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

10 ENRIQUE FRANCISCO
11 HERNANDEZ,
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Petitioner,
v.
CHAD T. WOLF, Acting Secretary of
Homeland Security; MATTHEW T.
ALBENCE, Deputy Director and
Senior Official Performing Duties of
the Director of U.S. Immigration and
Customs Enforcement; DAVID A.
MARIN, Field Office Director; JAMES
JANECKA, Warden, Adelanto ICE
Processing Center
Respondents.

No. CV: 5:20-cv-00617 _____
Hon. _____

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

(Filed in lieu of Form CV-27)

[COVID-19 HABEAS PETITION]

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28 U.S.C. § 13316

28 U.S.C. § 13466

28 U.S.C. § 13916

28 U.S.C. § 2241 6, 7, 26

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

2 1. In only twenty-five days, the novel Coronavirus (“Coronavirus” or
3 “COVID-19”) has infected 3,242 Californians, killed sixty-eight others, and been
4 declared a global pandemic. To date, there are 524,007 confirmed cases throughout
5 the world, though the true number of infected is presumed to be much higher. The
6 situation grows more dire every day. Indeed, in the United States alone, the number
7 of confirmed cases grew from 75 on March 1, 2020, to 80,854 on March 26, 2020,
8 with 10,000 new cases reported every day over the last six days.¹ The world has
9 changed, but for Immigration and Customs Enforcement (ICE) at Adelanto
10 Immigration Processing Facility, it is business as usual.

11 2. No one is immune from Coronavirus and it can quickly become deadly
12 for persons who are elderly, have underlying conditions, or lack timely access to
13 adequate medical care. The virus spreads easily from person to person—
14 transmission can occur simply via contact with a respiratory droplet from an
15 infected person, which can occur with coughing, sneezing, or even simply talking.
16 The best prevention method is social distancing—avoiding crowded spaces and
17 keeping at least six feet between yourself and others—and repeatedly disinfecting
18 hard, commonly touched surfaces.

19 3. Federal, state, and local governments, as well as prosecutors, judges,
20 and correctional administrators have codified social distancing into ordinance and
21 policy, issuing “shelter-in-place” orders and releasing thousands of criminal
22 inmates to reduce prison populations. Throughout California, the United States,
23 and the world, society has generally followed this directive in a collaborative effort
24 to combat Coronavirus.

25 4. For Petitioner Enrique Francisco Hernandez, a forty-three-year old
26

27 _____
28 ¹ *United States, Coronavirus*, WORLDOMETER.INFO (last visited Mar. 26,
2020, 1:18pm PST), <https://www.worldometers.info/coronavirus/country/us/>.

1 civil detainee at Adelanto ICE Processing Center (“Adelanto” or “Facility”) with
2 diagnosed hypertension, ██████, and gout, it is impossible for him to take any
3 preventative measures to protect himself from COVID-19. He is trapped at
4 Adelanto, where he is forced to share his sleeping, eating, bathing, and common
5 spaces with hundreds of other men, guards, and other Adelanto employees.

6 5. On March 13, 2020, Mr. Hernandez submitted to ICE his first of
7 several pleas for release on medically necessary Humanitarian Parole (“Request”),
8 explaining that his acute risk of fatality from COVID-19 increases everyday he
9 remains at Adelanto. ICE had the Request for thirteen days but declined to issue
10 any determination, leaving Mr. Hernandez in a dangerous, unsanitary, and crowded
11 purgatory.

12 6. On March 25, an ICE employee confirmed that an Agency directive
13 now prohibits officers from granting Humanitarian Parole requests submitted by
14 detainees whose underlying conditions make them high-risk for fatal complications
15 from COVID-19.

16 7. Consistent with this new directive, on March 26, 2020, Mr. Hernandez
17 learned from counsel for Respondents, Assistant United States Attorney General,
18 Chief, Joanne Osinoff, that ICE will not grant his request without any explanation.

19 8. Every day that Mr. Hernandez remains detained, he risks exposure to
20 an inevitable COVID-19 infection at Adelanto. Already multiple housing units are
21 under quarantine and ICE officials will neither confirm nor deny that there are cases
22 of COVID-19 symptoms within the Facility. Meanwhile, Mr. Hernandez is forced
23 to remain in Adelanto’s crowded and unsanitary conditions. Experts in the fields
24 of infectious disease in correctional settings agree that overcrowded and
25 unhygienic conditions like those at Adelanto expose detainees to significantly
26 higher rates of transmission, exposure, and harm from COVID-19. Meyer Dec’l at
27 p. 2 ¶ 7.

1 9. The risk of transmission at Adelanto is compounded by the Facility's
2 notoriously unsanitary conditions and lack of adequate, timely medical care, which
3 the Department of Homeland Security (DHS) deemed deficient under its own
4 standards. Mr. Hernandez' own experience confirms as much, as he has on several
5 occasions sought critical medical care at Adelanto, but his treatment was repeatedly
6 delayed, inadequate, or simply unavailable

7 10. Mr. Hernandez brings the underlying action as a last-ditch effort to
8 protect himself from a possibly fatal COVID-19 infection because ICE authorities
9 have shown no regard to protecting him.

10 II. PARTIES

11 11. **Petitioner Enrique Francisco Hernandez** ("Mr. Hernandez") is a 43-
12 year-old asylum seeker with hypertension (i.e., high blood pressure), gout, [REDACTED],
13 and recently diagnosed heart issues. Despite his best efforts to seek humanitarian
14 parole and release to his partner, Mr. Hernandez remains detained at Adelanto
15 Detention Facility.

