

1 LINDSAY TOCZYLOWSKI (SBN 262481)
lindsay@immdef.org
2 MUNMEETH KAUR SONI (CA SBN 254854)
meeth@immdef.org
3 HANNAH COMSTOCK (CA SBN 311680)
hcomstock@immdef.org
4 IMMIGRANT DEFENDERS LAW CENTER
634 S. Spring St., 10th Floor
5 Los Angeles, CA 90014
Telephone: (213) 634-7602
6 Facsimile: (213) 282-3133

7 Attorneys for Petitioner

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 JOHMMY ARNALDO GARCIA,

No. 5:20-cv-796

11 Petitioner, Hon.

12 v.

**PETITION FOR WRIT OF HABEAS
CORPUS FOR PERSON HELD IN
FEDERAL CUSTODY (28 U.S.C. §
2241)**

13 CHAD T. WOLF, Acting Secretary of
14 Homeland Security; MATTHEW T.
ALBENCE, Deputy Director and
15 Senior Official Performing Duties of
the Director of U.S. Immigration and
16 Customs Enforcement; DAVID A.
MARIN, Field Office Director;
17 GABRIEL VALDEZ, Officer in
Charge; JAMES JANECKA, Warden,
18 Adelanto ICE Processing Center,
19 Respondents.

(Filed in lieu of Form CV-27)

[COVID-19 HABEAS PETITION]

REDATED

20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. PRELIMINARY STATEMENT OF CLAIMS FOR RELIEF 1

II. PARTIES 3

III. JURISDICTION AND VENUE 6

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES..... 6

V. STATEMENT OF FACTS 7

 A. The Conditions of Confinement at Adelanto are Ripe for an Uncontrollable COVID-19 Outbreak..... 11

 1. Adelanto is Densely Packed and Lacks the Space, Expertise, and Personnel to Safely House and Treat Detainees During the COVID-19 Pandemic..... 11

 2. Adelanto’s Understaffed and Under-Resourced Medical Facilities Exacerbate the Substantial Risk of Harm from COVID-19..... 13

 3. Unlike Jails and Prisons Nationwide, Respondents Have Adamantly Opposed Reducing Its Detainee Population at Adelanto 17

 4. Respondents Have Not Implemented Adequate or Effective COVID-19 Policies at Adelanto 20

VI. LEGAL FRAMEWORK..... 24

 A. Petitioner Has a Constitutional Right to Reasonable Safety and Freedom from Punishment in ICE Custody 24

 1. The Conditions at Adelanto are Punitive Because They Expose Petitioner to the Exceptional Risk of a Severe COVID-19 Infection..... 26

 2. Mr. Garcia’s Conditions of Confinement are Presumptively Punitive Because They are Worse than Those of His Criminal Counterparts 28

VII. CLAIM FOR RELIEF 30

VIII. PRAYER FOR RELIEF..... 31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

Beagle v. Schwarzenegger, 107 F. Supp. 3d 1056 (E.D. Cal. 2014)..... 28

Bravo Castillo v. Barr, 2020 WL 1502864 (C.D. Cal. 2020) passim

Chettiar v. Holder, 665 F.3d 1375 (9th Cir. 2012)..... 6

DeShaney v. Winnebago Cnty. Dep’t of Soc. Services, 489 U.S. 189 (1989) .. 24

Doe v. Kelly, 878 F.3d 710 (9th Cir. 2017) 25

Estelle v. Gamble, 429 U.S. 87 (1976) 24

Farmer v. Brennan, 511 U.S. 825 (1994)..... 24

Fraihat v. ICE, CV 19-05146-JGB (Apr. 9, 2020)..... 22

Graves v. Arpaio, 623 F.3d 1043 (9th Cir. 2010)..... 27

Hallstrom v. City of Garden City, 991 F.2d 1473 (9th Cir.1993) 30

Helling v. McKinney, 509 U.S. 25 (1993) 24, 26, 27, 28

Hernandez v. Sessions, 872 F.3d 976 (9th Cir. 2017). 30

Hernandez v. Wolf, CV 20-60017-TJH (KSx) (C.D. Cal. Apr. 1, 2020) 12

Jones v. Blanas, 393 F.3d 918 (9th Cir. 2004) 25, 30

King v. Cnty. of Los Angeles, 885 F.3d 548 (9th Cir. 2018) 25

Mapp v. Reno, 241 F.3d 221 (2d Cir. 2001) 31

Nadarajah v. Gonzales, 443 F.3d 1069 (9th Cir. 2006) 31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Parsons v. Ryan, 754 F.3d 657 (9th Cir. 2014) 27

Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011) 7

Tijani v. Willis, 430 F.3d 1241 (9th Cir. 2009) 25

Torres v. Nielsen, 18-02604-JGB-SHL (C.D. Cal. Apr. 6, 2020) 13

Torres v. United States Dep’t of Homeland Security, 411 F.Supp.3d 1036
(C.D. Cal. 2019) 30

Zadvyas v. Davis, 533 U.S. 678 (2001) 25

STATUTES

28 U.S.C. § 1331 6

28 U.S.C. § 1346 6

28 U.S.C. § 1391 6

28 U.S.C. § 2241 6, 30

CONSTITUTIONAL PROVISIONS

Article 1, Section 9, clause 2 of the United States Constitution 6

1 **I. PRELIMINARY STATEMENT OF CLAIMS FOR RELIEF**

2 1. No one is immune from Coronavirus and it quickly becomes deadly
3 for persons who are elderly, have underlying conditions, or lack timely access to
4 adequate medical care. An infected person can easily, and unknowingly, spread
5 the virus. Transmission occurs through contact with an infected person’s
6 respiratory droplets that are produced by coughing, sneezing, or even simply
7 talking. The best prevention method is social distancing—i.e., avoiding crowded
8 spaces and keeping a six-foot distance between yourself and others—and
9 repeatedly disinfecting hard, commonly touched surfaces.

10 2. For Petitioner Johmmy Arnaldo Garcia, a thirty-year-old civil detainee
11 at Adelanto ICE Processing Center (“Adelanto” or “Facility”), taking any
12 preventive measures, let alone social distancing, is simply impossible. He is
13 instead forced to share his sleeping area with three other men, shower with seven
14 other men, and eat near thirty other men. Bell Dec’l at 3–4 ¶ 17. Immigration and
15 Customs Enforcement (ICE) has not given him a face mask, gloves, or hand
16 sanitizer. *Id.*

17 3. These conditions of confinement are exceptionally dangerous for Mr.
18 Garcia. He faces acute risk of complications from COVID-19 due to his diagnosed
19 asthma with a history of intubation, hypertension, and pre-diabetes. Ex. 3 - Medical
20 Progress Note (Nov. 9, 2019); Bell Dec’l at 2 ¶ 8. He is also diagnosed with

21 [REDACTED]
22 [REDACTED] which further elevate his risk of contracting COVID-19 and
23 experiencing more negative outcomes if infected.¹ Ex. 1 - Mental Health Progress
24 Note (Jan. 13, 2020) at 1. Mr. Garcia has plead to ICE for medical humanitarian
25

26 _____
27 ¹ Ex. 6 - Gwen Mitchell et al., *Expert Declaration Submitted by Experts in*
28 *Psychology & Social Work on the Known Impact of Adverse Experiences, Extreme*
Social Isolation & Public Health Pandemics 4 (Mar. 30, 2020).

1 release. ICE continues to ignore his pleas.

2 4. ICE’s response (or lack thereof) is emblematic of its head-in-the-sand
3 approach to COVID-19. As anticipated, COVID-19 is now raging through
4 immigration detention centers nationwide. The total number of infected detainees
5 grows everyday—with ICE’s most recent self-reports confirming at least eighty-
6 nine detainees and twenty-one detention center employees infected (curiously, this
7 number dropped from ninety-one confirmed detainee cases just several hours
8 earlier).² From the start of the pandemic, ICE has insisted that it was prepared for
9 COVID-19, its detainees were protected, and any additional measures, including
10 significant population reduction, were unnecessary. That was untrue then and is
11 patently untrue now.

12 5. COVID-19 shows no signs of slowing down in immigration detention
13 centers as it continues to wreak havoc throughout the world. As of 9:16 AM on
14 April 15, at least 2,034,309 people have been infected and 129,913 killed, with
15 26,317 of those deaths in the United States.³ In California alone, the virus has
16 infected 24,241 people and killed 731. The situation grows more dire every day.
17 The world has changed to accommodate the virus, and now ICE at the Adelanto
18 Immigration Processing Facility (“Adelanto” or “Facility”) must do the same.

19 6. Federal, state, and local authorities have codified social distancing into
20 ordinance and policy by issuing “shelter-in-place” orders and releasing thousands
21 of criminal inmates to reduce prison populations. Throughout California, the
22 United States, and the world, society has largely followed this directive in a
23

24 ² *ICE Guidance on COVID-19, Confirmed Cases*, ICE.Gov (last visited Apr.
25 15, 2020, 12:31 PM), <https://www.ice.gov/coronavirus>.

