

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

PEDRO BRAVO CASTILLO AND LUIS
VASQUEZ RUEDA

Petitioners,

vs.

WILLIAM BARR, United States Attorney
General; CHAD WOLF, Acting Secretary
of U.S. Department of Homeland Security;
U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. IMMIGRATION AND
CUSTOMS (ICE); MATTHEW T.
ALBENCE, Deputy Director and Senior
Official for ICE; DAVID MARIN, Field
Office Director for ICE ERO in Los
Angeles; JAMES JANECKA, Warden,
Adelanto ICE Processing Center

Respondents.

Case No.: 5:20-CV-00605

**NOTICE OF EMERGENCY
MOTION AND MOTION FOR A
TEMPORARY RESTRAINING
ORDER; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF TEMPORARY
RESTRAINING ORDER**

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NOTICE OF EMERGENCY MOTION AND MOTION FOR A TEMPORARY RESTRAINING ORDER;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF TEMPORARY RESTRAINING ORDER

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on March 25, 2020, at 8:30 a.m., or as soon
3 thereafter as may be heard in the above-entitled court, located at 3470 Twelfth
4 Street, Riverside, CA 92501-3801, Petitioners Pedro Bravo Castillo and Luis
5 Vasquez Rueda will and hereby do move this Court for entry of a temporary
6 restraining order requiring Respondents to:

- 7
- 8 • immediately release Petitioners from the custody of Warden James
9 Janecka, Adelanto ICE Processing Center (Adelanto Detention
10 Center) due to their risk of exposure to COVID-19 at the facility and
11 convey them safely to their homes in a manner that does not risk
12 infection;
 - 13 • in the alternative, order Respondents to show cause as to why
14 Petitioners should remain in detention at Adelanto Detention Center;
 - 15 • award such other relief as permitted by law.

16 This motion is made pursuant to Federal Rule of Civil Procedure 65 on the
17 grounds that 1) Petitioners are likely to prevail on their due process claim under the
18 Fifth Amendment and obtain an order directing Respondents to release them from
19 detention; 2) Petitioners will likely suffer irreparable harm absent the entry of a
20 temporary restraining order; 3) the balance of equities favors the entry of a
21 temporary restraining order; and 4) a temporary restraining order is in the public
22 interest.

23 This motion is based on this Notice of Motion; the supporting Memorandum
24 of Points and Authorities; the supporting declarations; all documents and pleadings
25 on file in this action, including the Petition for Writ of Habeas Corpus and
26 Complaint for Injunctive Relief and accompanying declarations; and on such other
27 oral and documentary evidence as may be presented at any hearing on the motion.

28 NOTICE OF EMERGENCY MOTION AND MOTION FOR A TEMPORARY RESTRAINING ORDER;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF TEMPORARY RESTRAINING ORDER

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As virtually every official in the Nation has recognized, this is not the time for
4 business as usual. The world confronts a deadly threat in the form of COVID-19,
5 which is highly contagious and which can spread rapidly before symptoms appear.
6 The United States, the State of California, and the City of Los Angeles have all
7 declared emergencies. Time and again, the public has been urged—in the strongest
8 possible terms—to engage in social distancing, to maintain good hygiene, and to
9 avoid burdening a healthcare system bracing for terrible challenges. Consistent with
10 those vital policies, and to protect human life, officials in many jurisdictions
11 (including Los Angeles) have moved swiftly to release detainees and limit arrests.

12 Ignoring all that, officers from Immigration and Customs Enforcement (ICE)
13 decided last week to undertake business-as-usual raids. These raids did not serve any
14 especially compelling or notable purpose. There was no great risk to public safety;
15 no report of imminent wrongdoing. The raids were entirely routine. ICE officers
16 seized their targets, handcuffed them, transported them in small vans with several
17 others, and ultimately deposited them at Adelanto ICE Processing Center—a facility
18 notorious for crowded dorms, poor hygiene, and inadequate medical care.

