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18 UNITED STATES DISTRICT COURT

19 DISTRICT OF ARIZONA

20 Jhonnatan Brinez Urdaneta; Claudia Avalos  
Inchicague; Miriam Gomez Cantillano; Noel  
21 Mejia Hernandez; Jose Vargas Saucedo;  
Bismer Rodriguez Alvarez; Landy Sanchez  
22 Ramos; and Geidys Calzadilla Borrero,

23 Petitioners-Plaintiffs,

24 v.

25 Chuck Keeton, in his official capacity as  
Warden of the La Palma Correctional Center;  
26 Fred Figueroa, in his official capacity as  
Warden of the Eloy Detention Center; Albert  
27 Carter, in his official capacity as Acting  
Phoenix Field Office Director, U.S.  
28 Immigration and Customs Enforcement; Cesar

No. \_\_\_\_\_

**PETITION FOR WRIT OF  
HABEAS CORPUS PURSUANT  
TO 28 U.S.C. § 2241 AND  
COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

1 Topete, in his official capacity as Assistant  
Phoenix Field Office Director, U.S.  
2 Immigration and Customs Enforcement; Jason  
Ciliberti, in his official capacity as Assistant  
3 Phoenix Field Office Director, U.S.  
Immigration and Customs Enforcement; John  
4 Cantu, in his official capacity as Assistant  
Phoenix Field Office Director, U.S.  
5 Immigration and Customs Enforcement; and  
Chad Wolf, Acting Secretary of the United  
6 States Department of Homeland Security,

7 Respondents-Defendants.

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## INTRODUCTION

1  
2 1. Petitioners-Plaintiffs (hereinafter “Petitioners”) are civil immigration  
3 detainees who, by virtue of their serious and chronic medical conditions, face imminent risk  
4 of severe illness or death if they contract COVID-19 in the detention centers where they are  
5 currently held. In this action, they ask the Court to do what numerous courts have already  
6 done: release them, so their civil detention does not become a death sentence. Each  
7 Petitioner has a willing sponsor able to provide a safe home.

8 2. Petitioners remain trapped in what are essentially tinderboxes on the verge of  
9 explosion as the global pandemic spreads. As medical experts have warned for weeks, the  
10 virus has now entered Immigration and Customs Enforcement (“ICE”) detention centers  
11 across the country—including the La Palma Correctional Center, where five of the eight  
12 Petitioners are being held—creating a risk of harm to these eight individuals that is both  
13 unconscionably high and entirely preventable.

14 3. Infectious disease specialists warn that no conditions of confinement in  
15 carceral settings can adequately manage the serious risk of harm for medically vulnerable  
16 individuals during the COVID-19 pandemic. Petitioners live in dorms and sleep in bunk  
17 beds, sharing common spaces and medical facilities with hundreds of other detainees. They  
18 are forced to share necessities like showers, telephones, toilets, and sinks with dozens of  
19 others. They are in the constant presence of officers and staff who continually rotate in and  
20 out of the facility, each time risking transmission of the virus to those inside and outside the  
21 detention center.

22 4. Deprived of basic forms of preventative hygiene and placed in conditions that  
23 make it impossible to practice social distancing, Petitioners are helpless to take the only risk  
24 mitigation steps known to limit transmission of the virus. And if the Petitioners are infected,  
25 they face a heightened risk of complications, pneumonia, sepsis, and even death within  
26 detention centers that have a track record of failing to provide adequate medical care even  
27 outside times of crisis. COVID-19 is highly contagious, with each person infected  
28 transmitting the virus to an average of two to three other people in normal conditions, let

1 alone in a confined environment. A single case has the potential to overwhelm not only the  
2 detention centers where Petitioners are located, but also the surrounding communities.

3 5. Medical experts agree that reducing detention center and other carceral  
4 populations is a necessary component of risk mitigation during the widespread COVID-19  
5 outbreak, and that officials should first focus on vulnerable populations to reduce harm to  
6 the entire population. In line with these recommendations, jurisdictions across the country  
7 have released or plan to release medically vulnerable individuals. A failure to heed public  
8 health advice to reduce detention center numbers will not just harm detainees—it will also  
9 have ripple effects across communities as rapid transmission of the disease in carceral  
10 settings further taxes already overburdened regional hospitals and healthcare systems.

11 6. Against this backdrop of extreme crisis, ICE continues to refuse to exercise  
12 its discretion to release medically vulnerable civil detainees from its custody. Before filing  
13 suit, Petitioners notified ICE of their medical conditions and formally requested that they  
14 be released in light of the harms they will experience if they contract COVID-19 while  
15 detained. Each Petitioner has a sponsor in the United States who has agreed to provide  
16 housing and take responsibility for supporting and supervising Petitioners if they are  
17 released. Yet ICE has failed to release Petitioners despite the imminent harms they face,  
18 and national guidance published by ICE lacks any discussion of reducing its existing  
19 detained populations. Faced with a global pandemic that has already caused fundamental  
20 changes to our way of life, ICE remains willfully blind to the reality that its failure to act  
21 could well result in the serious illness or death of these eight Petitioners and many more  
22 civil detainees in its custody.

23 7. Respondents-Defendants (hereinafter “Respondents”) are subjecting  
24 Petitioners to the risk of disease and death inherent in detention centers during a global  
25 pandemic. They are failing to follow the basic public health protocols that have been  
26 broadcasted all over the world as necessary to halt the spread of COVID-19. Both of the  
27 facilities where Petitioners are detained have documented track records of uncorrected  
28 health and safety violations. Since the pandemic began, jails, prisons, detention centers, and

1 the courts have taken the reasonable step of releasing detained individuals in order to reduce  
2 the risk of spreading COVID-19 in these confined, unhygienic spaces.

3 8. On March 23, 2020, the Ninth Circuit ordered *sua sponte* the release of an  
4 immigration petitioner “[i]n light of the rapidly escalating public health crisis, which public  
5 health authorities predict will especially impact immigration detention centers.” *Xochihua-*  
6 *Jaimes v. Barr*, No. 18-71460, 2020 WL 1429877, at \*1 (9th Cir. Mar. 23, 2020).

7 9. On March 26, 2020, the Southern District of New York granted a TRO  
8 requiring the immediate release of ten individuals in ICE detention in light of the COVID-  
9 19 public health crisis, noting that the “risk of contracting COVID-19 in tightly-confined  
10 spaces, especially jails, is now exceedingly obvious.” *Basank v. Decker*, No. 20 CIV. 2518  
11 (AT), 2020 WL 1481503, at \*5 (S.D.N.Y. Mar. 26, 2020). The next day, another judge of  
12 the same court granted a TRO ordering the immediate release of four individuals in ICE  
13 civil immigration detention because their underlying medical conditions made them  
14 vulnerable to COVID-19. *Coronel v. Decker*, No. 20-CV-2472 (AJN), 2020 WL 1487274,  
15 at \*7, \*10 (S.D.N.Y. Mar. 27, 2020).

16 10. On March 27, 2020, the Central District of California ordered the release of  
17 two individuals in ICE detention, noting that “[c]ivil detainees must be protected by the  
18 Government[, but] Petitioners have not been protected” because they “are not kept at least  
19 6 feet apart from others at all times[,]” “are forced to touch surfaces touched by other  
20 detainees” such as sinks, toilets, and showers, and officers and other employee continue  
21 rotating in and out of the facility. *Bravo Castillo v. Barr*, No. CV 20-00605 TJH (AFMx)  
22 (Doc. 32) (C.D. Cal. Mar. 27, 2020), at 10 [attached hereto as Exhibit 1].

23 11. On March 28, 2020, the Central District of California ordered ICE to show  
24 cause why the court should not issue a *nationwide* injunction requiring the prompt release  
25 of children in ICE detention centers, noting “the near-certainty of the rapid spread of  
26 COVID-19 in ICE . . . facilities, even if . . . ICE take[s] more urgent preventative measures.”  
27 *Flores v. Barr*, No. CV 85-4544-DMG (AGRx) (Doc. 740) (C.D. Cal. Mar. 28, 2020), at  
28 12-15 [attached hereto as Exhibit 2].

1           12.     And on March 31, 2020, the Middle District of Pennsylvania granted a TRO  
2 ordering ICE to immediately release 11 detainees with various underlying medical  
3 conditions *that day*, explaining that petitioners’ claims were considered against the  
4 “increasingly grim backdrop” of the novel COVID-19 virus, which “has rampaged across  
5 the globe, altering American life in ways previously unimaginable.” *Thakker v. Doll*, No.  
6 1:20-cv-480 (Doc. 47), at 4 (M.D. Pa. Mar. 31, 2020) [attached hereto as Exhibit 3]; *id.* at  
7 19 (“This virus spares no demographic or race and is ruthless in its assault. The precautions  
8 being adopted to stop it should apply equally, if not more so, to the most vulnerable among  
9 us.”).

10           13.     Other courts across the country have granted similar relief. *See, e.g., United*  
11 *States v. Stephens*, No. 15 Cr. 95, 2020 WL 1295155, at \*2 (S.D.N.Y. Mar. 19, 2020)  
12 (“[I]nmates may be at a heightened risk of contracting COVID-19 should an outbreak  
13 develop.”); *United States v. Garlock*, No. 18-CR-00418-VC-1, 2020 WL 1439980 (N.D.  
14 Cal. Mar. 25, 2020); *Matter of Extradition of Toledo Manrique*, No. 19-MJ-71055, 2020  
15 WL 1307109, at \*1 (N.D. Cal. Mar. 19, 2020) (“The risk that this vulnerable person will  
16 contract COVID-19 while in jail is a special circumstance that warrants bail.”); *cf. United*  
17 *States v. Martin*, No. PWG-19-140-13, 2020 WL 1274857, at \*2 (D. Md. Mar. 17, 2020)  
18 (“[T]he Due Process Clauses of the Fifth or Fourteenth Amendments, for federal and state  
19 pretrial detainees, respectively, may well be implicated if defendants awaiting trial can  
20 demonstrate that they are being subjected to conditions of confinement that would subject  
21 them to exposure to serious . . . illness.”).