26 ³ *COVID-19 CORONAVIRUS PANDEMIC*, Worldometer.info (last updated
27 Apr. 15, 2020, 4:16PM GMT), <https://www.worldometers.info/coronavirus/>;
Coronavirus: United States, Worldometer.info (last updated Apr. 15, 2020,
28 4:16PM GMT), <https://www.worldometers.info/coronavirus/country/us/>.

1 collaborative effort to combat Coronavirus.

2 7. Each day that Mr. Garcia remains detained, he risks exposure to an
3 inevitable COVID-19 infection at Adelanto, where wards are placed under
4 quarantine and fellow detainees go to medical for flu symptoms and never return.
5 Bell Dec’l at 4 ¶ 19. ICE, meanwhile, has not, and cannot, say with any degree of
6 certainty that no one—including, *inter alia*, Adelanto employees, detainees,
7 visiting attorneys, and court personnel—has not been or will not be infected with
8 COVID-19.

9 8. Experts in the fields of infectious diseases and correctional health
10 settings agree that overcrowded and unhygienic conditions like those in Adelanto
11 expose detainees to significantly higher rates of transmission, exposure, and harm
12 from COVID-19. Ex. 4 - Meyer Dec’l at p. 2 ¶ 7.

13 9. This heightened risk of transmission is compounded by Adelanto’s
14 notoriously unsanitary conditions and lack of adequate, timely medical care, which
15 the Department of Homeland Security (DHS) deemed deficient under its own
16 standards. Mr. Garcia’s own experience has left him without any trust in
17 Adelanto’s medical care. Bell Dec’l at 4 ¶ 18.

18 10. Mr. Garcia brings the underlying action as a final plea for release so he
19 can protect himself from the substantial risk of contracting COVID-19.

20 **II. PARTIES**

21 11. **Petitioner Jhohmy Arnaldo Garcia** is a thirty-year-old asylum
22 seeker with hypertension, asthma, pre-diabetes, [REDACTED]

23 [REDACTED] Longstanding
24 medical research shows that “having both a chronic illness such as [hypertension
25 and asthma] and a mental illness severely impacts the ability of a person to adhere
26 to treatment or necessary preventative protocols, increasing the likelihood of
27

1 disease management.”⁴ “[T]his puts not only detainees with comorbid mental
2 illness and physical illness at greater risk, but also puts those around them at greater
3 risk.”⁵

4 12. Adelanto medical staff know about Mr. Garcia’s vulnerabilities, but
5 they have not given him, or any other detainee, a face mask, gloves, or any
6 protective gear. Bell Dec’l at 4 ¶ 19. The dorm bathroom’s soap supply is
7 consistently running low and he rarely sees Adelanto staff cleaning and disinfecting
8 commonly touched areas. *Id.* at 3–4 ¶¶ 17, 19.

9 13. Mr. Garcia has a robust release plan in place. His United States citizen
10 mother, Petrona Lopez Garcia, has agreed to house Mr. Garcia if released. Bell
11 Dec’l at 5 ¶ 21. Ms. Garcia has a bedroom where Mr. Garcia can quarantine for
12 fourteen days upon release. *Id.* Ms. Bell has confirmed that BIENSTAR
13 Community Health Clinic, which provides comprehensive, culturally competent
14 programs such as a dual mental health and substance misuse counseling program,
15 will treat Mr. Garcia upon release. *Id.* at 5 ¶ 22.

16 14. Ms. Bell has on several occasions attempted to discuss medically
17 necessary humanitarian parole. Bell Dec’l at 5 ¶ 20. Though Mr. Garcia’s
18 deportation officer has yet to return any of Ms. Bell’s multiple voicemails,
19 Respondents confirmed on April 14, 2020, that they would not voluntarily release
20 Mr. Garcia Gonzalez. *Id.*; Soni Dec’l at 1 ¶ 3. Mr. Garcia remains a sitting duck
21 at Adelanto.

22 15. **Respondent Chad T. Wolf** is named in his official capacity as Acting
23 Secretary of DHS. He is responsible for the enforcement of the immigration laws
24 and routinely transacts business in the Central District of California. Respondent
25

26 ⁴ Ex. 6 - Mitchell et al., *supra* note 1, at 4–5.

27 ⁵ *Id.* at 5.

1 Wolf supervises Respondent Marin and is legally responsible for Mr. Garcia's
2 detention. He has legal custody of Mr. Garcia. Respondent Wolf's address is U.S.
3 Department of Homeland Security, 800 K Street, N.W. #1000, Washington, D.C.
4 20528.

5 16. **Respondent David A. Marin** is named in his official capacity as Field
6 Office Director of the Los Angeles Field Office for ICE. He is responsible for the
7 administration and management of ICE Enforcement Removal Operations in the
8 Los Angeles area. In his capacity as Field Office Director, Respondent Marin has
9 jurisdiction over the decision to keep Mr. Garcia in detention. He has legal custody
10 of Mr. Garcia. Respondent Marin's address is 300 North Los Angeles St., Room
11 7631, Los Angeles, CA 90012.

12 17. **Respondent Gabriel Valdez** is named in his official capacity as
13 Officer in Charge of the Adelanto ICE Processing Center. He is responsible for the
14 day-to-day operation of the Adelanto ICE office. In his capacity as the Officer in
15 Charge, Respondent Valdez is responsible for making Humanitarian Parole
16 determinations and has jurisdiction over the decision to keep Mr. Garcia in
17 detention. He has legal custody of Mr. Garcia. Respondent Valdez' address is
18 10400 Rancho Road, Adelanto, CA 92301.

19 18. **Respondent Matthew T. Albence** is named in his official capacity as
20 the Deputy Director and Senior Official Performing Duties of the Director of ICE.
21 Deputy Director Albence has legal custody of Mr. Garcia.

22 19. **Respondent James Janecka** is named in his official capacity as
23 Warden of Adelanto. Respondent Janecka is employed by the GEO Group, Inc.
24 (GEO), a private company, that contracts with the ICE to operate
25 Adelanto. Detention staff are employed by GEO, including medical
26 staff. Respondent Janecka maintains physical custody over Mr. Garcia.

1 **III. JURISDICTION AND VENUE**

2 20. This Court has subject matter jurisdiction over this matter under 28
3 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 28
4 U.S.C. § 2241 (habeas jurisdiction), and Article 1, Section 9, clause 2 of the United
5 States Constitution (the Suspension Clause).

6 21. Venue lies in the United States District Court for the Central District
7 of California, the judicial district in which Petitioner is currently in custody. Venue
8 is proper in the Central District of California under 28 U.S.C. § 1391, as venue is
9 proper in any district in which a defendant resides.

10 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

11 22. Mr. Garcia has exhausted all timely available and meaningful
12 administrative remedies to secure his release from detention. Knowing that ICE
13 was no longer considering Requests for Humanitarian Parole from medically
14 vulnerable detainees, Ms. Bell attempted to directly contact Mr. Garcia's
15 deportation officer, Officer Cortez, via telephone to discuss Mr. Garcia's release to
16 mitigate his heightened risk of exposure and complications. Bell Dec'1 at 5 ¶ 20.
17 To date, Ms. Bell has not received any response from Officer Cortez. *Id.*

18 23. On April 14, 2020, counsel for Respondents informed Petitioner's
19 counsel that Respondents would not voluntarily release Mr. Garcia. Soni Dec'1 at
20 1 ¶ 3.

21 24. Even if meaningful administrative remedies were promptly available,
22 as a noncitizen bringing a constitutional due process challenge under 8 U.S.C.
23 § 2241 to the lawfulness of his ongoing immigration detention, Mr. Garcia is not
24 required to exhaust them. *Chettiar v. Holder*, 665 F.3d 1375, 1379 n.2 (9th Cir.
25 2012). As a general matter, "[o]n habeas review under § 2241, exhaustion is a
26 prudential rather than jurisdictional requirement." *Singh v. Holder*, 638 F.3d 1196,
27

1 1203 n.3 (9th Cir. 2011).