19 Petitioners Pedro Bravo Castillo and Luis Vasquez Rueda were targeted for
20 such arrests on March 16 and 17. They are now detained at Adelanto. During the
21 course of their arrest and detention, and on an ongoing basis since then, ICE officials
22 have violated every principle that the United States government has articulated as
23 essential to prohibiting transmission of COVID-19. As a result, ICE officials have
24 coercively and continuously subjected Petitioners to a far greater risk of catching
25 COVID-19 than they would otherwise experience. In light of conditions at Adelanto,

1 for Childhood Arrivals (DACA) program through 2017. He was recently injured in
2 a work accident that left his eyes bleeding.

3 **B. COVID-19 is an Unprecedented Risk to Public Health**

4 COVID-19 poses a virtually unprecedented threat to public health. It is an
5 extremely contagious disease that is easily spread by close person-to-person contact,
6 and well as by respiratory droplets that can survive on surfaces for a period of time.
7 Early indications show that COVID-19 has an R0 (the number of people who can
8 get infected from a single infected person) of 2 to 3. This is a recipe for explosive,
9 exponential growth in any community that does not enact effective evidence-based
10 public health interventions. *See* Pet. Ex. A, Declaration of Ranit Mishori (Mishori
11 Decl.) ¶ 7; *see also* Pet. Ex. B, Declaration of Katherine McKenzie ¶¶ 1-2.

12 COVID-19 is also a prolific and often unpredictable killer. Severe cases of
13 COVID-19 can lead to respiratory failure, kidney failure, and death. *Id.* ¶ 9. Older
14 patients and patients with chronic underlying conditions are at a particularly high
15 risk for severe cases and complications. *Id.* But even the young and otherwise
16 healthy can succumb to the disease unpredictably.¹ According to the most recent
17 studies, the fatality rate of people infected with COVID-19 is about ten times higher
18 than a severe seasonal influenza, and even highly effective health care systems have
19 quickly had hospital capacity overrun by outbreaks of COVID-19. *Id.* Where such
20 shortages occur, lifesaving interventions such as ventilators must be rationed,
21 leading to additional deaths.²

22
23 ¹ County of Los Angeles Public Health, *Los Angeles County Announces Three New Deaths Related to 2019 Novel*
24 *Coronavirus (COVID-19)—128 New Cases of Confirmed COVID-19 in Los Angeles County* (Mar. 24, 2020),
25 available at <http://publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2280> (noting the
26 confirmed death of “a youth under the age of 18”); Pam Belluck, *Younger Adults Make Up Big Portion of*
27 *Coronavirus Hospitalizations in U.S.*, N.Y. Times (Mar. 18, 2020), available at
28 <https://www.nytimes.com/2020/03/18/health/coronavirus-young-people.html>.

² Suzy Khimm, *Who gets a ventilator? Hospitals facing coronavirus surge are preparing for life-or-death decisions*,
NBC News (Mar. 18, 2020), <https://www.nbcnews.com/health/health-care/who-gets-ventilator-hospitals-facing-coronavirus-surge-are-preparing-life-n1162721>.

1 The Los Angeles region and California as a whole have been hit hard by
2 COVID-19, which has led Mayor Eric Garcetti, the Los Angeles County Board of
3 Supervisors, and California Governor Gavin Newsom to take some of the most
4 stringent preventative measures anywhere in the country to contain the spread of the
5 disease. As of March 25, 2020, Los Angeles County had the highest number of cases
6 of any county in the state, with 814 confirmed cases.³ A growing number of these
7 cases can be attributed to community spread of the disease and are not traceable to
8 an identifiable source of exposure.⁴ Community spread is an indicator of a
9 significant number of unknown cases throughout the community.⁵

10 Authorities repeatedly sounded the alarm about this looming crisis. The
11 World Health Organization (WHO) first characterized the outbreak of COVID-19
12 as a pandemic on March 11, 2020.⁶ President Trump formally declared a national
13 emergency in response to the virus on March 13, 2020.⁷ Since at least early March,
14 California and Los Angeles County officials have been urging citizens to practice
15 social distancing to minimize contact with others to limit potential exposure to
16 COVID-19. Governor Newsom declared a State of Emergency on March 4, 2020.⁸
17 On March 15, 2020, Mayor Eric Garcetti issued an emergency order closing all Los
18

19 ³ Los Angeles Times Staff, *Tracking the coronavirus in California*, L.A. Times (updated Mar. 23, 2020), available
20 at <https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/>.