22           14.     Petitioners’ continued detention under these conditions violates the  
23 guarantees of the Fifth Amendment’s Due Process Clause. It also endangers Petitioners, the  
24 other people detained at these facilities, the staff and officers who work there, and all of  
25 their families and other contacts. Because release from custody is the only effective means  
26 to protect people with the greatest vulnerability to COVID-19, this suit seeks the immediate  
27 release of Petitioners from civil immigration detention.  
28

1 15. As Judge Hatter eloquently summarized: “This is an unprecedented time in  
2 our nation’s history, filled with uncertainty, fear, and anxiety. But in the time of a crisis,  
3 our response to those at particularly high risk must be with compassion and not apathy. The  
4 Government cannot act with a callous disregard for the safety of our fellow human beings.”  
5 *Bravo Castillo*, No. CV 20-00605 TJH (AFMx) (Doc. 32), at 11.

### 6 JURISDICTION & VENUE

7 16. This Court has subject matter jurisdiction over this action pursuant to 28  
8 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (original jurisdiction), 28 U.S.C. § 1361  
9 (officer duties); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (the All Writs Act);  
10 42 U.S.C. § 1983 (Civil Rights Act); and the Habeas Corpus Suspension Clause of the U.S.  
11 Constitution (U.S. Const. art. 1, § 9, cl. 2). This Court also has remedial authority under the  
12 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

13 17. Venue is proper in the District of Arizona because a substantial part of the  
14 events and omissions giving rise to this action occurred in the District. 28 U.S.C.  
15 § 1391(b)(2). Petitioners are currently being held at the La Palma Correctional Center and  
16 Eloy Detention Center, both of which are located in Eloy, Arizona.

### 17 PARTIES

18 18. Petitioner **Jhonnatan Brinez Urdaneta** is a 26-year-old man who has been  
19 detained at La Palma Correctional Center since November 27, 2019. Mr. Brinez Urdaneta  
20 is HIV positive and suffers from anemia, bleeding hemorrhoids, syphilis, and recently had  
21 shingles, probably as a result of his weakened immune system. Mr. Brinez Urdaneta was  
22 only recently diagnosed as HIV positive and has been unable to obtain proper treatment  
23 while in detention. Because of his compromised immune system, ICE has placed Mr. Brinez  
24 Urdaneta in a unit where he is housed together with other detainees who are also particularly  
25 vulnerable to COVID-19. As a result of his serious medical conditions and his placement  
26 in the vulnerable unit, Mr. Brinez Urdaneta faces imminent risk of severe illness or death if  
27 he contracts COVID-19. Declaration of Dr. Patricia Lebensohn (“Lebensohn Decl.”) ¶ 4(a)  
28 [attached hereto as Exhibit 4]. Mr. Brinez Urdaneta has a pending asylum application based

1 on persecution he faced in his home country of Venezuela.

2 19. Petitioner **Claudia Avalos Inchicague** is a 21-year-old woman who has been  
3 detained at Eloy Detention Center since August 2, 2019. Ms. Avalos Inchicague has asthma,  
4 for which she uses an inhaler. She has been suffering from asthma since she was 6 years  
5 old. Because of this serious medical condition, Ms. Avalos Inchicague faces imminent risk  
6 of severe illness or death if she contracts COVID-19. *Id.* ¶ 4(e). Ms. Avalos Inchicague is  
7 awaiting a decision on her application for asylum based on persecution and violence she  
8 faced in Peru, including violence because of her sexual orientation and violence against her  
9 and her family.

10 20. Petitioner **Miriam Gomez Cantillano** is a 39-year-old former police officer  
11 from Nicaragua who has been detained at Eloy Detention Center since September 17, 2019.  
12 She has diabetes (Type 2), takes medicine for blood pressure, and suffers from high  
13 cholesterol. Because of her serious medical conditions, Ms. Gomez Cantillano faces  
14 imminent risk of severe illness or death if she contracts COVID-19. *Id.* ¶ 4(d). Ms. Gomez  
15 Cantillano fled to the United States from Nicaragua where she faced severe violence,  
16 including physical beating, as a police officer who did not agree with the government.

17 21. Petitioner **Noel Mejia Hernandez** is a 19-year-old man (will turn 20 on  
18 April 5, 2020) who is currently detained at La Palma Correctional Center. Mr. Mejia  
19 Hernandez has suffered from scoliosis of the back since age 7. Mr. Mejia Hernandez's  
20 scoliosis is so severe that it interferes with his breathing. Most notably, a recent physical  
21 exam showed fine crackles in his left upper lung field along with no audible lung sounds at  
22 posterior middle or lower lung fields. As a result of his serious medical condition, Mr. Mejia  
23 Hernandez faces imminent risk of severe illness or death if he contracts COVID-19. *Id.*  
24 ¶ 4(b).

25 22. Petitioner **Jose Vargas Saucedo** is a 40-year-old man who has been detained  
26 at La Palma Correctional Center since January 21, 2020. Mr. Vargas Saucedo has  
27 hypertension and supraventricular extrasystoles. Because of his serious medical conditions,  
28 Mr. Vargas Saucedo faces imminent risk of severe illness or death if he contracts COVID-



1 19. *Id.* ¶ 4(f). In his home country of Mexico, Mr. Vargas Saucedo suffered severe violence  
2 including rape and kidnapping. In detention, he is scared to leave his cell because he  
3 believes he will be raped again. Mr. Vargas Saucedo has filed an application for asylum and  
4 has a merits hearing in immigration court on August 11, 2020.

5 23. Petitioner **Bismer Rodriguez Alvarez** is a 31-year-old man who has been  
6 detained at La Palma Correctional Center since March 5, 2020. Mr. Rodriguez Alvarez has  
7 hypertension, post-traumatic stress disorder, and a history of asthma. As a result of these  
8 medical conditions, Mr. Rodriguez Alvarez faces imminent risk of severe illness or death if  
9 he contracts COVID-19. *Id.* ¶ 4(c). Mr. Rodriguez Alvarez has a pending asylum  
10 application in the Florence Immigration Court and is scheduled for a merits hearing on April  
11 3, 2020, based on persecution he suffered on account of his sexual orientation in his home  
12 country of Cuba.

13 24. Petitioner **Landy Sanchez Ramos** is a 34-year-old man who has been  
14 detained at La Palma Correctional Center since September 29, 2019. Mr. Sanchez Ramos  
15 has poorly controlled diabetes. As a result of his diabetes, Mr. Sanchez Ramos faces  
16 imminent risk of severe illness or death if he contracts COVID-19. *Id.* ¶ 4(g).

17 25. Petitioner **Geidys Calzadilla Borrero** is a 21-year-old woman who is  
18 detained at Eloy Detention Center. Ms. Calzadilla Borrero suffers from mild intermittent  
19 asthma and has been hospitalized for tachycardia with a syncope episode. As a result of her  
20 serious medical conditions, Ms. Calzadilla Borrero faces imminent risk of severe illness or  
21 death if she contracts COVID-19. *Id.* ¶ 4(h).

22 26. Respondent **Chuck Keeton** is the warden of La Palma Correctional Center,  
23 where Petitioners Brinez Urdaneta, Mejia Hernandez , Vargas Saucedo, Rodriguez Alvarez,  
24 and Sanchez Ramos are being held. He is the custodian of these Petitioners and is named in  
25 his official capacity.

26 27. Respondent **Fred Figueroa** is the warden of Eloy Detention Center, where  
27 Petitioners Avalos Inchicaque, and Gomez Cantillano, and Calzadilla Borrero are being  
28 held. He is the custodian of these Petitioners and is named in his official capacity.

1           28. Respondent **Albert Carter** is the Acting Field Office Director responsible for  
2 the Phoenix Field Office of ICE with administrative jurisdiction over Petitioners' cases. He  
3 is a legal custodian of Petitioners and is named in his official capacity.

4           29. Respondent **Cesar Topete** is an Assistant Field Office Director responsible  
5 for the Phoenix Field Office of ICE with administrative jurisdiction over the Eloy Detention  
6 Center and La Palma Correctional Center. Along with Jason Ciliberti, Respondent Topete  
7 is a legal custodian of all Petitioners except Petitioner Rodriguez Alvarez and is named in  
8 his official capacity.

9           30. Respondent **Jason Ciliberti** is an Assistant Field Office Director responsible  
10 for the Phoenix Field Office of ICE with administrative jurisdiction over the Eloy Detention  
11 Center and La Palma Correctional Center. Along with Cesar Topete, Respondent Ciliberti  
12 is a legal custodian of all Petitioners except Petitioner Rodriguez Alvarez and is named in  
13 his official capacity.

14           31. Respondent **John Cantu** is an Assistant Field Office Director responsible for  
15 the Phoenix Field Office of ICE with administrative jurisdiction over cases being heard in  
16 the Florence Immigration Court where individuals are being detained in the La Palma  
17 Correctional Center. Respondent Cantu is a legal custodian of Petitioner Rodriguez Alvarez  
18 and is named in his official capacity.

19           32. Respondent **Chad Wolf** is the Acting Secretary of the U.S. Department of  
20 Homeland Security (“DHS”), an agency of the United States. He is responsible for the  
21 administration of the immigration laws. 8 U.S.C. § 1103(a). Acting Secretary Wolf is  
22 named in his official capacity.

23                                       **STATEMENT OF FACTS**

24           **A. COVID-19 Is an Unprecedented Risk to Public Health.**

25           33. The disease known as COVID-19, caused by a novel coronavirus never before  
26 seen in humans, was first characterized as a global pandemic by the World Health  
27 Organization (“WHO”) on March 11, 2020. *WHO Director-General's opening remarks at*  
28

1 *the media briefing on COVID-19*, WORLD HEALTH ORG. (Mar. 11, 2020) [attached hereto  
2 as Exhibit 11].

