Court’s power. “Federal courts possess whatever powers are necessary to
19 remedy constitutional violations because they are charged with protecting these
20 rights.” *Stone v. City & Cty. of San Francisco*, 968 F.2d 850, 861 (9th Cir. 1992).
21 As a result, “[w]hen necessary to ensure compliance with a constitutional mandate,
22 courts may enter orders placing limits on a prison’s population.” *Brown v. Plata*,
23 563 U.S. 493, 511 (2011). This falls within the Court’s broad power to fashion
24 equitable remedies to address constitutional violations in government confinement.
25 *Hutto*, 437 U.S. at 687 n.9. Moreover, as this Court has explained, “[t]he risk that

26 ¹¹ The Intensive Supervision Appearance Program, or ISAP, “relies on the use of
27 electronic ankle monitors, biometric voice recognition software, unannounced home
28 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 [Plaintiffs], here, will flee, given the current global pandemic, is very low, and
2 reasonable conditions can be fashioned to ensure their future appearance at
3 deportation proceedings.” *Castillo* TRO, at *5. It will be safer for everyone –
4 Plaintiff, Adelanto detainees and staff, and the surrounding community – if Plaintiff
5 is released.

6 **B. Plaintiff Satisfies the Remaining Factors for a Temporary**
7 **Restraining Order**

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

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

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

23 Each of these reasons supports immediate relief here. The fatality rate for people
24 infected with COVID-19 is estimated to be more than thirty times higher than the
25 seasonal flu.¹² For those who survive, infection can permanently damage the lungs
26 and other major organs. Schneberk Decl. ¶ 22. Once COVID-19 is introduced into a
27 congregate environment like a detention center, it spreads “like wildfire.” Greifinger

28 ¹² 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 Decl. ¶ 13; Schneberk Decl. ¶ 42. And the risk is getting closer. Experts have
2 concluded that “[e]ach day we wait to act increases the danger of serious illness or
3 death due to COVID-19 for not only detainees and staff at Adelanto, but for millions
4 of Southern Californians.” Schneberk Decl. ¶ 43; *see* Greifinger Decl. ¶¶ 19, 23.
5 There is no serious dispute the irreparable harm factor is satisfied.

6 **2. The Public Interest and Balance of Equities Weigh Heavily**
7 **in Plaintiff’s Favor**

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

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

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

28 *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

LATHAM & WATKINS LLP

10

/s/ Amanda Barnett
AMANDA BARNETT
Counsel for Plaintiffs

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