21 ⁴ *Id.*

22 ⁵ Julia Wick, *Newsletter: What 'community spread' means for the coronavirus*, L.A. Times (Feb. 27, 2020),
available at <https://www.latimes.com/california/story/2020-02-27/coronavirus-california-newsletter>.

23 ⁶ Tedros Adhanom Ghebreyesus, *WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020* (Mar. 11, 2020), available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>.

24 ⁷ Donald J. Trump, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

25 ⁸ Office of Governor Gavin Newsom, *Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19* (Mar. 4, 2020), available at <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/>.

1 Angeles bars, nightclubs, restaurants (with the exception of takeout and delivery),
2 entertainment venues, and gyms.⁹ On March 16, 2020, the Los Angeles County
3 Department of Public Health banned gatherings of 50 or more people.¹⁰ Since last
4 week, all Californians have been under orders from California Governor Gavin
5 Newsom to stay in their homes as much as possible.¹¹

6 Detention facilities, recognizing this threat, have taken similarly dramatic
7 measures. Over the weekend of March 14 and 15, 2020, the Los Angeles County
8 Sheriff released over 600 inmates from jail in order to prevent the spread of the
9 outbreak.¹² Over 1,700 more have been released since.¹³ Other jails, prisons, and
10 detention facilities in California have followed suit—demonstrating a widespread
11 judgment by law enforcement officials that ordinary government justifications for
12 detention are decisively outweighed by the threat to human life and public health
13 posed by continued detention of many individuals under these circumstances.¹⁴

14 **C. Meanwhile, ICE continued routine raids, ensnaring Petitioners**

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16
17 ⁹ Alex Wigglesworth et. al., *L.A. limits restaurants to takeout and delivery, closes gyms, entertainment sites over coronavirus*, L.A. Times (Mar. 15, 2020), available at <https://www.latimes.com/california/story/2020-03-15/la-me-coronavirus-california-news>.

18 ¹⁰ County of Los Angeles Department of Public Health, *Health Officer Order for the Control of Covid-19* (Mar. 16, 2020), available at <https://ca-times.brightspotcdn.com/4a/61/4577b422477f8d912563ff0a8725/2020-03-16-los-angeles-county-coronavirus-order.pdf>.

19 ¹¹ Tom Arango & Jill Cowan, *Gov. Gavin Newsom of California Orders Californians to Stay Home*, N.Y. Times (Mar. 19, 2020), available at <https://www.nytimes.com/2020/03/19/us/California-stay-at-home-order-virus.html>.

20 ¹² Alene Tchekmedyan, Paige St. John, & Matt Hamilton, *L.A. County releasing some inmates from jail to combat coronavirus*, L.A. Times (Mar. 16, 2020), available at <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>.

21 ¹³ Marissa Wenzke, *1,700 jail inmates in L.A. County released over coronavirus concerns, sheriff says*, KTLA 5 (Mar. 24, 2020), available at <https://ktla.com/news/local-news/1700-jail-inmates-in-l-a-county-released-over-coronavirus-concerns-sheriff-says>.

22 ¹⁴ Teri Figueroa & Karen Kucher, *Jails to release some inmates, adjust booking criteria amid coronavirus concerns* (Mar. 16, 2020), available at <https://www.sandiegouniontribune.com/news/public-safety/story/2020-03-16/jails-to-release-some-inmates-adjust-booking-criteria-amid-coronavirus-concerns>; Tony Saavedra & Scott Schwebke, *Early release and other precautions taken at Southern California jails wary of coronavirus* (Mar. 19, 2020), available at <https://www.oregister.com/2020/03/19/early-release-and-other-precautions-taken-at-southern-california-jails-wary-of-coronavirus/>.