2 **V. STATEMENT OF FACTS**

3 25. The novel coronavirus has raged through the world, infecting millions,
 4 killing hundreds of thousands, and fundamentally shifting our day-to-day
 5 experience. On March 11, 2020, the World Health Organization (“WHO”)
 6 declared COVID-19 a “global pandemic,” which, at that time, had spread
 7 throughout 114 countries, infecting at least 118,000 and killing at least 4,291 others.
 8 Now, as of 9:16 AM on April 15, the virus has infected over 2 million people and
 9 killer over 100,000.⁶ Exponential increases in daily infection and death rates
 10 foreshadow grim months ahead, with experts predicting at least 214 million
 11 infections and 1.7 million deaths in the United States alone. There is no vaccine or
 12 treatment for COVID-19

13 26. Person-to-person transmission is the principal force driving the virus’s
 14 spread.⁷ The most effective known measure to reduce the risk of infection is to
 15 avoid close contact with others and crowded areas.⁸ The CDC therefore strongly
 16 recommends, and forty-two states, including California, require people to stay at
 17 home except under certain enumerated circumstances.⁹ For those who must leave
 18 home, the CDC urges them to practice “social distancing”— i.e., keep at least six
 19
 20

21
 22 ⁶ *COVID-19 CORONAVIRUS PANDEMIC*, *supra* note 3; *Coronavirus: United States*, *supra* note 3.

23 ⁷ *Coronavirus Disease 2019, How It Spreads*, CDC.Gov (last visited Apr. 12, 2020, 4:33 PM), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

24
 25 ⁸ *Id.*

26 ⁹ Sarah Mervosh, Denise Lu, & Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home*, NYTimes (last updated Apr. 7, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.

1 feet between themselves and others.¹⁰ The CDC considers social distancing “a
2 cornerstone of reducing transmission of respiratory diseases such as COVID-19.”¹¹

3 27. The virus can also easily spread through contact with a hard surface
4 that was contaminated by an infected person’s respiratory droplets produced when
5 coughing, sneezing, or talking.¹² Such hard surfaces can include, among other
6 things, floors, technology devices, trash cans, doorknobs, and handrails.¹³ The
7 virus can even survive on the sole of a person’s shoes.¹⁴ Good personal hygiene,
8 including repeatedly and thoroughly washing hands with soap and water, and
9 cleaning and disinfecting frequently touched surfaces, are critical to preventing
10 exposure and spread.¹⁵

11 28. These commonsense mitigation methods are crucial to combatting
12 COVID-19 largely because transmission can occur from asymptomatic and pre-
13 symptomatic people who may unknowingly have the virus.¹⁶ The risk of silent
14 carriers unwittingly driving the pandemic has grown so profound that in early
15 April, the CDC recommended that every person wear a protective face covering
16

17 ¹⁰ *Social Distancing, Coronavirus Disease 2019*, CDC.Gov (last visited Apr.
18 12, 2020, 4:25 PM), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.

19 ¹¹ *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-
20 19) in Correctional and Detention Facilities*, CDC.Gov (last visited Apr. 10, 2019,
21 12:18 PM), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#prevention>.

22 ¹² *Coronavirus Disease 2019, How It Spreads*, *supra* note 7.

23 ¹³ Zhen-Dong Guo et al., *Aerosol and surface distribution of severe acute
24 respiratory syndrome coronavirus 2 in hospital wards, Wuhan, China, 2020*. 26
25 *Emerg Infect Dis.* 2020 Jul., available at <https://doi.org/10.3201/eid2607.200885>.

26 ¹⁴ *Id.*

27 ¹⁵ *Coronavirus Disease 2019, Protect Yourself*, CDC.GOV (last visited Apr.
28 12, 2020, 5:14 PM), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

¹⁶ See Ruiyun Li et al., *Substantial undocumented infection facilitates the
rapid dissemination of novel coronavirus (SARS-CoV2)*, *Science* (March 16, 2020),
<https://science.sciencemag.org/content/early/2020/03/13/science.abb3221>.

1 when around others.¹⁷ San Bernardino County, where Adelanto is located, as well
 2 as Los Angeles and Riverside Counties, codified this recommendation into policy
 3 and now require face masks in public.¹⁸ This shift in federal and local policy
 4 underscores that an effective response requires more than simply identifying
 5 persons exhibiting symptoms.

6 29. The likelihood of fatal complications from COVID-19 significantly
 7 increases for persons with underlying health conditions. The CDC has recognized
 8 many conditions that might increase the risk of death for COVID-19, including,
 9 among others, asthma.¹⁹ Unlike other high-risk groups, the CDC recommends
 10 sanitization guidelines unique to people with asthma.²⁰ The cleaning and
 11 disinfecting should be done by someone who is not asthmatic and when the person
 12 with asthma is not in the room.²¹ Windows and doors should be open and a fan
 13

14
 15 ¹⁷ *Coronavirus Disease 2019 (COVID-19), Cloth Face Covers*, CDC.gov
 16 (last visited Apr. 12, 2020, 5:16 PM), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

17 ¹⁸ Sandra Emerson, *San Bernardino County residents must wear masks in*
 18 *public, have virtual religious services to slow coronavirus*, SBSun.com (last
 19 updated Apr. 8, 2020, 3:26 PM), <https://www.sbsun.com/2020/04/07/s-b-county-residents-must-wear-masks-in-public-have-virtual-religious-services-to-slow-coronavirus/>; Brian Rokos, *No citations for not wearing coronavirus masks, Riverside County sheriff says*, Press Enterprise (last updated Apr. 8, 2020, 11:58 AM), <https://www.pe.com/2020/04/07/no-citations-for-not-wearing-coronavirus-masks-riverside-county-sheriff-says/>; Jaclyn Cosgrove, Sarah Parvini, & Kailyn Brown, *What you need to know about L.A.'s mandatory coronavirus mask, face covering rules*, LATimes (last updated Apr. 8, 2020, 8:31 AM), <https://www.latimes.com/california/story/2020-04-08/coronavirus-los-angeles-mandatory-face-covering-rules>.

23 ¹⁹ *Coronavirus Disease 2019 (COVID-19): Frequently Asked Questions*,
 24 CDC.GOV (Mar. 19, 2020), https://www.cdc.gov/coronavirus/2019-ncov/faq.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fchildren-faq.html

25 ²⁰ *Coronavirus Disease 2019, People with Asthma*, CDC.Gov (last visited
 26 Apr. 12, 2020, 5:40 PM), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html>

27 ²¹ *Id.*

1 should be used to blow air outdoors.²² Special care should also be given when
2 selecting cleaning and disinfecting supplies to ensure they do not trigger an asthma
3 attack.²³

4 30. Studies also suggest that hypertension could be a leading factor in
5 coronavirus deaths, with one study finding that hypertension increases the potential
6 mortality risk by six percent.²⁴ Finally, prediabetes diagnosis is predicated on high
7 blood glucose levels, which researchers believe correspond with negative COVID-
8 19 outcomes.²⁵

9 31. Mental illness can additionally amplify a person’s risk of COVID-19
10 and likelihood of negative outcomes by limiting their ability to “adhere to treatment
11 or necessary preventative protocols, increasing the likelihood of poor disease
12 management.”²⁶

13 32. Mr. Garcia is asthmatic, has hypertension and prediabetes, and
14 currently struggles with [REDACTED]

15 [REDACTED] Ex. 3 - Medical Progress Note (Nov. 9,
16

17
18 ²² *Id.*

19 ²³ *Id.*

20 ²⁴ Emily Bamforth, *Hypertension could be a leading factor in coronavirus*
21 *deaths: Here’s what we know*, Cleveland.com (last updated Mar. 12, 2020),
22 [https://www.cleveland.com/news/2020/03/hypertension-could-be-a-leading-factor-](https://www.cleveland.com/news/2020/03/hypertension-could-be-a-leading-factor-in-coronavirus-deaths-heres-what-to-know.html)
23 [in-coronavirus-deaths-heres-what-to-know.html](https://www.cleveland.com/news/2020/03/hypertension-could-be-a-leading-factor-in-coronavirus-deaths-heres-what-to-know.html); Dave Fornell, *FSC Council on*
24 *Hypertension Says ACE-I and ARBs Do Not Increase COVID-19 Mortality*,
25 *Diagnostic and Interventional Cardiology*.com (Mar. 16, 2020),
26 [https://www.dicardiology.com/content/esc-council-hypertension-says-ace-i-and-](https://www.dicardiology.com/content/esc-council-hypertension-says-ace-i-and-arbs-do-not-increase-covid-19-mortality)
27 [arbs-do-not-increase-covid-19-mortality](https://www.dicardiology.com/content/esc-council-hypertension-says-ace-i-and-arbs-do-not-increase-covid-19-mortality)

28 ²⁵ *Prediabetes*, Mayo Clinic (last visited Apr. 13, 2020 at 8:38 PM),
[https://www.mayoclinic.org/diseases-conditions/prediabetes/symptoms-causes/syc-](https://www.mayoclinic.org/diseases-conditions/prediabetes/symptoms-causes/syc-20355278)
29 [20355278](https://www.mayoclinic.org/diseases-conditions/prediabetes/symptoms-causes/syc-20355278); Michael A. Hill, Christos Mantzoros, & James R. Sowers,
30 *Commentary: COVID-19 in patients with diabetes*, *Metabolism Clinical and*
31 *Experimental* 107, 1 (2020), available at
32 [https://www.metabolismjournal.com/action/showPdf?pii=S0026-](https://www.metabolismjournal.com/action/showPdf?pii=S0026-0495%2820%2930081-0)
33 [0495%2820%2930081-0](https://www.metabolismjournal.com/action/showPdf?pii=S0026-0495%2820%2930081-0).