16 12. On March 13, 2020, Mr. Hernandez requested Humanitarian Parole
17 from his deportation officer, pleading for immediate release from Adelanto before
18 the facility falls victim to an inevitable COVID-19 outbreak. Mr. Hernandez'
19 Request explained that he is high risk because of multiple underlying conditions.
20 He also described several prior instances where he sought but was denied crucial
21 medical care at Adelanto, and that he fears of similar treatment in the event of a
22 COVID-19 outbreak. Finally, he submitted evidence showing that his domestic
23 partner, who is a Lawful Permanent Resident, would sponsor him and quarantine
24 him upon his release.

25 13. In the thirteen days that have since passed, two of Adelanto's five
26 wards were placed under quarantine. In that time, at least one detainee at Adelanto
27 informed his attorney that someone within the facility had tested positive for
28

1 COVID-19. Siler Dec’l at p. 3 ¶ 10.

2 14. Respondents have refused to respond to any formal inquiries
3 concerning their policy and procedure for releasing medically vulnerable detainees
4 and to discuss what, if any, precautionary and protective measures they have
5 implemented at Adelanto. As of the date of this filing, Respondents have not
6 formally responded to these requests, nor have they provided a formal
7 determination on Mr. Hernandez’ Request. Mr. Hernandez remains a sitting duck
8 at Adelanto.

9 15. **Respondent Chad T. Wolf** is named in his official capacity as Acting
10 Secretary of DHS. He is responsible for the enforcement of the immigration laws
11 and routinely transacts business in the Central District of California. Respondent
12 Wolf supervises Respondent Marin and is legally responsible for Mr. Hernandez’
13 detention. He has legal custody of Mr. Hernandez. Respondent Wolf’s address is
14 U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington,
15 D.C. 20528.

16 16. **Respondent David A. Marin** is named in his official capacity as Field
17 Office Director of the Los Angeles Field Office for ICE. He is responsible for the
18 administration and management of ICE Enforcement Removal Operations in the
19 Los Angeles area. In his capacity as Field Office Director, Respondent Marin has
20 jurisdiction over the decision to keep Mr. Hernandez in detention. He has legal
21 custody of Mr. Hernandez. Respondent Marin’s address is 300 North Los Angeles
22 St., Room 7631, Los Angeles, CA 90012.

23 17. **Respondent Gabriel Valdez** is named in his official capacity as
24 Officer in Charge of the Adelanto ICE Processing Center. He is responsible for the
25 day-to-day operation of the Adelanto ICE office. In his capacity as the Officer in
26 Charge, Respondent Valdez is responsible for making Humanitarian Parole
27 determinations and has jurisdiction over the decision to keep Mr. Hernandez in
28

1 detention. He has legal custody of Mr. Hernandez. Respondent Valdez' address is
2 10400 Rancho Road, Adelanto, CA 92301.

3 18. **Respondent Matthew T. Albence** is named in his official capacity as
4 the Deputy Director and Senior Official Performing Duties of the Director of ICE.
5 Deputy Director Albence has legal custody of Mr. Hernandez.

6 19. **Respondent James Janecka** is named in his official capacity as
7 Warden of Adelanto. Respondent Janecka is employed by the GEO Group, Inc.
8 (GEO), a private company, that contracts with the ICE to operate
9 Adelanto. Detention staff are employed by GEO, including medical
10 staff. Respondent Janecka maintains physical custody over Mr. Hernandez.

11 **III. JURISDICTION AND VENUE**

12 20. This Court has subject matter jurisdiction over this matter under 28
13 U.S.C. § 1331(federal question), 28 U.S.C. § 1346 (original jurisdiction), 28 U.S.C.
14 § 2241 (habeas jurisdiction), and Article 1, Section 9, clause 2 of the United States
15 Constitution (the Suspension Clause).

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

20 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 22. Mr. Hernandez has exhausted all meaningful administrative remedies
22 timely available to him through ICE to secure his release from detention. On March
23 13, 2020, Mr. Hernandez submitted a request for humanitarian parole considering
24 the COVID-19 pandemic.

25 23. On March 17, Mr. Hernandez learned through undersigned counsel
26 that Respondents would take at least one week to respond to his Request. That
27 same day, undersigned counsel contacted Respondents and requested expedited
28

1 review given the exigent circumstances.

2 24. On March 20, Mr. Hernandez submitted a final request to Respondents
3 for expedited processing of the Request and cited reports that sections of Adelanto
4 were under quarantine due to the risk of COVID-19 spread.

5 25. On March 26, Mr. Hernandez learned through counsel for Respondents
6 that they had declined his Request. No explanation was given. Respondents have
7 yet to provide Mr. Hernandez with a formal determination.

8 26. Even if meaningful administrative remedies were promptly available,
9 as a noncitizen bringing a constitutional due process challenge under 8 U.S.C.
10 § 2241 to the lawfulness of his ongoing immigration detention, Mr. Hernandez is
11 not required to exhaust them. *Chettiar v. Holder*, 665 F.3d 1375, 1379 n.2 (9th Cir.
12 2012).

13 27. As a general matter, “[o]n habeas review under § 2241, exhaustion is
14 a prudential rather than jurisdictional requirement.” *Singh v. Holder*, 638 F.3d
15 1196, 1203 n.3 (9th Cir. 2011).

16 V. STATEMENT OF FACTS

17 **A. Mr. Hernandez is High Risk for a Fatal COVID-19 Infection Because of** 18 **His Underlying Conditions**

19 28. COVID-19 is an unprecedented and highly transmissible respiratory
20 virus that has wreaked international havoc at an unprecedented rate with
21 extraordinarily dangerous outcomes. On March 11, 2020, the World Health
22 Organization (“WHO”) declared COVID-19 a “global pandemic.” At that time,
23 there were more than 118,000 cases in 114 countries, and 4,291 people had died.
24 Now, as of March 26, there are at least 524,007 confirmed cases throughout the
25 world with 23,647 deaths of which 1,163 deaths occurred in the United States.²

26
27 ² *COVID-19 CORONAVIRUS PANDEMIC*, WORLDMETER.INFO (last
28 visited Mar. 26, 2020, 1:26pm PST),
<https://www.worldometers.info/coronavirus/#countries>.