1 In the face of this rapidly unfolding public health crisis, ICE agents spent
2 March 16 and March 17 conducting “business as usual” raids around the Los
3 Angeles area, with a reporter in tow.¹⁵ Their raids brought teams of ICE agents to
4 Petitioners’ doorsteps, even as government officials at all levels were issuing
5 increasingly dire guidance about the importance of socially distancing themselves.

6 On March 16, 2020, ICE officers arrested Mr. Bravo in front of his home,
7 repeatedly made physical contact with him, and held him in enclosed spaces—a car,
8 a van, small rooms—with other arrestees and officers en route to Adelanto Detention
9 Center. Officers took no precautions to avoid spreading the virus.

10 On March 17, 2020, ICE officers arrested Mr. Vazquez at his apartment,
11 handcuffed him, and transported him to the Los Angeles ICE Field Office and then
12 to Adelanto Detention Center. During his arrest and transport, officers repeatedly
13 touched him and confined him in a van with seven other arrestees for an hour and a
14 half. They and at least a dozen other new people from a community actively fighting
15 a COVID-19 outbreak were deposited into one of the most overcrowded
16 immigration detention facilities in the country.

17 These raids took place well after city, county, and state officials began
18 ordering residents of the Los Angeles area to stay at home. By then, the risk was
19 clear—and ICE knew it. ICE finally acknowledged the obvious on March 18, 2020,
20 announcing that it would scale back immigration enforcement at least to some
21 degree.¹⁶ But this change came too late to keep Petitioners out of harm’s way.

23 ¹⁵ Brittny Mejia, *California coronavirus lockdown: ICE agents make arrests*, L.A. Times (Mar. 17, 2020),
24 [https://www.latimes.com/california/story/2020-03-17/for-ice-agents-its-business-as-unusual-day-after-sweeping-](https://www.latimes.com/california/story/2020-03-17/for-ice-agents-its-business-as-unusual-day-after-sweeping-coronavirus-order)
[coronavirus-order](https://www.latimes.com/california/story/2020-03-17/for-ice-agents-its-business-as-unusual-day-after-sweeping-coronavirus-order).

25 ¹⁶ Brittny Mejia, *Facing criticism, ICE will reduce enforcement actions amid coronavirus pandemic*, L.A. Times
26 (Mar. 18, 2020), available at [https://www.latimes.com/california/story/2020-03-18/ice-will-reduce-enforcement-](https://www.latimes.com/california/story/2020-03-18/ice-will-reduce-enforcement-actions-coronavirus?)
[actions-coronavirus?](https://www.latimes.com/california/story/2020-03-18/ice-will-reduce-enforcement-actions-coronavirus?).

1 **D. Respondents Subjected Petitioners to a High Risk of Exposure to**
2 **COVID-19 During Arrest and Detention**

3 When ICE agents arrested Petitioners in the midst of this rapidly unfolding
4 crisis, they made an affirmative choice to subject Petitioners to an unconscionable
5 risk of contracting the virus.

6 Conducting immigration raids in the midst of this pandemic severely
7 endangers the health of detainees and the general public. Mishori Decl. ¶¶ 36-43.
8 According to infectious disease specialist Dr. Ranit Mishori, an expert on issues of
9 public health among migrants and those in carceral systems, ICE officers who
10 physically touch people in close contact without masks or gloves are ignoring current
11 CDC guidelines. *Id.* ¶ 40. And the result of raids is to bring numerous unrelated
12 individuals into ICE vehicles, holding facilities, processing centers, and detention
13 centers. Any one of these individuals could have been infected by asymptomatic
14 community transmission of COVID-19 prior to their arrest, and thus could be
15 spreading the disease to many others. *Id.* ¶ 39. Raids expose healthy individuals
16 who are detained to a far more dangerous situation than they would experience if
17 they were left free to follow the shelter-in-place advisories currently in place in their
18 home communities. *Id.* ¶ 43.