34 ²⁶ Ex. 6 - Mitchell et al., *supra* note 1, at 4–5.

1 2019); Ex. 2 - Mental Health Progress Note (Dec. 19, 2019) at 1; Bell Dec’l at 2 ¶
2 8. These conditions independently expose Mr. Garcia to heightened risk of
3 exposure to and complications from COVID-19. This risk is significantly
4 compounded when they are simultaneously at play.

5 33. Because he is high risk, Mr. Garcia’s exposure to COVID-19 could
6 quickly become fatal. A severe case requires, for example, highly specialized
7 equipment and an entire team of care providers, including 1:1 or 1:2 nurse-to-
8 patient ratios, respiratory therapists, and intensive care physicians. The number of
9 patients and quality of required care has already depleted some of California’s, and
10 the Nation’s, health care resources. Ex. 5 - Romines Dec’l at pp. 8–9 ¶ 19.

11 **A. The Conditions of Confinement at Adelanto are Ripe for an**
12 **Uncontrollable COVID-19 Outbreak**

13 **1. Adelanto is Densely Packed and Lacks the Space, Expertise, and**
14 **Personnel to Safely House and Treat Detainees During the COVID-**
19 Pandemic

15 34. Adelanto has capacity for 1,940 bed, making it the second largest
16 immigrant detention facility in the United States. Its carceral design, operations,
17 and population density make Adelanto ripe for an uncontrollable COVID-19
18 outbreak.

19 35. The Facility’s correctional design welcomes disease spread because it
20 is poorly ventilated, which promotes spread through droplets. Ex. 4 - Meyer Dec’l
21 at 2 ¶ 9. This endangers the persons detained there spend every minute of every
22 day in densely packed sleeping, eating, and bathing areas. *Id.* at 3 ¶ 12.

23 36. Anywhere between four to nine people are assigned to a single
24 dormitory-type room that houses several bunkbeds placed only a few feet apart.
25 Ex. 5 - Romines Dec’l at 10 ¶ 22. Many people share the same toilets, sinks, and
26 showers, creating countless opportunities for respiratory droplets to contaminate
27

1 these hard surfaces. *Id.* at 9–10 ¶¶ 21–22; Ex. 4 - Meyer Dec’l at 2 ¶ 9. Even more,
2 “[i]t may be difficult or impossible for detainees to have access to sufficient soap
3 and water to wash their hands as frequently as public health officials recommend.”
4 Ex. 5 - Romines Dec’l at 10–11 ¶ 22; Ex. 4 - Meyer Dec’l at 2 ¶ 11. This is the
5 case for Mr. Garcia. He shares his sleeping area with three other men. Bell Dec’l
6 at 3–4 ¶ 17. He must shower at the same time and in the same area as seven other
7 men. *Id.*

8 37. Respondents have suggested that Adelanto staff are disinfecting
9 common areas multiple times per day to combat COVID-19. Mr. Garcia, however,
10 has only seen limited cleaning of door handles and no cleaning of telephones or
11 electronic tablets between use. Bell Dec’l at 3–4 ¶ 17. He is especially worried
12 about the failure to disinfect phones and tablets because you have to hold both and
13 push the former upon your face near your mouth, eyes, and nose. *Id.* Others have
14 reported that it is detainees, not Adelanto staff, who are responsible for disinfecting
15 much of the Facility, and those detainee-employees are currently striking. Miller
16 Dec’l at 4 ¶ 15. In any event, ICE has made no indication that it is disinfecting the
17 myriad hard and commonly touched surfaces in Adelanto between use, nor could
18 it. Ex. 5 - Romines Dec’l at 9–10 ¶¶ 21–22; Ex. 4 - Meyer Dec’l at 2 ¶ 9.

19 38. Eating areas are highly trafficked. “At meal times – three times a day
20 – the 60 to 70 detainees in each holding area line up together, sometimes only
21 inches apart, in the cafeteria. The guards, detainees and cafeteria workers do not
22 regularly wear gloves or masks to prevent the spread of the coronavirus.” *Bravo*
23 *Castillo v. Barr*, 2020 WL 1502864, at *2 (C.D. Cal. 2020); *Hernandez v. Wolf*,
24 CV 20-60017-TJH (KSx) (C.D. Cal. Apr. 1, 2020), ECF No. 17, at *5 (same). Mr.
25 Garcia must eat three times per day around thirty other people. Bell Dec’l at 3–4 ¶
26 17.

1 39. Adelanto is not a self-contained environment. ICE has restricted
2 detainee movement between wards, but that does shield them from the conditions
3 in other wards and the outside community because DO movement is not limited.
4 As Field Officer Valdez recently explained, “DO’s ... are continually moving
5 through [Adelanto] during their shifts, presenting documents to detainees for
6 signature, serving NTA’s, serving parole documents, serving notices and decisions,
7 speaking with detainees, conducting detainee interviews, answering detainee
8 requests in person, conducting observation of the facility, among other duties.”
9 Defendants’ Supp’l Filing of Declaration of Gabriel Valdez ISO Opp. to TRO,
10 *Torres v. Nielsen*, 18-02604-JGB-SHL (C.D. Cal. Apr. 6, 2020), ECF No. 139-1 at
11 4 ¶ 11.

12 40. Simply put, “social distancing is an oxymoron” for congregate settings
13 like those in Adelanto.²⁷

14 **2. Adelanto’s Understaffed and Under-Resourced Medical Facilities**
15 **Exacerbate the Substantial Risk of Harm from COVID-19.**

16 41. The risk to detainees trapped in Adelanto is compounded by the
17 Facility’s notoriously inadequate medical care. As DHS’ own Office of the
18 Inspector General (OIG) found, “detainees [at ADF] do not have timely access to
19 proper medical care,” and the Facility’s medical practices fall below ICE’s own
20 minimum standards.²⁸ These medical deficiencies have led to several preventable
21
22

23 ²⁷ Letter from Scott A. Allen et al., to House Committee on Homeland
24 Security, et al., (Mar. 19, 2020) at 4, *available at*
25 <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>.

26 ²⁸ Office Of The Inspector Gen., *Management Alert – Issues Requiring*
27 *Attention At The Adelanto Ice Processing Center In Adelanto, California* 7 (Sept.
28 27, 2018), *available at*
<https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf>.

1 detainee deaths over the past five years.²⁹

2 42. Inadequate and delayed medical care continues to plague detainees at
3 Adelanto for several reasons. First, there are simply too few medical care providers
4 qualified and able to provide basic medical treatment to the entire detainee
5 population. Ex. 5 - Romines Dec’1 at 11–12 ¶ 24; *see also* Ex. 4 - Meyer Dec’1 at
6 3 ¶ 14. Upon information and belief, Respondents’ entire “somatic” medical staff
7 is comprised of three medical physicians (i.e., licensed doctors) and six mid-level
8 physicians (e.g., nurse practitioners and physician’s assistances). It is further
9 alleged upon information and belief that all three medical physicians do not always
10 work together during a single shift.

11 43. The lack of 24-four medical care at Adelanto will prove fatal for
12 COVID-19 patients. *See* Ex. 4 - Meyer Dec’1 at 3 ¶ 14. Upon information and
13 belief, a medical doctor is not always on site, though one is always on call. Every
14 day, the scheduled medical doctor(s) generally arrives at Adelanto at 8am and
15 leaves at 6pm. Although the medical doctors and mid-level employees are all part
16 of the same medical unit, they are supervised by and report to different people.
17 Doctors do not automatically review medical records that were created by mid-
18 level medical employees.

19 44. Respondents have historically had trouble keeping a consistent and
20 experienced staff of mid-level physicians. A 2015 Detainee Death Review (DDR)
21 found that “many members” of Adelanto’s medical staff felt “that a high turnover
22 rate among nurses is of great concern, particularly given an increasing population
23

24 ²⁹ Disability Rights Cal., *There Is No Safety Here* 27, 33 (Mar. 2019),
25 available at [https://www.disabilityrightsca.org/system/files/file-
26 attachments/DRC_REPORT_ADELANTO-
27 IMMIG_DETENTION_MARCH2019.pdf](https://www.disabilityrightsca.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf); Office of Professional Responsibility,
Office of Detention Oversight, *Detainee Death Review – Raul Ernesto Morales-
28 Ramos* 1, 4–32, available at [https://www.ice.gov/doclib/foia/reports/ddr-
morales.pdf](https://www.ice.gov/doclib/foia/reports/ddr-morales.pdf).