3 34. On March 13, 2020, President Trump declared a national emergency in  
4 response to the coronavirus pandemic. At the time, there were over 1,600 confirmed cases  
5 in the United States and at least 46 deaths. Today, 18 days later, exponential growth in the  
6 outbreak has caused at least 209,000 cases to be identified in the country and has led to the  
7 death of over 4,600 patients with the virus. *See Coronavirus COVID-19 Global Cases by*  
8 *the Center for Systems Science and Engineering (CSSE)*, Johns Hopkins Univ.,  
9 <https://coronavirus.jhu.edu/map.html> (last updated Apr. 1, 2020). The United States now  
10 has the highest number of confirmed COVID-19 cases of any country. Declaration of Dr.  
11 Samantha Varner (“Varner Decl.”) ¶ 5 [attached hereto as Exhibit 5]. As of April 1, 2020,  
12 Arizona has reported over 1,400 cases of COVID-19, with 29 deaths. *COVID-19 (Novel*  
13 *Coronavirus)*, Ariz. Dep’t of Health Servs. <https://www.azdhs.gov/> (last updated Apr. 1,  
14 2020).

15 35. The threat of COVID-19 in detention facilities is imminent. Once a case is  
16 identified in a facility there is a risk of COVID-19 spreading within hours. Declaration of  
17 Dr. Jaimie Meyer (“Meyer Decl.”) ¶ 40 [attached hereto as Exhibit 6].

18 36. COVID-19 is an extremely contagious disease that is easily spread by close  
19 person-to-person contact, as well as by respiratory droplets that can survive on surfaces for  
20 a period of time. *Id.* ¶ 23. In China, an individual with COVID-19 passed the virus to an  
21 average of two to three people while only being three to six feet apart. *Id.*

22 37. COVID-19 is also a prolific and often unpredictable killer. Severe cases of  
23 COVID-19 can lead to serious illness and death, which is usually due to pneumonia and  
24 sepsis. *Id.* ¶ 24.

25 38. There is no vaccine for COVID-19, and there is no cure for COVID-19. *Id.*  
26 ¶ 23; Varner Decl. ¶ 6. In light of the lack of treatment options, doctors and public health  
27 officials focus on prevention strategies such as containment and mitigation. Meyer Decl.  
28 ¶ 26. Containment requires isolating people who are ill or have been in contact with those

1 who are ill; it is highly demanding requiring “intensive hand washing, decontamination and  
2 aggressive cleaning of surfaces” and social distancing. *Id.*; *see also* Varner Decl. ¶ 6.

3 **B. Federal, State, and Local Authorities Are Enacting Stringent**  
4 **Preventative Measures to Slow the Spread of COVID-19.**

5 39. Because the coronavirus that causes COVID-19 is particularly contagious,  
6 federal, state, and local authorities—including in Arizona—are taking unprecedented  
7 measures to manage the public health crisis and minimize the transmission of the virus by  
8 reducing the opportunity for groups of people to congregate.

9 40. On March 11, 2020, Governor Douglas Ducey declared that a State of  
10 Emergency exists in Arizona due to the COVID-19 outbreak. On March 15, 2020, Governor  
11 Ducey announced the closure of all schools, which has now been extended through the end  
12 of the 2019–2020 school year.

13 41. On March 17, 2020, Governor Ducey and the Arizona Department of Health  
14 Services released guidance concerning the actions needed and recommended to reduce and  
15 mitigate the spread of COVID-19, including the closure of bars, restaurants, gyms, and other  
16 places of public gathering.

17 42. On March 17, 2020, the Mayor of Tucson issued a Proclamation ordering that  
18 all bars, theaters, indoor exercise facilities, and recreation centers be closed, and limiting  
19 all restaurant services to take-out, delivery, or drive-through only.

20 43. On March 17, 2020, the Mayor of Phoenix declared a state of emergency,  
21 ordered the immediate closure of bars, and ordered restaurants to move to a delivery,  
22 takeout, and/or drive-through model starting that same day.

23 44. In Eloy, Arizona, where the detention centers housing Petitioners are located,  
24 the Mayor signed a Proclamation on March 18, 2020, declaring the existence of a City State  
25 of Emergency due to COVID-19. On March 19, 2020, the Mayor and City Council issued  
26 a press release announcing “dramatic steps” the City was implementing to keep its citizens  
27 “safe and healthy,” including closing City Hall and canceling all social and recreation  
28 programs, events, and gatherings at City facilities.

1           45.     On March 30, 2020, Governor Ducey issued an executive order mandating a  
2 stay-at-home policy until April 30, 2020, and prohibiting gatherings of 10 or more people.

3           **C.     There Is a Heightened Risk of Severe Illness or Death from COVID-19**  
4           **in Detention Centers.**

5           46.     According to infectious disease specialist Dr. Jaimie Meyer, jails, prisons, and  
6 detention centers are settings that pose a “significantly higher” risk for the spread of  
7 infectious diseases like COVID-19 than the general community. Meyer Decl. ¶ 10. Even  
8 when social visitation is suspended, staff, contractors, vendors, and detainees arrive at and  
9 leave the facility daily, and detention centers are “under-sourced and ill-equipped to provide  
10 sufficient personal protective equipment for people who are incarcerated and caregiving  
11 staff.” *Id.* ¶ 15. It is impossible to seal entry and exit to the facilities, and thus detainees  
12 housed within cannot be isolated from viruses circulating in the broader community.

13           47.     Preventative strategies utilized by the general public, like social distancing,  
14 hand sanitizing, and proper ventilation are neither readily available nor particularly  
15 effective in detention facilities. *Id.* ¶¶ 12-15. As a result, once one case of COVID-19 is  
16 identified in the facilities, rapid transmission and widespread outbreak is virtually  
17 inevitable. *Id.* ¶ 40; Varner Decl. ¶ 10.

18           48.     Once an infectious disease like COVID-19 enters a facility, there is frequently  
19 insufficient protective gear for staff and detainees, who live in close quarters and share  
20 common spaces and resources. Meyer Decl. ¶¶ 12, 15. When an outbreak occurs, detention  
21 centers are ill-equipped to engage in adequate testing, containment, and proper medical  
22 treatment for sick detainees. *Id.* ¶¶ 15, 17-18.

23           49.     The “skyrocket[ing]” number of COVID-19 cases in New York City jails  
24 highlights the acute danger of the virus in congregate settings. On Friday, March 20, 2020,  
25 New York City jails had only one confirmed case of COVID-19 at their facilities. The next  
26 day, they had 19 confirmed cases. Two days later, they had 38 confirmed cases. By March  
27 25, 2020, Rikers Island—only one of the City’s jails—had 52 confirmed cases of COVID-  
28 19. Officials at Rikers Island are releasing detainees by the hundreds. *See AP, Coronavirus:*

1 38 test positive in New York City jails, including Rikers Island, THE GUARDIAN (Mar. 22,  
2 2020) [attached hereto as Exhibit 12]; Julia Craven, *Rikers Island Has 52 Confirmed*  
3 *COVID-19 Cases*, SLATE (Mar. 25, 2020) [attached hereto as Exhibit 13].

4 50. Medical experts agree that reducing the number of detainees is a necessary  
5 component of risk mitigation in a pandemic as widespread and serious as the one currently  
6 spreading across the United States. According to Dr. Jaimie Meyer, “[r]educing the size of  
7 the population in detention centers, jails, and prisons is the single most important public  
8 health strategy to reducing the level of infection-related risk both for those within those  
9 facilities and for the community at large.” Meyer Decl. ¶ 37. Any reduction in detained  
10 populations must focus on the most vulnerable detainees in order to safeguard their health  
11 and the health of other detainees and detention center staff. *Id.* ¶¶ 39-40.

12 51. As medical staff and resources within the facility becomes overwhelmed,  
13 regional hospitals and health centers end up bearing the brunt of providing healthcare for  
14 sick detainees—who are disproportionately likely to be those with pre-existing medical  
15 vulnerabilities. The rapid spread of an infectious disease like COVID-19 within a detention  
16 center ultimately results in adverse public health outcomes for the broader community and  
17 region. *Id.* ¶¶ 20, 28, 36-38.

18 52. As a result, reducing detention center populations does not just benefit  
19 detainees and staff, it also benefits the community as a whole by reducing the burden on  
20 healthcare resources that are already in high demand. *Id.*

21 53. In the face of the current crisis, correctional systems around the country and  
22 the world have announced efforts to reduce their detained populations, even before a  
23 confirmed case of COVID-19 reaches their facilities. Indeed, even Iran has released over  
24 70,000 inmates from its prisons to address the risk of spread in congregate settings. *Id.* ¶ 27.  
25 Spain, the Netherlands, Belgium, and the United Kingdom have also released detainees  
26 from their immigration detention centers. Comm’r of Human Rights, *Commissioner calls*  
27 *for release of immigration detainees while Covid-19 crisis continues*, COUNCIL OF EUROPE  
28 (Mar. 26, 2020) [attached hereto as Exhibit 14].

1           54. Despite the consensus in the medical community about the need to reduce  
2 population size to improve outcomes for public health and safety, and in sharp contrast to  
3 the efforts of jurisdictions around the United States to comply with such recommendations,  
4 ICE has remained silent on any plans to release individuals as a COVID-19 risk mitigation  
5 strategy.

6           55. As a result, courts across the country have issued orders directing the release  
7 of individuals detained by ICE, including, primarily, individuals identified as being at  
8 increased risk should they contract the virus. *See, e.g., Xochihua-Jaimes*, 2020 WL  
9 1429877, at \*1; *Basank*, 2020 WL 1481503, at \*5, \*7; *Coronel*, 2020 WL 1487274, at \*3-  
10 5, \*10; *Bravo Castillo*, No. CV 20-00605 TJH (AFMx) (Doc. 32), at 11; *Thakker*, No. 1:20-  
11 cv-480 (Doc. 47), at 16, 25.

12           **D. The Risks to Petitioners’ Health Are Particularly Acute in the**  
13           **Detention Centers Where ICE Is Detaining Them.**

14           56. The detention centers where the Petitioners are detained—La Palma  
15 Correctional Center (“La Palma”) and the Eloy Detention Center (“EDC”)—are especially  
16 vulnerable to rapid transmission of COVID-19 because of the ongoing, sanctioned visitors  
17 to the detention center; the unsanitary and hazardous conditions within the facilities; and  
18 the facilities’ history of providing poor medical treatment. *See* Meyer Decl. ¶¶ 22, 28-32;  
19 Declaration of Monika Sud-Devaraj (“Sud-Devaraj Decl.”) ¶¶ 4-10 [attached hereto as  
20 Exhibit 7]; Declaration of Rocio Castañeda Acosta (“Castañeda Acosta Decl.”) ¶¶ 3-9, 11-  
21 16, 18-25 [attached hereto as Exhibit 8].