19 Nevertheless, ICE conducted the raids without taking precautions that could
20 have helped protect Petitioners from exposure to COVID-19. On Monday, March
21 16, 2020, at approximately 6 a.m., Mr. Bravo left his home to get into his truck to
22 sell recycled scrap metal when he was approached by a group of ICE officers and
23 arrested. *See* Pet. Ex. B, Declaration of Pedro Bravo Castillo ¶¶ 3, 6. (“Bravo
24 Decl.”). During the arrest, the officers had close physical contact with Mr. Bravo.
25 Officers grabbed him, handcuffed him, and placed him in a car. Mr. Bravo could
26 feel one officer’s breath on his neck as they handcuffed him. Bravo Decl. ¶¶ 8-9.

1 ICE officers continued to subject Mr. Bravo to additional potential sources of
2 exposure throughout his arrest. The officers placed a second arrested individual in
3 the backseat of the car approximately five inches away from Mr. Bravo, and left
4 them that way for approximately an hour. *Id.* ¶ 11. At the downtown Los Angeles
5 facility, ICE officers confined Mr. Bravo to a small room with the same man and
6 two other individuals. *Id.* ¶ 12. All four individuals were then placed into a van and
7 driven approximately an hour and half to the Adelanto Detention Center. *Id.* ¶ 13.
8 The person in the seat next to Mr. Bravo was approximately one foot away for the
9 duration of the ride. *Id.* Mr. Bravo did not observe anyone clean the van, and it did
10 not smell like it had recently been cleaned. *Id.*

11 Throughout all of this, no protective steps—such as masks, hand sanitizer, or
12 temperature checks—were employed to protect any of the detainees from exposure
13 to COVID-19. *Id.* ¶¶ 8-13.

14 ICE conducted further raids on March 17, 2020, which resulted in the unsafe
15 arrest and detention of at least eight individuals, including Luis Vasquez Rueda. Pet.
16 Ex. C, Declaration of Luis Vasquez Rueda ¶ 2. (“Vasquez Decl.”). Two ICE officers
17 entered Mr. Vasquez’s home on Tuesday, March 17, 2020 at approximately 6:40
18 a.m. and arrested him, grabbing Mr. Vasquez by the arm and shoulder in the process.
19 Vasquez Decl. ¶¶ 12-13. The officers were not wearing masks. They were in such
20 close contact with Mr. Vasquez that he could feel the officers’ breath on him. *Id.* ¶
21 13. As the officers handcuffed Mr. Vasquez outside his home, one of them asked
22 him if he had COVID-19. *Id.* Mr. Vasquez responded “no,” but no officers ever
23 checked his temperature, or gave him protective equipment such as a mask, gloves,
24 or hand sanitizer at any point during his arrest. *Id.* ¶¶ 13, 15. After he was
25 handcuffed, Mr. Vasquez was placed in a car with an another officer. *Id.* ¶¶ 14-15.

1 On the way to a holding facility in downtown Los Angeles, the officer stopped
2 to adjust Mr. Vasquez's handcuffs, touching him on his hands and wrists to move
3 his arms from behind his back to the front of his body. *Id.* ¶ 16. As when Mr.
4 Vasquez was first handcuffed, the officer was not wearing a mask and was in close
5 physical proximity to Mr. Vasquez. *Id.* At times, Mr. Vasquez could feel the
6 officer's breath on his face. *Id.* At the facility, Mr. Vasquez was held in a room
7 with seven other people, where there was not enough physical space for all eight to
8 be six feet away from one another at all times. *Id.* ¶ 17. Nobody in the room was
9 offered masks, gloves, or hand sanitizer. *Id.* Mr. Vasquez heard some of the people
10 sharing his room coughing at various points throughout the nine hours he was held
11 there. *Id.* ¶ 18.

12 A new officer from the facility brought Mr. Vasquez and the other seven
13 people in the room breakfast and lunch, without wearing a mask. *Id.* At
14 approximately 3 p.m., new officers arrived and again handcuffed and shackled Mr.
15 Vasquez, touching him on the hands, wrists, and ankles. *Id.* ¶ 19. Once again, the
16 officer who touched Mr. Vasquez was not wearing a mask and was in close physical
17 proximity, at some points directly face to face. *Id.* The new officers directed Mr.
18 Vasquez and the seven other people he was detained with to a van with three rows
19 of seats. *Id.* ¶ 20. Nobody provided Mr. Vasquez and the other detainees masks or
20 gloves. *Id.* Mr. Vasquez did not see anyone disinfect the van, nor did it smell of
21 disinfectant or cleaning supplies. *Id.* Two new officers drove for approximately two
22 hours from downtown Los Angeles to the Adelanto Detention Center, at which point
23 the officers again touched Mr. Vasquez while not wearing a mask to remove him
24 from the vehicle and bring him into the detention facility. *Id.* ¶ 21.