1 of detainees with chronic health care needs.”³⁰ The DDR further found that
2 “approximately 50 percent of [Adelanto’s] medical staff hires are new graduates”
3 and reported the Director of Nurse’s opinion that there was “a definite difference
4 between their skills and those of more experienced nurses.”³¹ Two doctors
5 interviewed similarly reported a “great variance in nursing skills among current
6 nursing staff.”³² Finally, the DDR found that Adelanto conducted no formal skills
7 training, did not require nurses to demonstrate competency prior to conducting
8 clinical assessments, and failed to conduct routine competency evaluations.³³

9 45. Unsurprisingly, shortages of doctors and frequent changes in mid-level
10 physicians have resulted in significant delays in detainee access to critical medical
11 care. Between November 2017 and April 2018, Adelanto detainees filed eighty
12 medical grievances for not receiving urgent medical care, several month delays in
13 treatment for persistent health conditions, and not receiving prescribed
14 medications.³⁴ The OIG found that appointments were sometimes canceled
15 without explanation, and there were “often excessively long” wait times to see a
16 provider for both acute illness or injury and chronic care.³⁵ ICE’s own reviews
17 acknowledged persistent deficiencies in providing necessary, adequate, and timely
18 medical care to detainees in Adelanto.³⁶

19 46. History confirms that Respondents could not handle a COVID-19
20 outbreak. In 2019, Adelanto addressed two separate outbreaks of contagious
21

22 ³⁰ *Detainee Death Review – Raul Ernesto Morales-Ramos, supra* note 29, at
23 36.

24 ³¹ *Id.*

25 ³² *Id.*

26 ³³ *Id.*

27 ³⁴ *Id.* at 8.

28 ³⁵ *Id.*

³⁶ *Id.*

1 disease—mumps and later measles—by instituting several-month lockdowns to
2 quarantine impacted areas. Ex. 5 - Romines Dec’1 at 11–12 ¶ 24. This practice is
3 referred to as cohorting, and the CDC urges that it “should only be practice if there
4 are no other available options.”³⁷ If cohorting is necessary, the CDC considers is
5 appropriate only for persons with confirmed cases of COVID-19.³⁸ These
6 instructions make clear: “Do not cohort confirmed cases with suspected cases or
7 case contacts.”³⁹ Adelanto’s default response to contagious diseases would
8 therefore not be appropriate here and will actually expedite the virus’ spread
9 throughout the facility.

10 47. Mr. Garcia’s own experiences have deterred him from seeking medical
11 care. Bell Dec’1 at 4 ¶ 18. Medical staff accused him of “feigning” ██████████
12 ██████████ for “secondary gain.” *Id.*; Ex. 2 - Mental Health Progress Note (Dec.
13 19, 2019). He sees no reason why he would be treated any differently if he were
14 to report COVID-19 symptoms. Bell Dec’1 at 4 ¶ 18.

15 48. Recent detainee experiences support Mr. Garcia’s assumptions. One
16 detainee recently recounted waiting two days before medical staff saw him for his
17 persistent headaches and body aches. Miller Dec’1 at 1–2 ¶¶ 4–6. It is well known,
18 particularly among medical communities, that the virus spreads from close contact
19 with others. Yet this detainee was seated within feet of others awaiting their
20 appointments and none of them were given any protective gear. *Id.* at 2 ¶ 8. He
21 was not screened for COVID-19 symptoms and simply returned to general
22 population with a dose of Tylenol. *Id.* at 2 ¶ 10.

23
24 _____
25 ³⁷ *Coronavirus Disease 2019, Guidance for Correctional & Detention*
26 *Facilities*, CDC.Gov (last visited Apr. 12, 2020, 6:39 PM),
[https://www.cdc.gov/coronavirus/2019-ncov/community/correction-](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-defention/guidance-correctional-detention.html#prevention)
[defention/guidance-correctional-detention.html#prevention.](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-defention/guidance-correctional-detention.html#prevention)

27 ³⁸ *Id.*

28 ³⁹ *Id.*

1 49. Even if detainees are transported to local hospitals, their systems will
2 likely be too overwhelmed to provide the intensive care that was required much
3 earlier, particularly by high-risk persons. Ex. 5 - Romines Dec’1 at 11–12 ¶ 24.
4 These conditions led Dr. Brie Romines to opine that “[i]f there is an outbreak of
5 COVID-19 at Adelanto, it is virtually certain that at least some detainees will die
6 from the disease.” *Id.* at 12 ¶ 26.

7 50. If Adelanto is forced to respond to the spread of COVID-19, its
8 notoriously deficient medical care will surely decline even more as medical staff
9 strain to care for patients and prevent further spread. Furthermore, deficiencies in
10 care that existed prior to the pandemic—including inadequate care for underlying
11 health conditions, failure to keep adequate medical records, and language
12 barriers—will impede efforts to provide adequate care in a crisis. Ex. 4 - Meyer
13 Dec’1 at 6 ¶¶ 28–31.

14 **3. Unlike Jails and Prisons Nationwide, Respondents Have Adamantly**
15 **Opposed Reducing Its Detainee Population at Adelanto**

16 51. The only viable method for combating COVID-19 at Adelanto is a
17 significant reduction of their detainee population. Ex. 4 - Meyer Dec’1 at 7 ¶ 35;
18 Ex. 5 - Romines Dec’1 at 13 ¶ 29. Respondents, however, have made no
19 discernable effort toward granting medically necessary Humanitarian Parole to
20 reduce their detainee population and have in fact aggressively opposed release of
21 the same.

22 52. On March 24, 2020, Adelanto Detention Officer Montes noted that
23 GEO medical staff are “flagging” medically-vulnerable detainees and that officers
24 are receiving many requests for Humanitarian Parole of high-risk detainees, but the
25 facility is “prioritizing” release of asylum seekers with positive “credible fear
26 interviews.” Cervera Dec’1 at 2 ¶¶ 7–8. He stated that Humanitarian Parole
27

1 Requests for those like Mr. Garcia who are medically vulnerable are not their
2 “number one priority” right now. *Id.* at 2 ¶ 9.

3 53. Thereafter, on March 26, undersigned counsel learned from another
4 Adelanto deportation officer that ICE Headquarters in Washington, D.C. recently
5 issued a new directive prohibiting deportation officers from granting any request
6 for Humanitarian Parole submitted by a medically vulnerable detainee. Okamoto
7 Dec’1 at 4–6 ¶¶ 20–25. Respondents have further applied this directive in their
8 strong opposition to the recent slew of federal litigation challenging the
9 unconstitutional conditions of confinement in immigration detention facilities.

10 54. ICE’s approach is at odds with recommendations from DHS’ own
11 medical experts who have warned that, absent swift preventative action, namely
12 reducing detainee populations, COVID-19 presents imminent danger to immigrant
13 detainees and the public at large.⁴⁰ Gravely concerned by ICE’s failure to
14 implement meaningful transmission mitigation policies, these experts became
15 whistleblowers to Congressional leaders, warning that ICE must immediately
16 implement social distancing to reduce the risk to detainees, employees, and the
17 public, and underscoring that, to do so, “*it is essential to consider releasing all*
18 *detainees who do not pose an immediate risk to public safety.*”⁴¹ These experts
19 later echoed their warnings in a parallel op-ed stating that screening incoming
20 detainees and isolating groups exposed to the virus “won’t be enough” without
21 rapidly “releas[ing] those who do not pose an immediate danger to public safety.”⁴²
22

23
24 ⁴⁰ Letter from Scott A. Allen, MD and Josiah Rich, MD, MPH to
Congressional Committee Chairpersons, *supra* note 27.

25 ⁴¹ *Id.* at 5 (emphasis in original).

26 ⁴² See Josiah Rich, Scott Allen, & Mavis Nimoh, *We must release prisoners*
to lessen the spread of coronavirus, WASHINGTON POST (Mar. 17, 2020),
27 [https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-
lessen-spread-coronavirus/](https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-
lessen-spread-coronavirus/).

1 55. Respondents' blanket refusal to reduce the overall detention
2 population is an anomaly when compared to the massive release of jail and prison
3 inmates throughout the county. On March 31, the California Department of
4 Corrections indicated its plan to release 3,500 nonviolent inmates in the next sixty
5 days.⁴³ Several days earlier, Los Angeles County Sheriff Alex Villanueva
6 announced plans to immediately release 1,700 inmates, i.e., roughly 10 percent of
7 the overall prison population, acknowledging that "[o]ur population within our jails
8 is a vulnerable population just by who they are [and] where they are located," and
9 release was required to "protec[t] that population from potential exposure."⁴⁴ Both
10 agencies prioritized the release of non-violent and vulnerable inmates who do not
11 present a danger to the community.⁴⁵

12 56. Other major jails and correctional facilities throughout the United
13 States have followed suit. In New York City, at least 375 Rikers Island inmates
14 were released because they had underlying health conditions, had served most of
15
16
17
18
19

20
21 ⁴³ Salvador Hernandez, *California Plans to Release 3,500 Prisoners Because*
22 *of The Coronavirus Pandemic*, BuzzFeedNews (Mar. 31, 2020, 6:22 PM),
<https://www.buzzfeednews.com/article/salvadorhernandez/coronavirus-california-release-prisoners>.