1 Experts estimate that as many as 214 million people in the United States could
2 become infected, and as many as 1.7 million people could die.

3 29. COVID-19 can be fatal for persons fifty years and older and persons
4 with underlying health conditions, otherwise known as “high-risk” groups. Among
5 the myriad underlying conditions that make a person particularly vulnerable to
6 COVID-19, studies suggest hypertension could be a leading factor in coronavirus
7 deaths, with one study finding hypertension increases the potential mortality risk
8 by six percent.³

9 30. Persons with hypertension are also significantly more likely to require
10 hospitalization and intensive care. A nationwide public health study of coronavirus
11 deaths in China found that even adjusting for age and smoking status, COVID-19
12 sufferers who also had chronic obstructive pulmonary disease (COPD), diabetes,
13 hypertension, or malignancy were 1.79 times more likely than others to be admitted
14 to an intensive care unit, require invasive ventilation, or die.⁴

15 31. The Centers for Disease Control (CDC) has recognized many
16 conditions that might be comorbidities (increase the risk of death) for COVID-19.
17 These include kidney disease, liver cirrhosis, extreme obesity, asthma, sickle cell
18 anemia, lack of a spleen or abnormal function of the spleen, any condition that
19 causes a “weakened immune system,” and “neurologic conditions that weaken
20

21 ³ Emily Bamforth, *Hypertension could be a leading factor in coronavirus*
22 *deaths: Here’s what we know*, CLEVELAND.COM (last updated Mar. 12, 2020),
23 [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)
24 [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*
25 *Hypertension Says ACE-I and ARBs Do Not Increase COVID-19 Mortality*,
26 [DIAGNOSTICANDINTERVENTIONALCARDIOLOGY.COM](https://www.dicardiology.com/content/esc-council-hypertension-says-ace-i-and-arbs-do-not-increase-covid-19-mortality) (Mar. 16, 2020),
27 [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)
28 [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)

29 ⁴ Wei-jie Guan et al., *Comorbidity and its impact on 1,590 patients with*
30 *COVID-19 in China: A Nationwide Analysis*, MEDRXIV 5 (Feb. 27, 2020),
31 *available at*
32 <https://www.medrxiv.org/content/10.1101/2020.02.25.20027664v1.full.pdf>.

1 ability to cough.”⁵

2 32. Most people who develop serious disease will need advanced
3 support. This level of supportive care requires highly specialized equipment that
4 is in limited supply, and an entire team of care providers, including 1:1 or 1:2
5 nurse to patient ratios, respiratory therapists, and intensive care physicians. This
6 level of support has already exhausted some of California’s health care resources.
7 Romines Dec’l at pp. 8–9 ¶ 19.

8 33. The need for care, including intensive care, and the likelihood of
9 death, is much higher from COVID-19 infection than from influenza. According
10 to recent estimates, the fatality rate of people infected with COVID-19 is about
11 ten times higher than a severe seasonal influenza, even in advanced countries with
12 highly effective health care systems. For people in the highest risk populations,
13 the fatality rate of COVID-19 infection is about fifteen percent—ten times the
14 average rate. Preliminary data from China showed that twenty percent of people
15 in high-risk categories who contracted COVID-19 died.

16 34. According to public health experts, the spread of COVID-19 is
17 exceptionally difficult to stop in part because transmission is mainly driven by
18 asymptomatic or mildly symptomatic individuals who may not realize they have
19 the virus.⁶

20 35. There is no vaccine against COVID-19, nor is there any known
21 medication to prevent or treat infection. The only known effective measures to
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23
24 ⁵ *Coronavirus Disease 2019 (COVID-19): Frequently Asked Questions*,
25 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

26 ⁶ See RUIYUN LI ET AL., SUBSTANTIAL UNDOCUMENTED INFECTION
27 FACILITATES THE RAPID DISSEMINATION OF NOVEL CORONAVIRUS (SARS-CoV2),
28 SCIENCE (March 16, 2020), <https://science.sciencemag.org/content/early/2020/03/13/science.abb3221>.

1 reduce the risk for vulnerable people from injury or death from COVID-19 are to
 2 prevent them from being infected in the first place, and to limit community
 3 spread.

4 36. Social distancing or remaining physically separated from known or
 5 potentially infected individuals, and vigilant sanitation and hygiene, including
 6 repeatedly and thoroughly washing hands with soap and water, are the only
 7 known effective measures for protecting vulnerable people from COVID-19.

8 **B. The Conditions of Confinement at Adelanto are Ripe for an**
 9 **Uncontrollable COVID-19 Outbreak**

10 **1. Adelanto is Overcrowded and Lacks Capacity to House Medically**
 11 **Vulnerable Detainees During the COVID-19 Pandemic**

12 37. With capacity for 1,940 beds, Adelanto is the second largest immigrant
 13 detention facility in the United States. Most recent publicly available data show
 14 that Adelanto’s detainee population is overwhelmingly male (86.4%).⁷ Recent
 15 studies of COVID-19 confirm that men have a higher rate of fatally severe cases.⁸

16 38. Close contact with hundreds of people every day is inevitable at
 17 Adelanto. As a detainee, Mr. Hernandez is forced to eat, sleep, and live in
 18 communal areas that prevent any sort of “social distancing.” Romines Dec’l at pp.
 19 9–10 ¶ 21. Indeed, he sleeps in a bunk that is within arms-reach of other detainees
 20 and has no choice but to use shared communal dining, bathing, and recreation areas
 21 which are rarely disinfected. *Id.* at p. 10–11 ¶ 22; Meyer Dec’l at p. 2 ¶ 9. Many
 22 hundreds of people frequent these locations, providing ample opportunities for the
 23 virus to spread via droplets from sneezing, coughing, or even talking. Romines

24 ⁷ Xavier Becerra, Cal. Att’y Gen., IMMIGRATION DETENTION IN CALIFORNIA,
 25 CAL. DEP’T OF JUSTICE 22 (Feb. 2019), *available at*
 26 <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>.