22           **1. The Facilities Remain Open to Outside Contamination**

23           57. Detainees and their attorneys are still appearing in person at immigration  
24 hearings. At the Eloy Immigration Court in the EDC, where three of the eight Petitioners  
25 have or had cases, detainees are still being shuttled to and from the courtroom, where they  
26 are exposed to new potential sources of contagion.

27           58. The courtroom setup at the Eloy Immigration Court does not allow for  
28 detainees or other individuals to practice social distancing or otherwise avoid exposure to

1 the virus, and ICE does not appear to be taking any measures to rearrange courtrooms to  
2 accommodate social distancing or ensure that tables or other equipment are sanitized  
3 between hearings. First, to get to the Eloy Immigration Court, attorneys must be escorted  
4 down a hallway into a smaller hallway outside the courtrooms. Inside the courtrooms, which  
5 are about 30 feet long by 30 feet wide, there are long rows of benches in the back that  
6 frequently fill with 10-20 detainees at master calendar hearings. Sud-Devaraj Decl. ¶ 7.  
7 Also present in the courtrooms are court officers, government attorneys, court reporters,  
8 and interpreters. Maintaining the recommended six feet of space between people is “nearly  
9 impossible.” *Id.* ¶ 7.

10 59. Although the Executive Office for Immigration Review (“EOIR”) has issued  
11 standing orders allowing (but not requiring) attorneys to appear telephonically for all  
12 hearings, the Eloy Immigration Court has not formulated policies or put into practice  
13 protective mechanisms that allow attorneys to continue to effectively represent their clients  
14 in the context of this public health crisis. Only on March 31 did EOIR headquarters send a  
15 notice allowing attorneys to send filings via e-mail. Its own website describes the e-mail  
16 filing option as “temporary” and explains that courts will offer no technical support or  
17 confirmation of receipt of filings. Exec. Office for Immigration Review, *Filing by Email*,  
18 U.S. DEP’T OF JUSTICE, <https://www.justice.gov/eoir/filing-email> (last visited Apr. 1, 2020)  
19 [attached hereto as Exhibit 15].

20 60. Furthermore, legal staff still frequently enter the detention centers to prepare  
21 their clients, gather signatures, and assess their cases. Because there is no other effective,  
22 consistently functional, and confidential manner to communicate with clients, contact visits  
23 are the only realistic options attorneys have for conducting the in-depth private  
24 conversations required for representation in bond or other matters. Thus, despite EOIR’s  
25 standing order permitting telephonic appearances, attorneys and other individuals are still  
26 frequently entering and leaving the detention centers. Sud-Devaraj Decl. ¶ 8.

27 61. Although ICE recently began requiring attorneys to wear personal protective  
28 equipment before entering the detention centers, ICE does not provide the personal



1 protective equipment (including masks, gloves, or goggles), and does not require its own  
2 staff to wear personal protective equipment, making this a wholly ineffective measure to  
3 prevent COVID-19 from entering via people who regularly go back and forth between the  
4 detention centers and the larger community. *See id.* ¶¶ 9-10; Meyer Decl. ¶ 15.

5 62. On March 30, 2020, the National Association of Immigration Judges publicly  
6 called attention to EOIR’s woefully inadequate response to the COVID-19 crisis in  
7 immigration courts, noting that the government’s policies have “ranged from unacceptable  
8 to unconscionable” and have “put us all at risk.” *The National Association of Immigration*  
9 *Judges Urgently Calls for Immediate Implementation of Required Health and Safety*  
10 *Measures for the Immigration Courts During the Coronavirus Pandemic*, NAT’L ASS’N  
11 IMMIGRATION JUDGES (Mar. 30, 2020) [attached hereto as Exhibit 16]. As Immigration  
12 Judges themselves put it, “EOIR’s failure to take prompt, appropriate and sufficient action  
13 on court closures has created a dangerous environment placing at risk the health and lives  
14 of . . . judges, court staff, practitioners, detained respondents, and all individuals who  
15 interface with the court process as well as the broader community.”

16 63. Although ICE has taken steps to limit some visitors to the detention centers,  
17 in addition to attorneys and legal staff, ICE staff, officers, medical staff, and court staff also  
18 enter and exit the detention centers on a daily basis. Sud-Devaraj Decl. ¶ 8. These  
19 sanctioned visitors and employees to the detention centers make it impossible to shield  
20 detainees from potential exposure to the virus, the only way medical professionals know to  
21 slow the spread of the virus in the absence of a vaccine or treatment. Meyer Decl. ¶ 12.

22 **2. Conditions in the La Palma and EDC Facilities Remain**  
23 **Unsanitary and Hazardous**

24 64. Thousands of immigration detainees are housed in the EDC and La Palma  
25 facilities at any given time. The EDC has a capacity for approximately 1,500 people, and  
26 La Palma can hold about 3,000 people. Sud-Devaraj Decl. ¶ 3.  
27  
28

1           65. ICE detainees at both facilities have reported that the facilities are taking ad  
2 hoc, insufficient measures to contain the likelihood of transmission. Castañeda Acosta Decl.  
3 ¶¶ 5, 20.

4           66. At EDC, it is impossible for detainees to maintain a 6-foot distance from other  
5 people. *Id.* ¶ 23; Declaration of Mohamed Mahmoud (“Mahmoud Decl.”) ¶ 3 [attached  
6 hereto as Exhibit 9]. Detainees at EDC live in close quarters in their units (called “tanks”).  
7 Cells in each unit have, at a minimum, a bunk bed, a toilet, and a sink. Castañeda Acosta  
8 Decl. ¶¶ 3, 18; Mahmoud Decl. ¶ 3. Every cell has two inhabitants, and the tanks are  
9 generally full. Castañeda Acosta Decl. ¶¶ 3, 18. Sometimes, the units are so full that cells  
10 are occupied by 3-4 detainees, despite being built only to accommodate 2 people. Mahmoud  
11 Decl. ¶ 3.

12           67. According to detainees, no additional precautions are being taken to limit the  
13 flow of detainees in either living quarters or common areas. Castañeda Acosta Decl. ¶ 6. In  
14 the dining area, there are anywhere from 6-8 tables for 50-200 detainees. *Id.* ¶ 22; Mahmoud  
15 Decl. ¶ 5. Detainees generally eat “elbow-to-elbow” or, at best, need only “extend [their]  
16 hand to touch the other person.” Mahmoud Decl. ¶ 5, Castañeda Acosta Decl. ¶ 22.  
17 Detainees have to wait in line for up to 20 minutes to receive their food. Mahmoud Decl.  
18 ¶ 5.

19           68. Although each cell has its own toilet and sink (generally shared with at least  
20 one cellmate), detainees in each unit share shower facilities. In the “Echo 400” unit at EDC,  
21 for example, there are five individual showers for 100 detainees to share. *Id.* ¶ 4. Detainees  
22 currently held at EDC describe that the only soap they typically receive from the facility is  
23 a “very small cup[]” of shampoo once a week to shower. Castañeda Acosta Decl. ¶¶ 4, 19.  
24 If detainees want to use hand soap to wash their hands, they are required to purchase their  
25 own soap at the commissary. *Id.* ¶ 19; Mahmoud Decl. ¶ 14. Since the COVID-19 outbreak,  
26 the only change to the availability of soap is that there are now gel hand sanitizer dispensers  
27 stationed outside the entrances to the living quarters and the dining area. Castañeda Acosta  
28 Decl. ¶¶ 5, 20. Detainees are not required to use the hand sanitizer. *Id.* Moreover, although

1 detainees are now being encouraged to wash their hands more frequently, hand soap  
2 remains available only to those who can afford to purchase it. *Id.* ¶¶ 5, 19; *see also*  
3 Mahmoud Decl. ¶ 14.

4 69. Detainees are responsible for cleaning their own units; if detainees are “on  
5 break,” the common area tables are not cleaned for up to two days. Castañeda Acosta Decl.  
6 ¶ 9. Detainees who have been held at the facility previously reported frequently running out  
7 of toilet paper, which is restocked only once per week. Mahmoud Decl. ¶ 15.

8 70. In addition to the living quarters and dining area, detainees are frequently  
9 confronted with sharing limited equipment in common areas with dozens of other  
10 individuals, including phones, computers, and other equipment. *Id.* ¶ 7. In the EDC library,  
11 six tables and chairs hold six computer desks, but the library is often filled with 50-60  
12 people at a time. *Id.* All library visitors share the same photocopy machine. *Id.* Ventilation  
13 systems in these common areas are poor. *Id.*

14 71. Facility staff at EDC do not use face masks around the detainees. Castañeda  
15 Acosta Decl. ¶¶ 7, 21. The only time they wear gloves is when they search detainees’ rooms.  
16 Detainees have noted no increase in the use of gloves or masks in recent days. *Id.* ¶ 7.

17 72. As with EDC, individuals detained at the La Palma facility also live in close  
18 quarters. Units are “usually at capacity.” Mahmoud Decl. ¶ 9. Detainees are confined to  
19 their roughly 7-foot-by-10-foot cells for roughly eight hours per day, and cellmates sleep  
20 with their heads no more than 5 feet apart. Declaration of Yesenia Ramales Ferguson  
21 (“Ramales Ferguson Decl.”) ¶ 9 [attached hereto as Exhibit 10]. Like at EDC, detainees are  
22 required to clean their own cells. *Id.* Although detainees can obtain a chemical and gloves  
23 to clean, they are not able to obtain masks. *Id.* Similarly, while detainees are given  
24 shampoo/soap to shower, there is no hand sanitizer in the pod. *Id.* ¶ 7.

25 73. Like at EDC, detainees typically sit elbow-to-elbow while eating their meals  
26 in a room with up to hundreds of people, after waiting in line for up to 25 minutes to receive  
27 their food. *Id.* ¶ 8; Mahmoud Decl. ¶ 11. ICE has changed the dining process somewhat in  
28 light of COVID-19, requiring detainees to sit four to a table instead of six to a table. Ramales

1 Ferguson Decl. ¶ 8. But even with these reduced numbers, detainees sitting together are no  
2 more than two feet away and can reach out and touch each other at any time. *Id.* Detainees  
3 also continue to congregate in close proximity in line for their food. *Id.*

4 74. Washrooms at La Palma are communal spaces where, for example, 120  
5 people might share eight showers. Mahmoud Decl. ¶ 10. Although detention center porters  
6 have gloves to use while they clean, they do not have masks. Ramales Ferguson Decl. ¶ 10.