23 ⁴⁴ Marissa Wenzke, *1,700 jail inmates in L.A. County released over*
24 *coronavirus concerns, sheriff says*, KTLA5 (lasted updated Mar. 24, 2020, 4:06
25 PM), <https://ktla.com/news/local-news/1700-jail-inmates-in-l-a-county-released-over-coronavirus-concerns-sheriff-says/>; Alene Tchekmedian, Paige St. John, &
26 Matt Hamilton, *L.A. County Releasing Some Inmates from Jail to Combat*
Coronavirus, L.A. Times (Mar. 16, 2020),
<https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>.

27 ⁴⁵ Wenzke, *supra* note 44.
28

1 their time, or were elderly.⁴⁶ The same is true at Chicago’s Cook County Jail,⁴⁷ as
 2 well as facilities in Houston, San Antonio⁴⁸, and Nashville.⁴⁹

3 **4. Respondents Have Not Implemented Adequate or Effective COVID-**
 4 **19 Policies at Adelanto**

5 57. The recent explosion of ICE detainees testing positive for COVID-19
 6 exemplifies the indefensible deficiencies in ICE’s approach to the virus. Since late
 7 February, advocates across the nation have sought access to the COVID-19 policies
 8 operating within their local detention centers. Until recently, ICE remained tight-
 9 lipped in response, offering only high-level policy summaries on its website.⁵⁰

10 58. On April 13, 2020, ICE published *Pandemic Response Requirements*,
 11 a COVID-19 policy guideline for its detention facilities.⁵¹ Dated April 10, these
 12 protocols were first prepared and distributed only after COVID-19 had reached at
 13 least twenty ICE detention facilities.

14
 15 _____
 16 ⁴⁶ Julia Marsh & Ben Feuerherd, *NYC jail population lowest since World*
 17 *War II after coronavirus release*, New York Post (Mar. 26, 2020, 6:13 PM),
<https://nypost.com/2020/03/26/nyc-jail-population-lowest-since-world-war-ii-after-coronavirus-releases/>.

18 ⁴⁷ David Struett, *Cook County Jail Releases Several Detainees “Highly*
 19 *Vulnerable” to Coronavirus*, Chi. Sun Times (Mar. 17, 2020, 9:18 AM),
<https://chicago.suntimes.com/coronavirus/2020/3/17/21183289/cook-county-jail-coronavirus-vulnerable-detainees-released-covid-19>.

20 ⁴⁸ Yami Virgin, *Bexar County to Release Prisoners in Effort to Lessen*
 21 *COVID-19 Chances at Jail*, News 4 San Antonio (Mar. 17, 2020),
<https://news4sanantonio.com/news/local/bexar-county-to-release-prisoners-in-effort-to-lessen-covid-19-chances-at-jail>.

22 ⁴⁹ AJ Abell, *Davidson Co. Sheriff Working to Reduce Jail Population amid*
 23 *COVID-19 Fears*, Fox 17 Nashville (Mar. 19, 2020),
<https://fox17.com/news/local/davidson-co-sheriff-to-reduce-jail-population-amid-covid-19-fears>.

24 ⁵⁰ *ICE Guidance on COVID-19, Overview 7 FAQs*, ICE.Gov (last visited
 25 Apr. 15, 2020 9:00 AM), <https://www.ice.gov/coronavirus>.

26 ⁵¹ ERO, *COVID-19 Pandemic Response Requirements*, ICE.Gov (Apr. 10,
 27 2020), available at
<https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

1 59. ICE’s *Pandemic Response Requirements* tracks the CDC’s *Interim*
2 *Guidance on Management of Coronavirus Disease 2019 (COVID-19) in*
3 *Correctional and Detention Facilities*, but imposes no real obligations on
4 facilities.⁵² Though purportedly introducing “mandatory” policies or protocols, it
5 in large part only offers a hierarchy of transmission mitigation measures for
6 detention facilities to adopt if physical space and staffing permit.⁵³

7 60. It is highly questionable whether Respondents are implementing *any*
8 meaningful COVID-19 prevention policies at Adelanto. In fact, it appears they are
9 doing just the opposite.

10 61. Mr. Garcia and fellow detainees have yet to receive face masks, gloves,
11 hand sanitizer, or an adequate soap supply. Bell Dec’l 4 ¶ 19; Miller Dec’l at 2–3
12 ¶ 11. As of April 13, Mr. Garcia had observed guards only occasionally cleaning
13 door handles. Bell Dec’l at 3–4 ¶ 17. Dormitory telephones and tablets, which are
14 frequently touched and come into contact with a person’s face and not cleaned
15 between use. *Id.* This is possibly in line with ICE’s *Pandemic Response*
16 *Requirements*, which recommends “[f]or electronics such as tablets, touch screens,
17 keyboards, remote controls, and ATM machines, remove visible contamination if
18 present.”⁵⁴

19 62. As recently as April 7, an Adelanto nurse sent a detainee back to his
20 sixty-person dormitory after he sought medical care for a headache, body aches,
21 and a sore throat. *See generally* Miller Dec’l. Neither the detainee nor the officer
22 escorting him to his appointment had face masks or other protective equipment. *Id.*
23

24
25 ⁵² Compare *id.*, with *Interim Guidance on Management of Coronavirus*
Disease 2019 (COVID-19) in Correctional and Detention Facilities, *supra* note 11.

26 ⁵³ *See generally* *COVID-19 Pandemic Response Requirements*, *supra* note
27 51.

28 ⁵⁴ *Id.* at 11.

1 at 2 ¶ 7. At medical, the detainee waited for his appointment while sitting no more
2 than one to two feet from the five other people also waiting. None of them were
3 wearing masks. *Id.* at 2 ¶ 8. When he was finally seen for his appointment, the
4 nurse (who was also not wearing a mask) did not ask if he was having trouble
5 breathing or if he had any COVID-19 symptoms. *Id.* at 2 ¶ 9. The nurse took his
6 temperature, gave him Tylenol, and told him to drink a lot of water and submit
7 another medical request if his symptoms persisted. *Id.* at 2 ¶ 10. He was sent back
8 to general population without a mask and on Saturday submitted a second medical
9 request because he had developed a cough and fever. *Id.* at 2–3 ¶ 11. He has yet
10 to see a doctor. *Id.* at 3 ¶ 13.

11 63. Even if ICE’s new protocols were in effect at Adelanto, the rate at
12 which COVID-19 infections are skyrocketing among detention facilities
13 nationwide casts serious doubt on their efficacy. From April 9 to April 16, the total
14 number of detainees who tested positive nearly doubled from the mid-thirties to
15 eighty-nine.⁵⁵

16 64. This sudden increase is unsurprising given the chorus of medical
17 experts condemning ICE’s COVID-19 response as deficient, inadequate, and in
18 conflict with the CDC’s recommendations. *See* Declaration of Dr. Homer Venters
19 ISO Plaintiffs’ Reply ISO Emergency Preliminary Injunction, *Fraihat v. ICE*, CV
20 19-05146-JGB (Apr. 9, 2020) ECF No. 113-2 at p. 3 ¶ 3.

21 65. For example, prior guidance indicated that incoming detainees are
22 screened for symptoms, among other CDC “criteria for epidemiologic risk of
23 exposure to COVID-19.”⁵⁶ Detainees who are symptomatic or meet the criteria are
24 isolated and observed “for a specified time period,” while everyone else is

25
26 ⁵⁵ *ICE Guidance on COVID-19, Confirmed Cases*, *supra* note 2.

27 ⁵⁶ *ICE Guidance on COVID-19, Overview 7 FAQs*, *supra* note 50.

1 monitored for fourteen days. As to current detainees, ICE purports to house “in a
2 single medical housing room” detainees with a fever or respiratory symptoms. *Id.*
3 The April 10 protocols are materially identical apart from recommending that
4 “considerable effort should be made to quarantine all new entrants for 14 days
5 before they enter the general population.”⁵⁷

6 66. The April 10 guidance expands on these principles, suggesting various
7 screening methods for facilities to implement “where practicable.”⁵⁸ In addition to
8 tracking the CDC’s guidelines, which Respondents purportedly already follow,
9 these policies are merely discretionary and shed no light on what is happening
10 specifically at Adelanto.

11 67. Asymptomatic and pre-symptomatic carriers are driving the spread of
12 COVID-19, yet they are wholly overlooked in ICE screening policies. And even
13 if Respondents were now implementing the April 10 policies recommendation of
14 cohorting incoming detainees to prevent asymptomatic transmission (which seems
15 unlikely given space limitations), these policies do nothing to prevent egress of
16 asymptomatic employees.