27 ⁸ *Coronavirus, Age, Sex, and Demographics*, WORLDMETER.INFO (last
 28 visited Mar. 26, 2020, at 3:55pm),
<https://www.worldometers.info/coronavirus/coronavirus-age-sex-demographics/>.

1 Dec’l at pp. 10–11 ¶ 22. Under these conditions, “it would be extraordinarily
2 difficult for inmates to practice social distancing inside Adelanto.” *Id.*

3 39. Other features of detention facilities similarly increase the likelihood
4 of spread. Detention facilities are often poorly ventilated, which increases the
5 likelihood that diseases will spread through droplets. Meyer Dec’l at p. 2 ¶ 9. “It
6 may be difficult or impossible for detainees to have access to sufficient soap and
7 water to wash their hands as frequently as public health officials recommend.”
8 Romines Dec’l at pp. 10–11 ¶ 22; Meyer Dec’l at p. 2 ¶ 11. In addition, detainees
9 and staff do not have access to appropriate personal protective equipment. Meyer
10 Dec’l at p. 3 ¶ 12. Simply put, detainees cannot escape the virus.

11 40. Following outcry over ICE’s nonchalance toward the risk that COVID-
12 19 presents for detainees, the Agency published policy directives for screening and
13 mitigating detainees who exhibit symptoms. But these policies miss the point.
14 Medical evidence confirms asymptomatic carriers can transmit the virus. Romines
15 Dec’l at p. 4 ¶ 8; Meyers Dec’l at p. 4 ¶ 20. After the virus enters the facility,
16 Respondents will simply have no way of containing an outbreak.

17 41. Respondents have made no discernable effort toward granting
18 Humanitarian Parole to their high-risk detainees to reduce their overall detainee
19 population. On March 24, 2020, Adelanto Detention Officer Montes noted that
20 GEO medical staff are “flagging” medically-vulnerable detainees and that officers
21 are receiving many request for Humanitarian Parole of high-risk detainees, but the
22 facility is “prioritizing” release of asylum seekers with positive “credible fear
23 interviews.” Cervera Dec’l at p. 2 ¶¶ 7–8. He stated that Humanitarian Parole
24 Requests are not their “number one priority” right now. *Id.* at 2 ¶ 9.

25 42. Thereafter, on March 26, undersigned counsel learned from another
26 Adelanto deportation officer that ICE Headquarters in Washington, D.C. recently
27 issued a new directive prohibiting deportation officers from granting any request
28

1 for Humanitarian Parole submitted by a medically vulnerable detainee. Okamoto
2 Dec’1 at pp. 4–6 ¶¶ 21–25.

3 43. Respondents’ new policy is unconscionable. It is at direct odds with
4 the massive release of federal and state criminal inmates occurring across the
5 country by judges, prosecutors, and correctional authorities who recognize that
6 centers of mass confinement are COVID-epicenters in the making.

7 44. DHS’ own medical experts warn that COVID-19 presents imminent
8 and significant health risks to immigrant detainees and the public at large absent
9 swift mitigation measures, including decreasing the number of immigrant
10 detainees.⁹ ICE’s failure to take appropriate action has led experts who served in
11 senior capacities within the DHS to become whistleblowers, writing to Congress,
12 “regarding the need to implement social distancing to reduce the likelihood of
13 exposure to detainees, facility personnel, and the general public, it is essential to
14 consider releasing all detainees who do not pose an immediate risk to public
15 safety.”¹⁰ In a parallel op-ed, these experts further warned that screening incoming
16 detainees and isolating groups exposed to the virus “won’t be enough” without
17 rapidly “releas[ing] those who do not pose an immediate danger to public safety.”¹¹

18 45. Prisons and jails throughout the county have already taken this critical
19 step. As of March 23, 2020, the Los Angeles County Sherriff’s Department had
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21
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23 ⁹ Letter from Scott A. Allen, MD and Josiah Rich, MD, MPH to
24 Congressional Committee Chairpersons (Mar. 19, 2020), *available at*
25 <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>.

26 ¹⁰ *Id.*

27 ¹¹ See Josiah Rich, Scott Allen, & Mavis Nimoh, *We must release prisoners*
28 *to lessen the spread of coronavirus*, WASHINGTON POST (Mar. 17, 2020),
<https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lesser-spread-coronavirus/>

1 released 1,700 inmates, i.e., roughly 10 percent of the overall prison population.¹²
 2 Los Angeles County Sheriff Alex Villanueva acknowledged that “[o]ur population
 3 within our jails is a vulnerable population just by who they are [and] where they
 4 are located,” and said that the County had carried out the releases to “protec[t] that
 5 population from potential exposure.”¹³ On March 24, Los Angeles County Sheriff
 6 identified only one category of people ineligible for early release: persons in
 7 custody for a violent, serious crime and represents a danger to the community.¹⁴
 8 Other major jails and correctional facilities throughout the United States have taken
 9 or are actively evaluating similar steps, including Cook County Jail in Chicago,¹⁵
 10 Rikers Island in New York City,¹⁶ Harris County (which includes the city of
 11 Houston)¹⁷, Bexar County (which includes the city of San Antonio)¹⁸ in Texas, and

12
 13 ¹² Marissa Wenzke, *1,700 jail inmates in L.A. County released over*
 14 *coronavirus concerns, sheriff says*, KTLA5 (lasted updated Mar. 24, 2020, 4:06pm
 15 PDT), <https://ktla.com/news/local-news/1700-jail-inmates-in-l-a-county-released-over-coronavirus-concerns-sheriff-says/>.