1 In carrying out these raids, ICE placed Mr. Bravo, Mr. Vasquez and at least
2 10 other individuals in the *exact* type of close-contact environment that officials had
3 explicitly and repeatedly pleaded with the public to avoid.

4 **E. Respondents Are Subjecting Petitioners to Severe Risk of Contracting**
5 **COVID-19 at Adelanto**

6 Petitioners' arrests were only the beginning of their peril. They are now
7 forcibly detained at Adelanto, a crowded immigration detention facility that has been
8 cited for its inability to give adequate medical care even in the best of times.
9 Respondents have repeatedly ensured that every precaution the rest of us have been
10 advised to take is effectively unavailable to Petitioners and their fellow detainees.

11 *1. Experts are deeply concerned about detention facilities generally and*
12 *Adelanto specifically.* According Dr. Mishori, the risk posed by COVID-19 in
13 immigration detention centers "is significantly higher than in the community, both
14 in terms of risk of exposure and transmission and harm to individuals who become
15 infected." Mishori Decl. ¶ 17. This is because Petitioners have been involuntarily
16 disarmed of basic steps they could otherwise take to protect themselves and those
17 around them.

18 First, it is not possible to practice the social distancing that officials have said
19 is essential when imprisoned in a detention center. Detention center detainees are
20 housed in tight dormitory conditions with shared sleeping, eating, and bathroom
21 spaces, which allows for the rapid spread of infectious diseases. Bathroom facilities
22 are shared, typically without disinfection between uses. Detention centers often have
23 poorly ventilated indoor spaces, which create a greater risk of rapid disease spread.
24 Living in these conditions drastically reduces a person's ability to take protective
25 measures to avoid exposure to infectious diseases such as COVID-19. *Id.* ¶ 21. This
26 is especially true for diseases such as COVID-19, which is easily transmitted person

1 to person by droplets through coughing and sneezing. *Id.* The close quarters
2 exacerbate the risk that the introduction of COVID-19 into a detention center via a
3 single person could rapidly cause it to spread. *Id.* ¶ 27.

4 Second, detention centers also typically cannot provide access to appropriate
5 disease mitigation efforts, like the practices that have been mandated by state, local,
6 and federal authorities. Frequent handwashing is rarely feasible in detention, and
7 there is limited access to resources like hand sanitizer and wipes. High touch areas
8 of facilities are rarely cleaned with the regularity that would be needed to prevent
9 the spread of disease. *Id.* ¶ 22. Moreover, detention centers rarely have medical
10 facilities or staff that are appropriately equipped to deal with an outbreak of
11 infectious disease, especially one as dangerous and contagious as COVID-19. *Id.* ¶
12 24. It is “inevitable” that detention centers in the United States will experience an
13 outbreak of COVID-19 in the near future. *Id.* ¶ 33. Cases of COVID-19 are
14 beginning to appear in detention centers across the country.¹⁷

15 Third, detention centers often lack the resources necessary to identify
16 infectious diseases like COVID-19, such as sufficient testing equipment and
17 laboratories. *Id.* ¶ 19. At a time when both California and the nation currently face
18 shortages in test kits, such resources are especially likely to be unavailable in
19 detention facilities. Officials there are flying blind.

20 These grave concerns are particularly acute at Adelanto, which holds over
21 1,600 people in detention and is run by a private, for-profit corrections company
22 called Geo Group, Inc.¹⁸ The company has a poor track record for the health and
23

24 ¹⁷ Justine Coleman, *First immigrant in ICE detention center tests positive for coronavirus*, The Hill (Mar. 24, 2020),
available at <https://thehill.com/policy/national-security/department-of-homeland-security/489312-first-immigrant-in-ice-detention>.