7 75. Indeed, facility staff at La Palma have not been using personal protective  
8 equipment around vulnerable detainees, let alone general population detainees. Castañeda  
9 Acosta Decl. ¶ 12. Petitioner Rodriguez Alvarez, a detainee at La Palma who requested and  
10 was moved to a unit housing detainees who are at higher risk for complications with  
11 COVID-19, explained that even in a unit occupied by people with underlying medical  
12 conditions, facility staff come and go without using face masks or gloves. *Id.* ¶¶ 11-13.  
13 Although these detainees—who are confined to the unit, supposedly to prevent exposure to  
14 the coronavirus—are given liquid soap to shower, they are not provided with hand sanitizer.  
15 *Id.* ¶ 15.

16 76. Detainees at La Palma have not received comprehensive information about  
17 the coronavirus—only an instruction to wash their hands and notice that visitors are no  
18 longer permitted. Ramales Ferguson Decl. ¶ 10.

19 77. Consistent with the lack of education and information, detainees at La Palma  
20 who have exhibited symptoms of COVID-19 have not received appropriate medical  
21 attention or been adequately quarantined. *Id.* ¶¶ 5-7. One current detainee, Mr. Thular  
22 Siram, reported a sore throat, fever, cough, and headache and requested a medical  
23 appointment on his own and through his case manager. *Id.* ¶ 5. Even with the assistance of  
24 his case manager, Mr. Siram was unable to see a doctor for nearly a week, reportedly due  
25 to too many people requesting medical appointments. *Id.* ¶¶ 5-6. Despite having  
26 documented potential symptoms of COVID-19, Mr. Siram was never separated from his  
27 cellmate, never taken out of the communal pods, and never given a mask. *Id.* ¶ 6. According  
28 to Mr. Siram, he and other detainees who do not feel well are still permitted to go to the

1 “day room,” a common area in Mr. Siram’s pod at La Palma where 40-50 people at a time  
2 gather in close proximity to watch television and socialize. *Id.* ¶ 7.

3 78. The opportunities for transmission in environments like those described in La  
4 Palma and EDC—where people live in close, crowded quarters and “must share dining  
5 halls, bathrooms, showers, and other common areas”—are significant. Meyer Decl. ¶ 12.  
6 “Individuals in these facilities live, eat, and sleep in such close quarters that COVID-19 will  
7 spread like wildfire once it enters the detention centers, as it inevitably will in the absence  
8 of adequate infection prevention and control measures.” *Id.* As Dr. Meyer predicted, the  
9 virus has now entered the detention facilities—ICE confirmed the first reported case at La  
10 Palma this morning.

11 79. It is all but inevitable that “COVID-19 will spread rapidly and uncontrollably  
12 in a place where people are held in close confinement, like an immigration detention  
13 center.” *Id.* ¶ 14.

### 14 3. EDC and La Palma Have Documented Histories of Poor Medical 15 Treatment

16 80. Further contributing to the elevated risk of harm are EDC and La Palma’s  
17 track records of failure to provide adequate and prompt medical care even before the current  
18 pandemic. Examples of inadequate care at these specific facilities include failing to treat  
19 serious mental illness resulting in serious injury to detainees, failing to respond with  
20 urgency to medical emergencies, sometimes even leading to the death of the detainee,  
21 failure to provide adequate or effective medication, and deprivation of basic dietary and  
22 hygiene needs, including drinkable water. *See Memorandum re: ICE Health Services Corp*  
23 *(IHSC) Medical/Mental Health Care and Oversight*, U.S. DEP’T OF HOMELAND SEC. (Mar.  
24 20, 2019) [attached hereto as Exhibit 17]; PUENTE MOVEMENT & ADVANCEMENT PROJECT,  
25 THE CARCERAL STATE OF ARIZONA 25-43 (Oct. 2019) [attached hereto as Exhibit 18]. EDC  
26 is ranked as one of the deadliest ICE facilities in the country. *See Jason Barry, Human*  
27 *Rights Groups Release Scathing Report on ICE Detention Facility in Eloy*, AZFAMILY.COM  
28 (Nov. 25, 2019) [attached hereto as Exhibit 19].

1           81.     One former detainee of both EDC and La Palma noted that during his roughly  
2 eighteen-month stay at those facilities, he “encountered people with serious medical issues  
3 including mumps and tuberculosis.” Mahmoud Decl. ¶ 13. Pods would be placed on  
4 quarantine for up to 30 days, with no explanations from staff. *Id.*

5           82.     Indeed, in 2019, a mumps outbreak at La Palma resulted in the quarantine of  
6 dozens of immigration detainees for several weeks. *See* Matthew Casey, *ICE: Roughly 400*  
7 *Immigration Detainees Quarantined in Arizona*, ARIZ. PUB. MEDIA (Mar. 14, 2019) (noting  
8 that about 15% of the approximately 2,200 detainees being quarantined nationally were in  
9 Arizona, primarily at La Palma) [attached hereto as Exhibit 20].

10          83.     This was not the first time a contagious disease required quarantine at one of  
11 these facilities. In 2016, a measles outbreak at EDC resulted in 31 cases of measles,  
12 including 9 staff members, in part because ICE’s personnel policies did not require staff  
13 members to be vaccinated. *See* Heather Venkat et al., *Notes from the Field: Measles*  
14 *Outbreak at a United States Immigration and Customs Enforcement Facility — Arizona,*  
15 *May-June 2016*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 26, 2017) [attached  
16 hereto as Exhibit 21]. The CDC’s report on the measles outbreak notes that—despite its  
17 immediate recommendations to take certain preventative measures—ICE’s “slow  
18 compliance with vaccination recommendations and incomplete implementation of  
19 exclusion recommendations, and restrictions on enforcing them, might have prolonged this  
20 outbreak.” *Id.*

21          84.     These past outbreaks of contagious diseases in the La Palma and EDC  
22 facilities strongly suggest “that these facilities are poorly equipped and ill-prepared to  
23 handle COVID19.” Meyer Decl. ¶ 22.

24          85.     In light of their failure to provide consistent access to basic hygiene and  
25 adequate health care even under normal circumstances, it appears unlikely that ICE’s EDC  
26 and La Palma facilities will be able to competently and safely respond to the COVID-19  
27 pandemic. *Id.* ¶¶ 17, 28-35. Recent guidance from ICE regarding the agency’s COVID-19  
28 response is not reassuring. *Id.* ¶ 17. In fact, guidance on ICE’s website actually asserts that

1 ICE’s practice of “cohorting serves as an alternative to self-monitoring at home.” *See* U.S.  
2 Immigration and Customs Enforcement, *ICE Guidance on COVID-19*,  
3 <https://www.ice.gov/coronavirus> (last visited Apr. 1, 2020) [attached hereto as Exhibit 22].

4 Indeed, at least one court has found that these measures are “patently ineffective” and, in  
5 any event, were not being consistently followed by ICE. *Thakker*, No. 1:20-cv-480 (Doc.  
6 47), at 15, 22 n.15 (“The current measures undertaken by ICE, including ‘cohorting’  
7 detainees, are patently ineffective in preventing the spread of COVID-19.”).

8 86. Petitioners, who have all been diagnosed with serious medical disease “are in  
9 even greater danger in these facilities, including a meaningfully higher risk of death.” Meyer  
10 Decl. ¶¶ 36, 39. Because of the ongoing flow of people in and out of the facilities, the  
11 unsanitary conditions in the facilities themselves, and the facilities’ history of mismanaging  
12 outbreaks of infectious diseases, the irreparable harm Petitioners will suffer once the virus  
13 reaches the La Palma and EDC facilities is imminent. *Id.* ¶¶ 12, 22, 39.

14 **E. The COVID-19 Pandemic Presents a Grave Risk of Harm, Including**  
15 **Serious Illness and Death to the Elderly and Those with Certain**  
16 **Medical Conditions.**

17 87. Although even the young and otherwise healthy can succumb to COVID-19,  
18 older patients and patients with chronic underlying conditions are at a particularly high risk  
19 for severe cases and complications. Varner Decl. ¶ 8; Meyer Decl. ¶ 24. Patients who are  
20 particularly vulnerable to the virus include people over the age of 50 and individuals with  
21 pre-existing health conditions, including high blood pressure, blood disorders, weakened  
22 immune systems, hypertension, metabolic disorders (including diabetes), chronic kidney or  
23 liver disease, heart and lung disease, neurological and neurodevelopmental conditions, and  
possibly recent or current pregnancy. *Id.*

24 88. Preliminary data from China shows serious illness, sometimes resulting in  
25 death, occurs in up to 16% of cases, with a higher rate among those older and high-risk  
26 individuals. Meyer Decl. ¶ 24.

27 89. Those in high-risk categories who do not die may have prolonged serious  
28 illness requiring hospital care, including ventilators that will likely be in very short supply,

1 and a team of care providers, including 1:1 or 1:2 nurse to patient ratios, respiratory  
2 therapists, and intensive care physicians. People with severe symptoms may require  
3 ventilation and intravenous antibiotics. Public health officials anticipate that hospital  
4 settings will likely be overwhelmed and beyond capacity to provide this type of intensive  
5 care as COVID-19 becomes more widespread in communities. *Id.* ¶ 25.

6 **F. Petitioners Face a Heightened Risk of Severe Harm if They Contract**  
7 **COVID-19 While Detained.**

8 90. The eight Petitioners in this case—all in civil immigration custody at La  
9 Palma Correctional Center or Eloy Detention Center—face unprecedented, unnecessary,  
10 and imminent harm once COVID-19 begins to spread in the detention centers where ICE is  
11 holding them. Each Petitioner has one or more underlying medical conditions that renders  
12 him or her particularly vulnerable to severe illness and death if they contract the disease.