16 ¹³ Alene Tchekmedian, Paige St. John, & Matt Hamilton, *L.A. County*
 17 *Releasing Some Inmates from Jail to Combat Coronavirus*, L.A. Times (Mar. 16,
 18 2020), <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>.

19 ¹⁴ *Id.*

20 ¹⁵ David Struett, *Cook County Jail Releases Several Detainees “Highly*
 21 *Vulnerable” to Coronavirus*, CHI. SUN TIMES (Mar. 17, 2020, 9:18 AM CT),
 22 <https://chicago.suntimes.com/coronavirus/2020/3/17/21183289/cook-county-jail-coronavirus-vulnerable-detainees-released-covid-19>.

23 ¹⁶ James D. Walsh, *Will Rikers Island Free Inmates Because of the*
 24 *Coronavirus?*, NEW YORK MAG (Mar. 17, 2020),
 25 <https://nymag.com/intelligencer/2020/03/will-rikers-island-free-inmates-because-of-coronavirus.html>.

26 ¹⁷ Randy Wallace, *Harris Co. Considers Releasing Inmates over COVID-19*
 27 *Concerns*, FOX 26 HOUSTON (Mar. 19, 2020),
 28 <https://www.fox26houston.com/news/harris-co-considers-releasing-inmates-over-covid-19-concerns>.

¹⁸ Yami Virgin, *Bexar County to Release Prisoners in Effort to Lessen*
COVID-19 Chances at Jail, NEWS 4 SAN ANTONIO (Mar. 17, 2020),

1 Davidson County (which includes the city of Nashville) in Tennessee.¹⁹

2 **2. Adelanto’s Perpetually Understaffed and Under-Resourced Medical**
 3 **Facilities Will Prove Fatal for Medically Vulnerable Detainees.**

4 46. Adelanto is notorious for providing inadequate medical care and its
 5 infrastructure cannot handle the imminent COVID-19 outbreak. Romines Dec’l at
 6 pp. 11–12 ¶ 24. As DHS’ own Office of the Inspector General (OIG) found,
 7 “detainees [at ADF] do not have timely access to proper medical care,” and the
 8 Facility’s medical practices fall below ICE’s own minimum standards.²⁰ Detainees
 9 at Adelanto have for years been routinely denied the provision of adequate and
 10 timely medical care and refused necessary accommodations for disabilities.

11 47. Adelanto’s failure to provide acceptable medical care to detainees has
 12 repeatedly led to preventable detainee deaths over the past five years.²¹

13 48. Lack of adequate and prompt medical care continues to plague
 14

15 _____
 16 <https://news4sanantonio.com/news/local/bexar-county-to-release-prisoners-in-effort-to-lessen-covid-19-chances-at-jail>.

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

20 ²⁰ Office Of The Inspector Gen., *Management Alert – Issues Requiring*
 21 *Attention At The Adelanto Ice Processing Center In Adelanto, California* 7 (Sept.
 22 27, 2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf>.

23 ²¹ Disability Rights Cal., *There Is No Safety Here* 27, 33 (Mar. 2019),
 24 available at [https://www.disabilityrightsca.org/system/files/file-](https://www.disabilityrightsca.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf)
 25 [attachments/DRC_REPORT_ADELANTO-](https://www.disabilityrightsca.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf)
 26 [IMMIG_DETENTION_MARCH2019.pdf](https://www.disabilityrightsca.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf); Office of Professional Responsibility,
 27 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-](https://www.ice.gov/doclib/foia/reports/ddr-morales.pdf)
[morales.pdf](https://www.ice.gov/doclib/foia/reports/ddr-morales.pdf)

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

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

17 50. Respondents have historically had trouble keeping a consistent,
18 experienced staff of mid-level physicians. A 2015 Detainee Death Review (DDR)
19 found that “many members” of Adelanto’s medical staff felt “that a high turnover
20 rate among nurses is of great concern, particularly given an increasing population
21 of detainees with chronic health care needs.”²² The DDR found that
22 “approximately 50 percent of [Adelanto’s] medical staff hires are new graduates”
23 and reported the Director of Nurse’s opinion that there was “a definite difference
24 between their skills and those of more experienced nurses.”²³ Two doctors
25 interviewed similarly reported that they saw “great variance in nursing skills among
26

27 ²² *Detainee Death Review – Raul Ernesto Morales-Ramos* at 36.

28 ²³ *Id.*

1 current nursing staff.”²⁴ The DDR further found that Adelanto conducted no formal
2 skills training, did not require nurses to demonstrate competency prior to
3 conducting clinical assessments, and failed to conduct routine competency
4 evaluations.²⁵

5 51. Unsurprisingly, shortages of doctors and frequently changing mid-
6 level physicians have resulted in significant delays for detainees seeking critical
7 care. Between November 2017 and April 2018, Adelanto detainees filed eighty
8 medical grievances for not receiving urgent medical care, several month delays in
9 treatment for persistent health conditions, and not receiving prescribed
10 medications.²⁶ The OIG found that appointments were sometimes canceled
11 without explanation, and that the wait times to see a provider for both acute illness
12 or injury and chronic care were “often excessively long.”²⁷ ICE acknowledged in
13 its own reviews that there are persistent deficiencies in providing necessary,
14 adequate, and timely medical care to detainees in Adelanto.²⁸

15 52. Recent history confirms that Respondents could not handle a COVID-
16 19 outbreak. As recently as 2019, Respondents’ twice relied on several months of
17 quarantine to control outbreaks of mumps and subsequent separate outbreak of
18 measles. Romines Dec’l at pp. 11–12 ¶ 24. Even if detainees are transported to
19 local hospitals, their systems will likely be too overwhelmed to provide the
20 intensive care that was required much earlier, particularly by high-risk persons. *Id.*
21 These conditions led Dr. Brie Romines to opine that “[i]f there is an outbreak of
22 COVID-19 at Adelanto, it is virtually certain that at least some detainees will die
23 from the disease.” *Id.* at p. 12 ¶ 26.