17 68. Until the publication of ICE’s *COVID-19 Pandemic Response*
18 *Requirements*, it was unknown if Respondents were screening for medical
19 vulnerabilities that make detainees high-risk for COVID-19 and recent detainee
20 reports indicate that there are no face masks or other protective gear available. Bell
21 Dec’l at 3–4 ¶ 17; Miller Dec’l at 2 ¶¶ 7–8. Although the new policy requires
22 notification to the ERO Field Officer Director of any detainee who “meets the
23 CDC’s identified populations potentially being at higher-risk for serious illness
24 from COVID-19,” it is unknown if Respondents are implementing this directive
25

26 ⁵⁷ *COVID-19 Pandemic Response Requirements*, *supra* note 51, at 14.

27 ⁵⁸ *Id.* at 12.

1 and the purpose of such notification.⁵⁹

2 VI. LEGAL FRAMEWORK

3 A. Petitioner Has a Constitutional Right to Reasonable Safety and 4 Freedom from Punishment in ICE Custody

5 69. When the government places someone in criminal custody, the Eighth
6 Amendment's prohibition against cruel and unusual punishment imposes an
7 affirmative obligation "to provide for his basic human needs—e.g., food, clothing,
8 shelter, medical care, and reasonable safety." *DeShaney v. Winnebago Cnty. Dep't*
9 *of Soc. Services*, 489 U.S. 189, 200 (1989); *Estelle v. Gamble*, 429 U.S. 87, 103
10 (1976) ("These elementary principles establish the government's obligation to
11 provide medical care for those whom it is punishing by incarceration."); *Bravo*
12 *Castillo*, 2020 WL 1502864, at *3. This is so because "when the State takes a
13 person into its custody and holds him there against his will, the Constitution
14 imposes upon it a corresponding duty to assume some responsibility for his general
15 well-being." *DeShaney*, 489 U.S. at 199–200).

16 70. Conditions of criminal confinement constitute cruel and unusual
17 punishment under the Eighth Amendment when: (1) the conditions pose "a
18 substantial risk of serious harm,"; and (2) government officials are deliberately
19 indifferent to that risk. *Farmer v. Brennan*, 511 U.S. 825, 834, 837 (1994). The
20 Supreme Court has explicitly held that a criminal prisoner's potential exposure to
21 a serious, communicable disease can establish the first factor of the Eighth
22 Amendment analysis, even if the risks of exposure have yet to occur. *Helling v.*
23 *McKinney*, 509 U.S. 25, 33 (1993).

24 71. In the context of civil detention, i.e., immigration detention, however,
25 a civil detainee's Constitutional protections derive from the Fifth Amendment's

26
27 ⁵⁹ *Id.* at 5.

1 Substantive Due Process Clause and are significantly more robust. *Zadvyas v.*
2 *Davis*, 533 U.S. 678, 690 (2001); *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir.
3 2004), cert. denied, 546 U.S. 820 (2005). Unlike the Eighth Amendment, the Fifth
4 Amendment does not tolerate any form of punishment.

5 72. The Ninth Circuit has interpreted this principle to mean that conditions
6 of confinement for civil detainees cannot be equal to or more restrictive than those
7 of their criminal counterparts. *Jones*, 393 F.3d at 933–34. Accordingly, conditions
8 are presumptively punitive, and thus presumptively unconstitutional, when they are
9 similar to or worse than those of criminal pretrial detainees. *Id.*; see also *King v.*
10 *Cnty. of Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018). It likewise follows that
11 “[c]onditions of confinement that violate the Eighth Amendment necessarily
12 violate the Fifth Amendment” for immigrant detainees. *Doe v. Kelly*, 878 F.3d 710,
13 714 (9th Cir. 2017) (“...decisions defining the constitutional rights of prisoners
14 establish a floor for Plaintiffs’ constitutional rights.”). Stated differently, an
15 immigrant detainee can establish a Fifth Amendment due process violation under
16 standards far less onerous than the Eighth Amendment standard governing cruel
17 and unusual punishment.

18 73. The purpose of immigration detention is to facilitate removal
19 proceedings, *Zadvydas*, 533 U.S. at 699, and “detention incidental to removal must
20 bear a reasonable relationship to its purpose.” *Tijani v. Willis*, 430 F.3d 1241, 1249
21 (9th Cir. 2009) (Tashima, J., concurring). A detained immigrant’s constitutional
22 right to non-punitive conditions of confinement is violated when they are deprived
23 of basic human needs, including safety, and the deprivation is either excessive or
24 cannot be justified by a legitimate governmental interest. See *Jones*, 393 F.3d at
25 932.

1 **1. The Conditions at Adelanto are Punitive Because They Expose**
2 **Petitioner to the Exceptional Risk of a Severe COVID-19 Infection**

3 74. Mr. Garcia’s continued detention at Adelanto inevitably exposes him
4 to COVID-19. He lacks agency to practice social distancing, cannot exercise basic
5 hygienic measures to prevent a deadly infection, and is limited to notoriously
6 substandard medical treatment. *Bravo Castillo*, 2020 WL 1502864, at *5. These
7 conditions expose Mr. Garcia to a risk “so grave that it violates contemporary
8 standards of decency to expose anyone unwillingly to such a risk. In other words,
9 ... the risk of which he complains is not one that today’s society chooses to
10 tolerate.” *Helling*, 509 U.S. at 36.

11 75. Adelanto is crowded, unsanitary, and grossly limited in medical staff,
12 expertise, and resources. If COVID-19 has not yet arrived at Adelanto, it is only a
13 matter of time. As noted by Infectious Disease Expert, Dr. Jaimie Meyer,
14 “[p]risons and jails are not isolated from communities. Staff, visitors, contractors,
15 and vendors pass between communities and facilities and can bring infectious
16 diseases into facilities.” Ex. 4 - Meyer Dec’1 at 2 ¶ 8. That is precisely the case
17 here. Adelanto is not and cannot be a self-contained facility. Everyday staff reenter
18 the facility after exposure to the outside community and have face-to-face
19 interactions with detainees. *Bravo Castillo*, 2020 WL 1502864, at *5; Okamoto
20 Dec’1 at 4 ¶¶ 18–19.

21 76. Respondents’ prevention and transmission mitigation policies focus
22 solely on detecting and isolating (a) newly arriving detainees who were possibly
23 exposed outside of detention; and (b) current detainees who are symptomatic.
24 Respondent has yet to acknowledge and issue directives concerning the significant
25 risk posed by detention employees or what measures it is taking to screen
26 asymptomatic detainees. Any attempt to now repair this deficiency is simply too
27

1 little, too late.

2 77. Absent reduction of the detainee population, there are simply no
3 precautionary measures that can prevent COVID-19 from rapidly spreading
4 throughout Adelanto. Ex. 5 - Romines Dec’l at 12–13 ¶¶ 27–29; *see also* Ex. 4 -
5 Meyer Dec’l at 2–4 ¶¶ 9–18.

6 78. Adelanto’s medical staff of three doctors and six mid-level physicians
7 (e.g., nurse practitioners and physician assistants), cannot provide the intensive
8 supervision required to treat Mr. Garcia and the deluge of other high-risk detainees.
9 Ex. 5 - Romines Dec’l at 11–12 ¶¶ 24–26; Ex. 4 - Meyer Dec’l at 3 ¶ 14. And even
10 if Respondents’ nine medical employees could handle an influx of COVID-19
11 patients, the medical staff would themselves be exposed to the virus and likely
12 become infected. Ex. 4 - Meyer Dec’l at 3 ¶ 17. Absenteeism of any staff member
13 would mean that Adelanto will become “dangerously understaffed with healthcare
14 providers. This increases a number of risks and can dramatically reduce the level
15 of care provided.” *Id.*

16 79. Mr. Garcia’s conditions of confinement deprive him of his right to
17 “reasonable safety” by exposing him to an “unsafe, life-threatening” and highly
18 contagious disease. *Helling*, 509 U.S. at 33; *Bravo Castillo*, 2020 WL 1502864, at
19 *5–6. Mr. Garcia’s underlying conditions make this risk even more profound.
20 *Graves v. Arpaio*, 623 F.3d 1043, 1049 (9th Cir. 2010) (holding a person’s
21 individual characteristics may make a risk of harm more substantial). The Ninth
22 Circuit has consistently found Eighth Amendment violations in conditions of
23 criminal confinement that exposed inmates to a future health risk, including future
24 exposure to a communicable disease. *Helling*, 509 U.S. at 33; *see also Parsons v.*
25 *Ryan*, 754 F.3d 657, 679–80 (9th Cir. 2014) (finding Eighth Amendment violation
26 in systemic deficiencies in prison medical care even where plaintiffs have not yet
27

1 encountered the deficiencies); *Beagle v. Schwarzenegger*, 107 F. Supp. 3d 1056,
2 1065 (E.D. Cal. 2014) (“plaintiff, who allegedly was exposed to Valley Fever, but
3 did not contract the disease, may have [] a viable Eighth Amendment claim”). And
4 this Court has applied this principle to materially identical facts to those presented
5 herein to grant the relief that Mr. Garcia currently seeks. *Bravo Castillo*, 2020 WL
6 1502864, at *5. ICE’s refusal to confirm or deny the presence of COVID-19 at
7 Adelanto is immaterial and does not change that “the Government cannot deny the
8 fact that the risk of infection in immigration detention facilities – and jails – is
9 particularly high if an asymptomatic guard, or other employee, enters a facility.”
10 *Id.* Under these conditions, “it is inevitable that detainees will be exposed to
11 COVID-19 and that there will be person-to person spread.” Ex. 5 - Romines Dec’1
12 at 10 ¶ 23.