13 91. Mr. Brinez Urdaneta is HIV positive and suffers from anemia secondary to  
14 worsening bleeding hemorrhoids. Due to his HIV status, Mr. Brinez Urdaneta’s immune  
15 system “is significantly compromised making him unable to fight off infections as well as  
16 the healthy person.” Lebensohn Decl. ¶ 4(a). As noted by Dr. Patricia Lebensohn, Mr.  
17 Brinez Urdaneta’s recent bout with shingles is evidence of his weakened immune system  
18 and demonstrates that he is at an increased risk for contracting COVID-19. *Id.* His  
19 compromised immune system also means he is at a high risk of suffering serious  
20 consequences should he contract the virus, including respiratory distress, multi-organ  
21 failure, or death. *Id.*

22 92. Ms. Calzadilla Borrero has a history of intermittent tachycardia and heart  
23 palpitations, for which she has been referred to a cardiology specialist for likely underlying  
24 heart conditions. Ms. Calzadilla Borrero also suffers from asthma, which “manifests as  
25 shortness of breath and chest tightness and is treated with a prescribed albuterol inhaler.”  
26 *Id.* ¶ 4(h). Ms. Calzadilla Borrero’s asthma puts her at severe risk, as COVID-19 “causes  
27 respiratory symptoms and is extremely dangerous in patients who have underlying  
28 pulmonary disease, such as asthma.” *Id.* COVID-19 is also dangerous to Ms. Calzadilla



1 Borrero because of her suspected underlying heart issues, as COVID-19 has “been shown  
2 to cause cardiac injury.” *Id.*

3 93. Mr. Mejia Hernandez has a history of scoliosis so severe that it interferes with  
4 his breathing. A recent examination of Mr. Mejia Hernandez’s lungs showed fine crackles  
5 in his left upper lung field and no audible lung sounds at posterior middle or lower lung  
6 fields. Although Mr. Mejia Hernandez has not received a pulmonary function test at La  
7 Palma, Dr. Lebensohn believes that his “total lung capacity is significantly reduced.” *Id.*  
8 ¶ 4(b). These pulmonary issues put Mr. Mejia Hernandez at “increased risk of severe  
9 pulmonary infection” if he were to contract COVID-19. *Id.*

10 94. Mr. Rodriguez Alvarez suffers from chronic medical conditions, including  
11 hypertension, asthma, and obesity. These underlying medical conditions increase Mr.  
12 Rodriguez Alvarez’s risk of contracting “severe” COVID-19. *Id.* ¶ 4(c). Furthermore, Mr.  
13 Rodriguez Alvarez’s mental health has already been affected by COVID-19. Mr. Rodriguez  
14 Alvarez has post-traumatic stress disorder from being separated from his life partner, who  
15 is HIV positive and from whom Mr. Rodriguez Alvarez has been the primary caregiver. Mr.  
16 Rodriguez Alvarez’s partner was recently released from the detention center and “is also at  
17 significant risk of experiencing severe COVID-19 complications due to being  
18 immunocompromised.” *Id.*

19 95. Mr. Vargas Saucedo also has severe chronic medical conditions that have  
20 been “identified risk factors for severe COVID-19 infection,” including hypertension,  
21 hyperthyroidism, tachycardia and heart palpitations, and obesity, as well as a “significant  
22 family history of cardiovascular disease.” *Id.* ¶ 4(f). Compounding his physical health  
23 complications is Mr. Vargas Saucedo mental health, as he suffers from “debilitating anxiety  
24 secondary to severe sexual and physical abuse.” *Id.* This anxiety “translates into high levels  
25 of stress that may negatively affect the immune response,” rendering Mr. Vargas Saucedo  
26 even more susceptible to COVID-19.

27 96. Ms. Gomez Cantillano has diabetes (type 2), making her  
28 immunocompromised and thus “at an increased risk for contracting severe COVID-19

1 infection.” *Id.* ¶ 4(d). Ms. Gomez Cantillano also has hypertension and hyperlipidemia,  
2 which put her at “moderate high risk for heart disease,” increasing her risk of becoming  
3 severely ill if she contracts COVID-19. *Id.*

4 97. Ms. Avalos Inchicaque has suffered from asthma since childhood. In light of  
5 her history of respiratory conditions, Ms. Avalos Inchicaque is “at an increased risk for  
6 developing severe COVID-19 respiratory complications, including respiratory distress  
7 necessitating intubation and potentially death.” *Id.* ¶ 4(e).

8 98. Mr. Sanchez Ramos has “poorly controlled” diabetes and has been treated at  
9 La Palma on multiple occasions for symptomatic hypoglycemia. *Id.* ¶ 4(g). Because  
10 individuals with diabetes—especially individuals with uncontrolled blood sugar levels—  
11 are at a higher risk for contracting COVID-19 than the rest of the population, Mr. Sanchez  
12 Ramos is at “significant risk for contracting COVID-19.” *Id.* Because he is  
13 immunocompromised, Mr. Sanchez Ramos is also “at increased risk for suffering the most  
14 feared and serious complications of COVID-19, including respiratory distress and death.”  
15 *Id.*

16 99. Because of Petitioners’ serious underlying medical conditions and the high  
17 prevalence of risk factors in their medical histories, all eight Petitioners “have a  
18 significantly increased risk of severe illness and possibly death if they contract COVID-  
19 19,” and such a risk is “imminent.” *Id.* ¶¶ 4, 7.

20 **G. No Other Forum, Including ICE and Immigration Courts, Can Provide**  
21 **Meaningful Relief to Abate the Harm to Petitioners.**

22 100. ICE has the authority to release individuals like the Petitioners, whose  
23 detention is governed by the discretionary detention statute, 8 U.S.C. § 1226(a). Despite the  
24 exigent circumstances, ICE continues to improperly delay release and/or responding to  
25 Petitioners’ humanitarian parole requests, whose equities and lack of criminal histories  
26 demonstrate that they are neither dangers nor risks of flight.

27 101. Through counsel, all Petitioners submitted detailed humanitarian parole  
28 release requests to ICE, which described the medical conditions that render them highly

1 vulnerable to adverse health outcomes from COVID-19.<sup>1</sup> As of this filing, the government  
2 has not acted to release any of the Petitioners in this case.

### 3 CAUSES OF ACTION

#### 4 **COUNT I**

#### 5 **Violation of Fifth Amendment Due Process Clause – State-Created Danger**

6 102. The Due Process Clause provides that no person shall “be deprived of life,  
7 liberty, or property, without due process of law.” U.S. Const. amend. V. Its protections  
8 extend to “every person within the nation’s borders,” regardless of immigration status.  
9 *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014); *id.* (“Even one whose  
10 presence in this country is unlawful, involuntary, or transitory is entitled to that  
11 constitutional protection.” (quoting *Mathews v. Diaz*, 426 U.S. 67, 77 (1976)).

12 103. The government violates an individual’s right to due process when it (1)  
13 “affirmatively place[s] [the] individual in danger,” (2) by “acting with ‘deliberate  
14 indifference to [a] known or obvious danger.’” *Kennedy v. City of Ridgefield*, 439 F.3d  
15 1055, 1062 (9th Cir. 2006) (quoting *Munger v. City of Glasgow*, 227 F.3d 1082, 1086 (9th  
16 Cir. 2000) and *L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996)).

17 104. When the government’s actions leave an individual “in a situation that [is]  
18 more dangerous than the one in which [it] found him,” the government has affirmatively  
19 placed that individual in danger. *Hernandez v. City of San Jose*, 897 F.3d 1125, 1133 (9th  
20 Cir. 2018) (quoting *Munger*, F.3d at 1086). The critical inquiry is thus whether the  
21 government’s actions “create[d] or expose[d] an individual to a danger which he or she  
22 would not have otherwise faced.” *Kennedy*, 439 F.3d at 1061. *Cf. J.P. v. Sessions*, No. Civ.  
23 18-06081 JAK (SKx), 2019 WL 6723686, at \*36 (C.D. Cal. Nov. 5, 2019) (federal  
24 government “‘acted with deliberate indifference to a known or obvious danger’ by  
25 implementing the [family separation] policy with awareness of the potential harm it would  
26 cause and intending to use that as a basis to deter future attempts by those similarly situated

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<sup>1</sup> None of the Petitioners in this matter are eligible for bond.

1 to enter the United States” (alterations omitted) (quoting *Hernandez*, 897 F.3d at 1137, and  
2 *Kennedy*, 439 F.3d at 1062)).

3 105. Even if Petitioners were required to show deliberate indifference as civil  
4 detainees—and they are not, *see Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004)—they  
5 could easily do so. The government acts with deliberate indifference to a known or obvious  
6 danger when it “recognize[s] an unreasonable risk and actually intend[s] to expose [the  
7 plaintiff] to such risks without regard to the consequences to [the plaintiff].” *Hernandez*,  
8 897 F.3d at 1135 (alterations omitted) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974  
9 (9th Cir. 2011)). An unreasonable risk includes future harm caused by conditions of  
10 confinement. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993).

11 106. First, Respondents have affirmatively placed Petitioners in danger by forcing  
12 them into a position more dangerous than it found them. Meyer Decl. ¶ 36; *see also*  
13 *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 888 (E.D. Cal. 2009) (recognizing that  
14 crowding in prisons makes detainees “vulnerable to outbreaks of communicable disease”).  
15 “The risk of contracting COVID-19 in tightly-confined spaces, especially jails, is now  
16 exceedingly obvious.” *Basank*, 2020 WL 1481503, at \*5. Nonetheless, Respondents made  
17 the affirmative decision to continue detaining Petitioners and/or delay granting their  
18 affirmative requests for humanitarian parole. Respondents have thus exposed Petitioners to  
19 a greater risk of contracting COVID-19 than they would have otherwise faced. *See Coronel*,  
20 2020 WL 1487274, at \*5 (finding that “Petitioners put forward undisputed evidence that  
21 ICE had *actual knowledge* of their serious, unmet medical conditions” where each  
22 “Petitioner submitted a letter to ICE detailing his or her medical conditions and explaining  
23 that those conditions predisposed them to higher risk from contracting COVID-19 . . .  
24 multiple days before [the] litigation began,” and noting that the “Government was thus  
25 aware of the petitioners’ medical conditions and the serious harm that COVID-19 posed to  
26 them[, but could] point to *no specific action* that it took in direct response to this serious,  
27 unmet medical need”).