24 ²⁴ *Id.*

25 ²⁵ *Id.*

26 ²⁶ *Id.* at 8.

27 ²⁷ *Id.*

28 ²⁸ *Id.*

1 53. Mr. Hernandez is all too familiar with these conditions of medical care
2 at Adelanto. Throughout his detention, Adelanto medical staff have repeatedly
3 delayed care or provided inadequate care in response to his health problems.

4 54. When Mr. Hernandez broke his wrist after slipping in the shower,
5 Adelanto medical staff caused him to miss multiple scheduled appointments for an
6 evaluation at the local hospital. He has also experienced long waits for necessary
7 medication and for appointments with on-staff doctors and nurses.

8 55. Before his detention at Adelanto, Mr. Hernandez was diagnosed with
9 hypertension. He was recently evaluated by medical staff based on self-reported
10 heart problems. Mr. Hernandez was prescribed medication and instructed to report
11 for blood pressure monitoring three times a week. Since his initial consult and
12 diagnosis, medical staff have only taken Mr. Hernandez for approximately half of
13 his blood pressuring monitoring appointments.

14 56. On March 13, 2020, Immigrant Defenders Law Center (“ImmDef”)
15 requested an updated set of Mr. Hernandez’s medical records from the medical unit
16 at Adelanto to corroborate his account of his recent heart issues and blood pressure
17 monitoring. ImmDef has yet to receive a response from medical staff at Adelanto.

18 57. Mr. Hernandez also recently experienced a [REDACTED] outbreak for the first
19 time in his life while in detention. Even prior to being detained, Mr. Hernandez
20 suffered from gout, a form of autoimmune arthritis that affects his feet and legs and
21 is indicative of immune dysregulation. Mr. Hernandez’s gout flares up several
22 times a year, and some flares are debilitating, making it difficult for him to walk or
23 to work.

24 58. If Adelanto is forced to respond to the spread of COVID-19, the
25 deficiencies in medical care that Mr. Hernandez and other detainees have
26 experienced at the facility will be exacerbated as medical staff strain to respond to
27 an acute crisis. Delays in care that already exist in normal circumstances will
28

1 become worse in an outbreak. Furthermore, deficiencies in care that existed prior
2 to the epidemic – including inadequate care for underlying health conditions,
3 failure to keep adequate medical records, and language barriers – will impede
4 efforts to provide adequate care in a crisis. Meyer Dec’l at p. 6 ¶¶ 28–31.

5 **3. Adelanto Detainees Have Already Been Exposed Due to Inadequate**
6 **and Delayed ICE Action**

7 59. Adelanto will likely bear the same fate as the nursing home in
8 Washington State. It is all but certain that the Adelanto detainee population has
9 already been exposed to COVID-19 from Adelanto employees and visitors entering
10 the facility due to ICE’s initial indifference to the COVID-19 threat and their
11 subsequent delayed, haphazard response.

12 60. On March 17, ICE began implementing protective measures to screen
13 visitors entering the facility for temperature, flu-like symptoms, and international
14 travel. On March 21, ICE updated its policy requiring all visitors to wear personal
15 protective equipment. These policies do not apply to the detention staff who are
16 most likely to transmit and infect detainees because of their frequent coming-and-
17 going from the detention center.

18 61. ICE has not announced any policy or explained what measures they
19 are taking to ensure their staff is not unwittingly spreading COVID-19 through the
20 detention facility. To that end, attorneys and detainees have observed Adelanto
21 guards, officers, and others not practicing social distancing. Okamoto Dec’l at p.
22 4 ¶¶ 18–19; Siler Dec’l at p. 3 ¶ 9. One attorney observed approximately thirty to
23 forty GEO employees enter the facility at the same time with no more than one foot
24 between each person. *Id.* The employees proceeded to huddle together as they
25 waited to clock into their shift. *Id.*

26 62. Additionally, the Executive Office for Immigration Review has
27 continued to operate its immigration court within the Adelanto facility.
28

1 Immigration removal proceedings against detainees continues and further exposes
2 them to threat of transmission from the outside world through attorneys, judges,
3 court bailiffs, and others who gather daily in small courtrooms for scheduled
4 hearings. Romines Dec’l at p. 11 ¶ 23. To date, there is no requirement that anyone
5 within these courts practice social distancing.

6 63. Finally, because ICE continues with its enforcement activities, newly
7 arriving detainees have already or will bring the virus into the facility. On Monday,
8 March 16, ICE’s Los Angeles Field Office executed predawn raids to squeeze even
9 more people into its detention centers. The Field Office Director stated to the L.A.
10 Times: “We couldn’t factor this in, right? This COVID-19 and the precautions that
11 everybody’s taking We just have to continue to go with the same game plan
12 that we’ve been doing.”²⁹

13 64. Mr. Hernandez’ risk of a deadly COVID-19 infection grows every
14 minute that he remains detained at Adelanto. COVID-19 has shown us the death it
15 can cause absent immediate action to protect vulnerable people, and that the United
16 States, and Southern California in particular, are in no position to “wait-and-see”
17 where the virus will strike next. As long as Respondents keep Mr. Hernandez
18 locked in immigration detention, he will have close contact with hundreds of other
19 detainees, Adelanto employees, and the innumerable hard surfaces that they or their
20 respiratory droplets may have touched. Mr. Hernandez cannot self-isolate, wash
21 his hands frequently, or disinfect his own sleeping area. Right now, Mr. Hernandez
22 is a sitting duck for COVID-19.