13 80. The substantial health risks do not stop at Mr. Garcia. They do not
14 even stop at the entire detainee population and Adelanto. They reach our local
15 hospitals and medical facilities, which are already overwhelmed with COVID-19
16 cases. Ex. 5 - Romines Dec’1 at 11 ¶ 25. They also reach the family and community
17 members that Adelanto staff encounter after leaving work every day. *Bravo*
18 *Castillo*, 2020 WL 1502864, at *6. In the time of COVID-19, state and local
19 legislatures, correctional leaders, and medical experts unanimously support
20 releasing people from mass confinement to protect them from deadly conditions,
21 stop the spread of Coronavirus, and prevent the collapse of our already
22 overwhelmed medical system. Ex. 5 - Romines Dec’1 at 11–12 ¶ 24. These risks
23 are simply “not one that today’s society chooses to tolerate.” *Helling*, 509 U.S. at
24 36.

25 **2. Mr. Garcia’s Conditions of Confinement are Presumptively Punitive**
26 **Because They are Worse than Those of His Criminal Counterparts**

1 81. Respondents' refusal to even discuss medically required release of Mr.
2 Garcia's is outrageously punitive when compared to federal and state correctional
3 officials proactively releasing their vulnerable inmates. The conditions of Mr.
4 Garcia's civil confinement are more restrictive than those in which pre-trial
5 detainees and individuals convicted of criminal offenses within the same or
6 comparable facilities are held.

7 82. Like much of the country (if not the world), Mr. Garcia would currently
8 be self-isolating at home with his mother if he were in the criminal custody of Los
9 Angeles County Sheriff's Department. In fact, the same would be true if he were
10 in criminal custody in Iowa, North Dakota, Illinois, San Francisco, Boulder,
11 Colorado, Spokane, Washington, or Cuyhoga or Hamilton Counties, Ohio, to name
12 a few.⁶⁰

13 83. But, alas, Mr. Garcia is a civil detainee at Adelanto, where
14 Respondents are operating under strict instructions to not even consider
15 Humanitarian Parole requests for medically vulnerable detainees. Okamoto Dec'1
16 at 4–6 ¶¶ 20–25. Respondents' decision to continue to detain Mr. Garcia when
17 their law enforcement counterparts would otherwise release him is nothing short of
18 punitive. Mr. Garcia is not a criminal prisoner. He has a sponsor with whom he
19 can safely reside and no history of past flight risk or dangerousness. And, in any
20 event, the global pandemic that gives rise to this Petition is itself strong evidence
21 that mitigates any potential flight risk. *Bravo Castillo*, 2020 WL 1502864, at *5.

22 84. Respondents have no basis to keep Mr. Garcia detained given his high-
23 risk vulnerability. The Government's anticipated interest in protecting the public
24 and preventing aliens from absconding into the United States and not appearing for
25

26
27 ⁶⁰ *Responses to the COVID-19 Pandemic*, PrisonPolicyInitiative.org (last
visited Mar. 25, 2020), <https://www.prisonpolicy.org/virusresponse.html>.

1 their removal proceedings is mere pretext. It is not reasonably related to legitimate
2 government interests and it is excessive in relation to those objectives. *Jones*, 393
3 F.3d at 932. Mr. Garcia has submitted evidence that his United States citizen
4 mother will sponsor him at her home where he will quarantine for fourteen days.
5 Bell Dec’l at 5 ¶ 21. Additionally, Mr. Garcia is willing to enroll in the alternatives-
6 to-detention program, which the Ninth Circuit found had “empirically
7 demonstrated effectiveness ... at meeting the government's interest in ensuring
8 future appearances.” *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017);
9 Bell Dec’l at 5 ¶ 23.

10 85. Because Respondents’ interests in ensuring Mr. Garcia does not
11 abscond or endanger the public could readily be achieved through alternative and
12 less harsh means, there is no interest being served by keeping him detained and
13 endangering his life other than to punish him. *Hallstrom v. City of Garden City*,
14 991 F.2d 1473, 1484 (9th Cir.1993). Mr. Garcia’s condition of civil confinement
15 is presumptively punitive, and thus presumptively unconstitutional, because it is
16 worse than his criminal counterparts. *Jones*, 393 F.3d at 932; *Torres v. United*
17 *States Dep’t of Homeland Security*, 411 F. Supp. 3d 1036, 1064–65 (C.D. Cal.
18 2019) (finding a presumption of punitive conditions of immigration confinement
19 where plaintiffs alleged that criminal detainees in comparable facilities had fewer
20 restrictions on their access to telephones, visitors, and counsel).

21 VII. CLAIM FOR RELIEF

22 FIRST CAUSE OF ACTION

23 **Fifth Amendment Right to Substantive Due Process** 24 **(Unlawful Punishment; Freedom from Cruel and Unusual Punishment** 25 **and Conditions of Confinement)** 26 **(8 U.S.C. § 2241)**

27 86. The Fifth Amendment of the Constitution guarantees that civil
28

1 detainees, including all immigrant detainees, may not be subjected to punishment.
2 The federal government violates this substantive due process right when it subjects
3 civil detainees to cruel treatment and conditions of confinement that amount to
4 punishment or does not ensure those detainees' safety and health.

5 87. Respondents' conditions of confinement subject Mr. Garcia to
6 heightened risk of contracting COVID-19, for which there is no vaccine, known
7 treatment, or cure. Because of Mr. Garcia's asthma, hypertension, and mental
8 illnesses, he is at risk of contracting a fatal COVID-19 infection. Respondents are
9 subjecting Mr. Garcia to a substantial risk of serious harm, in violation of his rights
10 under the Due Process Clause.

11 88. As public health experts in correctional medical care and infectious
12 disease agree, people vulnerable to COVID-19 who are held in immigration
13 detention "are at grave risk of severe illness and death." Accordingly,
14 Respondents' continued detention of Mr. Garcia fails to ensure his safety and health
15 and amounts to punishment.

16 89. Furthermore, the conditions of confinement at Adelanto are even more
17 restrictive than current conditions at jails and prisons where thousands of medically
18 vulnerable inmates are being released. As a civil detainee, Mr. Garcia is entitled
19 to even greater protections than his criminal counterparts.

20 90. For these reasons, Respondents' ongoing detention of Mr. Garcia
21 violates the Due Process Clause under the Fifth Amendment.

22 **VIII. PRAYER FOR RELIEF**

23 91. This Court has "inherent authority to grant bail to habeas petitioners"
24 seeking release from immigration detention. *Mapp v. Reno*, 241 F.3d 221, 223 (2d
25 Cir. 2001); *see Nadarajah v. Gonzales*, 443 F.3d 1069, 1083 n.5 (9th Cir. 2006)
26 (citing *Mapp* with approval).

1 92. Given the imminent and substantial risk of death facing Mr. Garcia at
2 Adelanto during the COVID-19 pandemic, Mr. Garcia requests this Court to
3 intervene and grant his petition for writ of habeas corpus and order him released
4 from immigration custody. Respondents' refusal to release Mr. Garcia is
5 indefensible when compared to the federal, state, and local authorities releasing
6 thousands of prisoners every day who are similarly situated to Mr. Garcia.
7 Respondents' continued detention of Mr. Garcia is punitive; he is being deprived
8 of his basic right to safety and there is no legitimate governmental interest
9 justifying his continued detention.

10 93. WHEREFORE, Petitioner prays that this Court grant the following
11 relief:

- 12 A. Issue a writ of habeas corpus requiring Respondents to immediately
13 release Mr. Garcia;
- 14 B. Enter judgment declaring that Respondents' detention of Mr. Garcia
15 is unauthorized by statute and contrary to law;
- 16 C. Award Mr. Garcia reasonable costs and attorneys fees; and
17 D. Grant any other and further relief this Court deems fit and proper.

18
19 Dated: 4/15/2020

IMMIGRANT DEFENDERS LAW CENTER
By: /s/ Hannah K. Comstock
Hannah K. Comstock, Esq.
Munmeeth K. Soni, Esq.
Counsel for Petitioner