1           107. Petitioners are detained in conditions that expose them to a heightened risk of  
2 contracting COVID-19. Respondents are confining Petitioners in close proximity to other  
3 detainees, detention center staff, and ICE officers, rendering Petitioners entirely unable to  
4 practice necessary social distancing. Respondents are not providing masks to Petitioners  
5 and other detainees and are providing limited hand sanitizer and soap alternatives (like  
6 shampoo). ICE officers are failing to take necessary precautions, such as wearing masks, to  
7 avoid transmitting COVID-19 to Petitioners, detainees, and other officers. Respondents’  
8 ongoing detention of Petitioners thus continues to expose them to a greater risk of  
9 contracting COVID-19 than they would face if they were not in detention and were able to  
10 take necessary precautions to protect themselves. *See Bravo Castillo*, No. CV 20-00605  
11 TJH (AFMx) (Doc. 32), at 10 (“Petitioners have not been protected. They are not kept at  
12 least 6 feet apart from others at all times. They have been put into a situation where they  
13 are forced to touch surfaces touched by other detainees, such as with common sinks, toilets  
14 and showers. Moreover, the Government cannot deny the fact that the risk of infection in  
15 immigration detention facilities – and jails – is particularly high if an asymptomatic guard,  
16 or other employee, enters a facility. While social visits have been discontinued at [the  
17 detention center], the rotation of guards and other staff continues.”); *Thakker*, No. 1:20-cv-  
18 480 (Doc. 47), at 8–9 (“Public health officials now acknowledge that there is little that can  
19 be done to stop the spread of COVID-19 absent effective quarantines and social distancing  
20 procedures. But Petitioners are unable to keep socially distant while detained by ICE and  
21 cannot keep the detention facilities sufficiently clean to combat the spread of the virus.”).

22           108. As the virus continues its potentially exponential spread, it is all but certain  
23 to find its way into La Palma and EDC, if it has not already. *See Flores*, No. CV 85-4544-  
24 DMG (AGRx) (Doc. 740), at 12–15 (noting the “the *near-certainty* of the rapid spread of  
25 COVID-19 in ICE . . . facilities, even if . . . ICE take[s] more urgent preventative measures”  
26 (emphasis added)); *Thakker*, No. 1:20-cv-480 (Doc. 47), at 8 (“At this point, it is not a  
27 matter of *if* COVID-19 will enter Pennsylvania prisons, but *when* it is finally detected  
28 therein.”). There it will find a tinderbox of involuntary crowding and underpreparedness.

1 See *Basank*, 2020 WL 1481503, at \*3 (“[M]edical doctors, including two medical experts  
2 for the Department of Homeland Security, have warned of a ‘tinderbox scenario’ as  
3 COVID-19 spreads to immigration detention centers and the resulting ‘imminent risk to the  
4 health and safety of immigrant detainees’ and the public.”); cf. *Hernandez v. Cty. of*  
5 *Monterey*, 110 F. Supp. 3d 929, 942–43 (N.D. Cal. 2015) (finding the fact that jail’s  
6 practices regarding tuberculosis did not conform to the standards of the CDC and others to  
7 “strongly indicate[] deliberate indifference” and granting TRO).

8 109. When the spark ignites, as it already has in La Palma, the consequences will  
9 be dire for everyone at the facilities. Detention facilities in general are not appropriately  
10 equipped to deal with an outbreak of a disease as dangerous and contagious as COVID-19.  
11 Meyer Decl. ¶ 28. Petitioners could at any moment exhibit symptoms of COVID-19, and it  
12 is extremely likely they will if left in the facilities until the virus is already running rampant.  
13 And if they do contract the disease, they will have no way of knowing or controlling whether  
14 it will progress to life-threatening respiratory symptoms, as it can in people of all ages.

15 110. Respondents have acted, and continue to act, with deliberate indifference to  
16 the known and obvious risk of COVID-19 transmission. Despite being well-aware of both  
17 the risks of community transmission of COVID-19 and the preventive measures necessary  
18 to slow that transmission, Respondents have acted without regard to the consequences to  
19 Petitioners by continuing to detain them without taking precautions necessary to protect  
20 them. See *Basank*, 2020 WL 1481503, at \*5 (“Respondents have exhibited, and continue to  
21 exhibit, deliberate indifference to Petitioners’ medical needs. The spread of COVID-19 is  
22 measured in a matter of a single day—not weeks, months, or years—and Respondents  
23 appear to ignore this condition of confinement that will likely cause imminent, life-  
24 threatening illness.”).

25 111. Even as Respondents have acknowledged in their latest guidance the need to  
26 curb their enforcement activities “[t]o ensure the welfare and safety of the general public,”  
27 Respondents continue to detain Petitioners in conditions that expose them to a heightened  
28 risk of contracting COVID-19 without regard to the consequences to Petitioners. See *supra*

1 Part D; Meyer Decl. ¶¶ 17, 36–38; *Basank*, 2020 WL 1481503, at \*5 (finding ICE’s  
2 measures to prevent the spread of COVID-19 to be “patently insufficient to protect  
3 Petitioners” because “Respondents could not represent that the detention facilities were in  
4 a position to allow inmates to remain six feet apart from one another, as recommended by  
5 the CDC”). “Confining vulnerable individuals such as Petitioners without enforcement of  
6 requisite social distancing and without specific measures to protect their delicate health  
7 poses an unreasonable risk of serious damage to their future health, and demonstrates  
8 deliberate indifference.” *Id.* (alterations omitted).

9 112. For these reasons, Petitioners’ detention violates the Fifth Amendment of the  
10 United States Constitution.

11 **COUNT II**  
12 **Violation of Fifth Amendment Due Process Clause – Special Relationship**

13 113. The Fifth Amendment’s Due Process Clause applies to all “persons” within  
14 the United States, including persons whose presence here is unlawful, temporary, or  
15 permanent. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

16 114. When the government takes custody of a person, the government creates a  
17 “special relationship” that entails assuming responsibility for the person’s safety and well-  
18 being. *See, e.g., Henry A. v. Willden*, 678 F.3d 991, 998 (9th Cir. 2012). The government  
19 violates the Due Process Clause when it takes custody of a person “and at the same time  
20 fails to provide for his basic human needs – e.g., food, clothing, shelter, *medical care*, and  
21 *reasonable safety*.” *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200  
22 (1989) (emphasis added). Due process for civil detainees, like those held in immigration  
23 facilities, “requires more than minimal necessities.” *Jones*, 393 F.3d at 931; *Unknown*  
24 *Parties v. Nielsen*, No. CV-15-00250-TUC-DCB, 2020 WL 813774, at \*2 (D. Ariz. Feb.  
25 19, 2020).

26 115. To state a claim under the special relationship doctrine, a plaintiff must show:  
27 “(i) the defendant made an intentional decision with respect to the conditions under which  
28 the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of

1 suffering serious harm; (iii) the defendant did not take reasonable available measures to  
2 abate the risk, even though a reasonable official in the circumstances would have  
3 appreciated the high degree of involved . . . ; and (iv) by not taking such measures, the  
4 defendant caused the plaintiff’s injuries.” *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124-  
5 25 (9th Cir. 2018); *see also Unknown Parties*, 2020 WL 813774, at \*3 (applying *Gordon*  
6 to claims about inhumane and punitive treatment in civil immigration detention); *Martinez*  
7 *v. Geo Grp., Inc.*, No. EDCV 18-1125-R, 2019 WL 3758026, at \*2-3 (C.D. Cal. Apr. 30,  
8 2019) (applying *Gordon* to claims about detention center’s failure to attend to a detainee’s  
9 medical needs); *J.P.*, 2019 WL 6723686, at \*31-33 (applying *Gordon* to claims about  
10 conditions of confinement in civil immigration detention).

11       116. Inadequate health and safety measures at a detention center cause cognizable  
12 harm to every detained person. *See Parsons v. Ryan*, 754 F.3d 657, 679 (9th Cir. 2014). As  
13 the Supreme Court observed in the context of the California prison system, “all prisoners []  
14 are at risk so long as the State continues to provide inadequate care.” *Brown v. Plata*, 563  
15 U.S. 493, 532 (2011). Those who are not yet sick are not “remote bystanders”—they are  
16 the “next potential victims.” *Id.*; *see also Helling*, 509 U.S. at 33 (holding that the  
17 government cannot “be deliberately indifferent to the exposure of inmates to a serious,  
18 communicable disease on the ground that the complaining inmate shows no serious current  
19 symptoms”). This is particularly true here because, in the case of COVID-19, even those  
20 who do not appear to be sick may already be infected. Meyer Dec. ¶ 23; Varner Decl. ¶ 7;  
21 *Bravo Castillo*, No. CV 20-00605 TJH (AFMx) (Doc. 32), at 9 (“The science is well  
22 established – infected, asymptomatic carriers of the coronavirus are highly contagious.”).

23       117. When Respondents detained Petitioners, they created a special relationship  
24 that required them to provide Petitioners with medical care and reasonable safety.  
25 Respondents have placed Petitioners at continued risk of suffering serious harm during a  
26 deadly pandemic with local community spread. *See Parsons*, 754 F.3d at 679 (recognizing  
27 that inadequate health and safety measures at a detention center cause cognizable harm to  
28 every detainee). Petitioners are subjected to close physical contact with ICE officers,



1 detention center staff, and other detainees without providing them with masks, gloves,  
2 adequate hand sanitizer, distance, or other measures mandated by experts, government  
3 officials, and the CDC to protect people from infection; and continue to hold Petitioners in  
4 detention.

5 118. According to experts, as well as government officials and the CDC, these  
6 conditions put Petitioners at significant risk of exposure to COVID-19, which in turn  
7 subjects them to risk of serious illness and death. Meyer Decl. ¶¶ 28–41.