23 **VI. LEGAL FRAMEWORK**

24

25

26 ²⁹ Brittny Mejia, *With masks at the ready, ICE agents make arrests on first*
27 *day of California coronavirus lockdown*, LATIMES (Mar. 17, 2020), available at
28 <https://www.latimes.com/california/story/2020-03-17/for-ice-agents-its-business-as-unusual-day-after-sweeping-coronavirus-order>

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

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

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

21 67. In the context of *civil* detention, i.e., immigration detention, however,
22 a civil detainee’s Constitutional protections derive from the Fifth Amendment’s
23 Substantive Due Process Clause and are significantly more robust. *Zadvyas v.*
24 *Davis*, 533 U.S. 678, 690 (2001); *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir.
25 2004), cert. denied, 546 U.S. 820 (2005). Unlike the Eighth Amendment, the Fifth
26 Amendment does not tolerate *any form of punishment*.

27 68. The Ninth Circuit has interpreted this principle to mean that conditions
28 of confinement for civil detainees cannot be equal to or more restrictive than those

1 of their criminal counterparts. *Jones*, 393 F.3d at 933–34. Accordingly, conditions
2 are presumptively punitive, and thus presumptively unconstitutional, when they are
3 similar to or worse than those of criminal pretrial detainees. *Id.*; *see also King v.*
4 *Cnty. of Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018). It likewise follows that
5 “[c]onditions of confinement that violate the Eighth Amendment necessarily
6 violate the Fifth Amendment” for immigrant detainees. *Doe v. Kelly*, 878 F.3d 710,
7 714 (9th Cir. 2017) (“...decisions defining the constitutional rights of prisoners
8 establish a floor for Plaintiffs’ constitutional rights.”). Stated differently, an
9 immigrant detainee can establish a Fifth Amendment due process violation under
10 standards far less onerous than the Eighth Amendment standard governing cruel
11 and unusual punishment.

12 69. The purpose of immigration detention is to facilitate removal
13 proceedings, *Zadvydas*, 533 U.S. at 699, and “detention incidental to removal must
14 bear a reasonable relationship to its purpose.” *Tijani v. Willis*, 430 F.3d 1241, 1249
15 (9th Cir. 2009) (Tashima, J., concurring). A detained immigrant’s constitutional
16 right to non-punitive conditions of confinement is violated when they are deprived
17 of basic human needs, including safety, and the deprivation is either excessive or
18 cannot be justified by a legitimate governmental interest. *See Jones*, 393 F.3d at
19 932.

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

22 70. Mr. Hernandez’ continued detention at Adelanto exposes him to an
23 inevitable COVID-19 infection. He lacks agency to practice social distancing,
24 cannot exercise basic hygienic measures to prevent a deadly infection, and is
25 limited to notoriously substandard medical treatment. These conditions expose Mr.
26 Hernandez to a risk “so grave that it violates contemporary standards of decency to
27 expose *anyone* unwillingly to such a risk. In other words, ... the risk of which he
28

1 complains is not one that today’s society chooses to tolerate.” *Helling*, 509 U.S. at
2 36.

3 71. Adelanto is crowded, unsanitary, and grossly limited in medical staff,
4 expertise, and resources. If COVID-19 has not yet arrived at Adelanto, it is only a
5 matter of time. As noted by Infectious Disease Expert, Dr. Jaimie Meyer,
6 “[p]risons and jails are not isolated from communities. Staff, visitors, contractors,
7 and vendors pass between communities and facilities and can bring infectious
8 diseases into facilities.” Meyer Dec’l at p. 2 ¶ 8. That is precisely the case here.
9 Adelanto is not and cannot be a self-contained facility. Everyday staff reenter the
10 facility after exposure to the outside community and have face-to-face interactions
11 with detainees. Okamoto Dec’l at p. 4 ¶¶ 18–19; Siler Dec’l at p. 3 ¶ 9.

12 72. Respondents’ prevention and transmission mitigation policies focus
13 solely on detecting and isolating (a) newly arriving detainees who were possibly
14 exposed outside of detention; and (b) current detainees who are symptomatic.
15 Respondent has yet to acknowledge and issue directives concerning the significant
16 risk posed by detention employees or what measures it is taking to screen
17 asymptomatic detainees. Any attempt to now repair this deficiency is simply too
18 late.

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

23 74. Adelanto’s medical staff of three doctors and six mid-level physicians
24 (e.g., nurse practitioners and physician assistants), cannot provide the intensive
25 supervision required to treat Mr. Hernandez and the deluge of other high-risk
26 detainees. *See* Romines Dec’l at pp. 11–12 ¶¶ 24–26; Meyer Dec’l at p. 3 ¶ 14.
27 And even if Respondents’ nine medical employees could handle an influx of
28

1 COVID-19 patients, the medical staff would themselves be exposed to the virus
2 and likely become infected. Meyer Dec’l at p. 3 ¶ 17. Absenteeism of any staff
3 member would mean that Adelanto will become “dangerously understaffed with
4 healthcare providers. This increases a number of risks and can dramatically reduce
5 the level of care provided.” *Id.*

6 75. Mr. Hernandez’ conditions of confinement deprive him of his right to
7 “reasonable safety” by exposing him to an “unsafe, life-threatening” and highly
8 contagious disease. *Helling*, 509 U.S. at 33. Mr. Hernandez’ underlying conditions
9 make this risk even more profound. *Graves v. Arpaio*, 623 F.3d 1043, 1049 (9th
10 Cir. 2010) (holding a person’s individual characteristics may make a risk of harm
11 more substantial). The Ninth Circuit has consistently found Eighth Amendment
12 violations in conditions of *criminal* confinement that exposed inmates to a *future*
13 health risk, including future exposure to a communicable disease. *Helling*, 509
14 U.S. at 33; *see also Parsons v. Ryan*, 754 F.3d 657, 679–80 (9th Cir. 2014) (finding
15 Eighth Amendment violation in systemic deficiencies in prison medical care even
16 where plaintiffs have not yet encountered the deficiencies); *Beagle v.*
17 *Schwarzenegger*, 107 F. Supp. 3d 1056, 1065 (E.D. Cal. 2014) (“plaintiff, who
18 allegedly was exposed to Valley Fever, but did not contract the disease, may have
19 [] a viable Eighth Amendment claim”). ICE’s refusal to confirm or deny the
20 presence of COVID-19 at Adelanto is immaterial and does not change that “it is
21 *inevitable* that detainees will be exposed to COVID-19 and that there will be
22 person-to person spread.” Romines Dec’l at p. 10 ¶ 23.