8 119. Respondents have not taken reasonable available measures to abate the risk  
9 of exposure to COVID-19, such as taking precautionary measures recommended by experts  
10 during detention and providing the necessary supplies and space for Petitioners to avoid  
11 exposure while detained. The failure to take these measures is objectively unreasonable in  
12 light of the local, state, and federal guidance on the pandemic that has been widely  
13 publicized since the COVID-19 pandemic was declared. *See Flores*, No. CV 85-4544-DMG  
14 (AGRx) (Doc. 740), at 1-2 (noting that COVID-19 “has reached pandemic status”;  
15 governments and public agencies “have taken extraordinary measures to attempt to curtail  
16 exponential rates of infection of this highly contagious disease”; and medical experts,  
17 including the CDC, urge social distancing, frequent handwashing, and use of hand  
18 sanitizer); *Helling*, 509 U.S. at 33 (noting that the Eighth Amendment required a remedy  
19 where “inmates in punitive isolation were crowded into cells and . . . some of them had  
20 infectious maladies[,] . . . even though it was not alleged that the likely harm would occur  
21 immediately and even though the possible infection might not affect all of those exposed”).

22 120. By failing to take these measures, Respondents subjected and continue to  
23 subject Petitioners to a substantial risk of contracting COVID-19. *See Parsons*, 754 at 679  
24 (discussing the harms inherent in inadequate public health and medical care provisions in  
25 detention); *Xochihua-Jaimes*, 2020 WL 1429877, at \*1 (ordering *sua sponte* release of a  
26 detainee in light of the current “rapidly escalating public health crisis, which public health  
27 authorities predict will especially impact immigration detention centers”). The risk is  
28 augmented by the La Palma and EDC facilities’ well-documented history of health and

1 safety failures, and by the reported presence of individuals with potential COVID-19  
2 symptoms in detention at the facility who remain among the general population.

3 121. For these reasons, Petitioners' detention violates the Fifth Amendment Due  
4 Process Clause.

5 **COUNT III**  
6 **Violation of Fifth Amendment Protection Against Punitive Detention**

7 122. When the federal government detains an immigrant, the immigrant is  
8 considered a civil detainee, even if they have a prior criminal conviction. *See Zadvydas*,  
9 533 U.S. at 690. As civil detainees, immigrants are afforded greater protection by the Fifth  
10 Amendment's Due Process Clause than convicted prisoners or even pretrial criminal  
11 detainees. Unlike a convicted prisoner, who may be punished as long as the punishment is  
12 not "cruel and unusual," *Pierce v. Cty. of Orange*, 526 F.3d 1190, 1205 (9th Cir. 2008), a  
13 civil detainee may not be punished at all. *Bell v. Wolfish*, 441 U.S. 520, 535 (1970); *Jones*,  
14 393 F.3d at 932. And civil immigration detainees "must be afforded 'more considerate  
15 treatment'" than criminal pretrial detainees. *See Unknown Parties*, 2020 WL 813774, at \*12  
16 (citing *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982)).

17 123. To establish a violation of the Due Process Clause, Petitioners need not show  
18 that Respondents intended to subject them to punishment, *see Pierce*, 526 F.3d at 1205, or  
19 that they acted with deliberate indifference, *Jones*, 393 F.3d at 933. A restriction is  
20 "punitive" if it is "excessive in relation to [its non-punitive purpose]" or is 'employed to  
21 achieve objectives that could be accomplished in so many alternative and less harsh  
22 methods.'" *Jones*, 393 F.3d at 933-34 (alteration in original) (quoting *Demery v. Arpaio*,  
23 378 F.3d 1020, 1028 (9th Cir. 2004); *Hallstrom v. City of Garden City*, 991 F.2d 1473, 1484  
24 (1993)). A presumption of punishment arises when a civil detainee is held in similar or more  
25 restrictive conditions than his criminal counterparts. *See Jones*, 393 F.3d at 932; *see also*  
26 *Torres v. U.S. Dep't of Homeland Sec.*, 411 F. Supp. 3d 1036, 1065 (C.D. Cal. 2019)  
27 (finding a presumption of punitiveness where plaintiffs "allege[d] conditions at [ICE  
28 detention center] and policies by ICE that are not 'more considerate' than at criminal

1 facilities”). To rebut this presumption, the government must show that its actions are not  
2 excessive in relation to a legitimate, nonpunitive purpose. *King v. Cty. of Los Angeles*, 885  
3 F.3d 548, 558 (9th Cir. 2018).

4 124. Here, a presumption of punishment arises because Petitioners, civil  
5 immigration detainees, are subjected to worse conditions than many convicted prisoners.  
6 Across the country, decisionmakers are releasing detainees to prevent them and surrounding  
7 communities from suffering bodily harm or death from COVID-19. *See, e.g., Timothy*  
8 *Williams et al., ‘Jails Are Petri Dishes’: Inmates Freed as the Virus Spreads Behind Bars,*  
9 *N.Y. TIMES* (Mar. 30, 2020) [attached hereto as Exhibit 23]; *United States v. Garlock*, No.  
10 18-CR-00418-VC-1, 2020 WL 1439980, at \*1 (N.D. Cal. Mar. 25, 2020) (*sua sponte*  
11 extending the defendant’s surrender date for his criminal sentence, and explaining: “To  
12 avoid adding to the chaos and creating unnecessary health risks, offenders who are on  
13 release and scheduled to surrender to the Bureau of Prisons in the coming months should,  
14 absent truly extraordinary circumstances, have their surrender dates extended until this  
15 public health crisis has passed.”); *United States v. Stephens*, No. 15-CR-95 (AJN), 2020  
16 WL 1295155 (S.D.N.Y. Mar. 19, 2020); *Matter of Extradition of Toledo Manrique*, No. 19-  
17 MJ-71055, 2020 WL 1307109, at \*1 (N.D. Cal. Mar. 19, 2020) (“The risk that this  
18 vulnerable person will contract COVID-19 while in jail is a special circumstance that  
19 warrants bail.”). To rebut the presumption of punitiveness, a “bare assertion of the  
20 requirement of keeping [ ] detainees . . . will not suffice.” *Torres*, 411 F. Supp. 3d at 1065  
21 (alteration in original) (quoting *Jones*, 393 F.3d at 934) (rejecting defendants’ proposed  
22 justification that they were “required by statute to maintain a secure facility for certain  
23 immigrants, pending the outcome of their proceedings”).

24 125. Moreover, even assuming Respondents have a legitimate, nonpunitive  
25 interest in continuing to detain Petitioners, endangering the lives and wellbeing of  
26 Petitioners and surrounding communities is excessive in relation to that interest. *Thakker*,  
27 No. 1:20-cv-480 (Doc. 47), at 20-21 (considering substantially similar conditions at  
28 Pennsylvania ICE detention centers and holding that there was “no rational relationship

1 between a legitimate government objective and keeping Petitioners detained in unsanitary,  
2 tightly-packed environments—doing so would constitute a punishment to Petitioners”).  
3 Detention itself exposes Petitioners to an unacceptable risk of contracting COVID-19 and  
4 suffering bodily harm or death as a result. Respondents have confined Petitioners in close  
5 quarters with many other individuals, any of whom could already be infected even if  
6 asymptomatic. The virus spreads rapidly in close quarters, often severely infecting not only  
7 older individuals or those with preexisting conditions but also younger, previously healthy  
8 people. Moreover, if COVID-19 begins to spread in La Palma or EDC, there is no indication  
9 that the facilities have adequate equipment, staff, or resources to treat large numbers of  
10 severely ill detainees.

11 126. Since the rise of COVID-19, ICE has modified its ordinary immigration  
12 enforcement procedures by curtailing its raids and interior enforcement in order to stop the  
13 spread of COVID-19. There is no legitimate reason to continue to detain Petitioners under  
14 these circumstances—circumstances that, in ICE’s view, outweigh the usual imperatives of  
15 immigration enforcement. And no risk to the community justifies the detention of these  
16 particular individuals under these conditions, particularly where Petitioners have no  
17 criminal histories. *See Thakker*, No. 1:20-cv-480 (Doc. 47), at 20–21 (“We note that ICE  
18 has a plethora of means *other than* physical detention at their disposal by which they may  
19 monitor civil detainees and ensure that they are present at removal proceedings, including  
20 remote monitoring and routine check-ins. Physical detention itself will place a burden on  
21 community healthcare systems and will needlessly endanger Petitioners, prison employees,  
22 and the greater community. We cannot see the rational basis of such a risk.”); *Bravo*  
23 *Castillo*, No. CV 20-00605 TJH (AFMx) (Doc. 32), at 10 (finding that the “balance of the  
24 equities tip[ped] sharply in favor of the Petitioners,” and there was “no harm to the  
25 Government” in ordering Petitioners’ release and “very low” flight risk “given the current  
26 global pandemic” even though both Petitioners had committed prior criminal offenses).

27 127. As Judge Jones recently concluded: “Respondents’ Facilities are plainly not  
28 equipped to protect Petitioners from a potentially fatal exposure to COVID-19. While this

1 deficiency is neither intentional nor malicious, should we fail to afford relief to Petitioners  
2 we will be a party to an unconscionable and possibly barbaric result. Our Constitution and  
3 laws apply equally to the most vulnerable among us, particularly when matters of public  
4 health are at issue. This is true even for those who have lost a measure of their freedom. If  
5 we are to remain the civilized society we hold ourselves out to be, it would be heartless and  
6 inhumane not to recognize Petitioners' plight. And so we will act." *Thakker*, No. 1:20-cv-  
7 480 (Doc. 47), at 24.

8 128. Respondents' continued detention of Petitioners violates the Fifth  
9 Amendment's protection against punitive detention.

#### 10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Petitioners pray that this Court grant the following relief:

- 12 (1) Assume jurisdiction over this matter;
  - 13 (2) Issue a Writ of Habeas Corpus on the ground that Petitioners' continued  
14 detention violates the Due Process Clause and order Petitioners' immediate  
15 release;
  - 16 (3) In the alternative, issue injunctive relief ordering Respondents to immediately  
17 release Petitioners on the ground that their continued detention violates the  
18 Due Process Clause;
  - 19 (4) Issue a declaration that Respondents' continued detention in civil immigration  
20 custody of individuals at increased risk for severe illness, including persons  
21 with underlying medical conditions that may increase the risk of serious  
22 COVID-19, violates the Due Process Clause;
  - 23 (5) Award Petitioners their costs and reasonable attorneys' fees in this action  
24 under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28  
25 U.S.C. § 2412, and on any other basis justified under law; and
  - 26 (6) Grant any other and further relief that this Court deems just and proper.
- 27  
28

1 Dated: April 1, 2020

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