23 76. The substantial health risks do not stop at Mr. Hernandez. They do not
24 even stop at the *entire* detainee population and Adelanto. They reach our local
25 hospitals and medical facilities, which are already overwhelmed with COVID-19
26 cases. Romines Dec’l at p. 11 ¶ 25. They also reach the family and community
27 members that Adelanto staff encounter after leaving work every day. In the time
28

1 of COVID-19, state and local legislatures, correctional leaders, and medical experts
 2 unanimously support releasing people from mass confinement to protect them from
 3 deadly conditions, stop the spread of Coronavirus, and prevent the collapse of our
 4 already overwhelmed medical system. *Id.* at pp. 11–12 ¶ 24. These risks are simply
 5 “not one that today’s society chooses to tolerate.” *Helling*, 509 U.S. at 36.

6 **2. Mr. Hernandez’ Conditions of Confinement are Presumptively**
 7 **Punitive Because They are Worse than Those of His Criminal**
 8 **Counterparts**

8 77. Respondents’ blanket denial of Mr. Hernandez’ Request is
 9 outrageously punitive when compared to federal and state correctional officials
 10 proactively releasing their vulnerable inmates. The conditions of Mr. Hernandez’
 11 civil confinement are *more restrictive* than those in which pre-trial detainees and
 12 individuals *convicted* of criminal offenses within the same or comparable facilities
 13 are held.

14 78. Like much of the country (if not the world), Mr. Hernandez would
 15 currently be self-isolating at home with his long-term partner if he were in the
 16 criminal custody of Los Angeles County Sheriff’s Department. In fact, the same
 17 would be true if he were in criminal custody in Iowa, North Dakota, Illinois, San
 18 Francisco, Boulder, Colorado, Spokane, Washington, or Cuyhoga or Hamilton
 19 Counties, Ohio, to name a few.³⁰

20 79. But, alas, Mr. Hernandez is a *civil* detainee at Adelanto, where
 21 Respondents are operating under strict instructions to *not even consider*
 22 Humanitarian Parole requests for medically vulnerable detainees. Okamoto Dec’1
 23 at pp. 4–6 ¶¶ 21–25. Respondents’ decision to continue to detain Mr. Hernandez
 24 when their law enforcement counterparts would otherwise release him is nothing
 25 short of punitive. Mr. Hernandez is not a criminal prisoner. He has a sponsor with
 26

27
 28 ³⁰ *Responses to the COVID-19 Pandemic*, PRISONPOLICYINITIATIVE.ORG
 (last visited Mar. 25, 2020), <https://www.prisonpolicy.org/virusresponse.html>.

1 whom he can safely reside and no history of past flight risk or dangerousness.

2 80. Respondents have no basis to keep him detained given his high-risk
3 vulnerability. The government's anticipated interest in protecting the public and
4 preventing aliens from absconding into the United States and not appearing for
5 their removal proceedings is mere pretext. It is not reasonably related to legitimate
6 government interests and it is excessive in relation to those objectives. *Jones*, 393
7 F.3d at 932. Mr. Hernandez' Request provided his home address, where he has
8 lived for several years with his partner. Hernandez Request for Humanitarian
9 Parole at 4-5. His decision to remain in ICE custody for ten months pending his
10 case on appeal underscores his commitment to his immigration case and
11 cooperating with future court orders. Additionally, Mr. Hernandez is willing to
12 enroll in the alternatives-to-detention program, which the Ninth Circuit found
13 had "empirically demonstrated effectiveness ... at meeting the government's
14 interest in ensuring future appearances." *Hernandez v. Sessions*, 872 F.3d 976, 991
15 (9th Cir. 2017).

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

27 VII. CLAIM FOR RELIEF

FIRST CAUSE OF ACTION

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

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3
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5 82. The Fifth Amendment of the Constitution guarantees that civil
6 detainees, including all immigrant detainees, may not be subjected to punishment.
7 The federal government violates this substantive due process right when it subjects
8 civil detainees to cruel treatment and conditions of confinement that amount to
9 punishment or does not ensure those detainees’ safety and health.

10 83. Respondents’ conditions of confinement subject Mr. Hernandez to
11 heightened risk of contracting COVID-19, for which there is no vaccine, known
12 treatment, or cure. Because of Mr. Hernandez’ particular vulnerabilities, he is at
13 risk of contracting a fatal COVID-19 infection. Respondents are subjecting Mr.
14 Hernandez to a substantial risk of serious harm, in violation of his rights under the
15 Due Process Clause.

16 84. As public health experts in correctional medical care and infectious
17 disease agree, people vulnerable to COVID-19 who are held in immigration
18 detention “are at grave risk of severe illness and death.” Accordingly,
19 Respondents’ continued detention of Mr. Hernandez fails to ensure his safety and
20 health and amounts to punishment.

21 85. Furthermore, the conditions of confinement at Adelanto are even more
22 restrictive than current conditions at jails and prisons where thousands of medically
23 vulnerable inmates are being released. As a civil detainee, Mr. Hernandez is
24 entitled to even greater protections than his criminal counterparts.

25 86. For these reasons, Respondents’ ongoing detention of Mr. Hernandez
26 violates the Due Process Clause under the Fifth Amendment.
27
28

VIII. PRAYER FOR RELIEF

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

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

WHEREFORE, Petitioner prays that this Court grant the following relief:

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

Dated: 3/26/2020

IMMIGRANT DEFENDERS LAW CENTER

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