25 ¹⁸ U.S. Imm. and Customs Enforcement, “Dedicated and Non-Dedicated Facility List,” available at
26 <https://www.ice.gov/facility-inspections> (as of Mar. 2, 2020).

1 safety of detainees. A 2017 Report from the U.S. Department of Homeland Security
2 (DHS), Office for Civil Rights and Civil Liberties (CRCL) delivered a scathing
3 assessment of the health and safety of detainees at the facility.¹⁹ The report states
4 that “[o]verall, the medical care at the Adelanto facility is inadequate and does not
5 meet the 2011 Performance Based National Detention Standards (PBNDS)
6 standards.”²⁰ The center has been subject to numerous substantiated complaints or
7 grievances regarding delays or denial of care. “The wait time to see a provider for
8 both acute illness/injury and chronic care needs [is] often excessively long, and this
9 appears to be due in part to the inadequate staffing of providers (both physician and
10 nurse practitioner).”²¹ By 2017, two years after CRCL “clearly warned Adelanto that
11 clinical leadership was not competent and that negligent medical care was occurring
12 as a result,” the facility had not yet corrected “this critical failure.”²² A separate
13 2018 report from the DHS Office of the Inspector General found “significant health
14 and safety risks at the facility,” including “Untimely and Inadequate Detainee
15 Medical Care,”²³ indicating that the issues have persisted despite the findings and
16 recommendations of prior investigations.

17 According to Dr. Mishori, “an outbreak in the facility has the potential to
18 become a devastating public health event.” Mishori Decl. ¶ 47.

19
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21
22 ¹⁹ CRCL Report On Adelanto ICE Processing Center, available at
<https://www.documentcloud.org/documents/6278922-HQ-Part2-Copy.html> (as of Mar. 22, 2020).

23 ²⁰ CRCL Report On Adelanto ICE Processing Center, On-site Investigation Report at 1, available at
<https://www.documentcloud.org/documents/6278922-HQ-Part2-Copy.html> (as of Mar. 22, 2020).

24 ²¹ *Id.* at 4.

25 ²² *Id.* at 5.

26 ²³ Office of the Inspector General, Management Alert – Issues Requiring Action at the Adelanto ICE Processing
Center in Adelanto, California (Sept. 27, 2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>.

1 2. *Petitioners have been placed at grave and obvious risk in Adelanto.*

2 Petitioners' experiences while at Adelanto confirm the experts' fears, and make clear
3 that they face grave danger if not immediately released.

4 Petitioners' continued detention subjects them to a severe risk of contracting
5 COVID-19 from other individuals, including staff and officers, at Adelanto
6 Detention Center. Officers again had physical contact with Mr. Bravo while
7 removing him from the van upon his arrival at Adelanto. Bravo Decl. ¶ 14. He was
8 not provided with gloves or a mask, and was held with fellow detainees in a small
9 medical screening room for approximately half an hour. *Id.* While Mr. Bravo was
10 waiting in this screening room, he had his temperature taken for the first time since
11 he was brought into custody nearly twelve hours earlier. *Id.* ¶ 15. He did not have
12 a temperature, but informed the person taking it that he had felt unwell since he was
13 detained earlier that morning. *Id.*

14 During this screening process, one of the detainees (the man arrested after Mr.
15 Bravo in the morning) was moved to a different room. Later in the day, that
16 individual informed Mr. Bravo that he had been separated from the group during
17 medical screening because he had recently been sick with the flu. *Id.* ¶ 16. Mr.
18 Bravo had spent the whole day confined with this individual in different vehicles
19 and small spaces: handcuffed next to each other in the backseat of a vehicle while
20 they were brought to downtown Los Angeles, in a holding cell at the Los Angeles
21 facility, and handcuffed near each other again in a van for the hour and a half long
22 ride to Adelanto, until he was finally isolated following a screening nearly 12 hours
23 after first having contact with Mr. Bravo and ICE officers.

24 Mr. Bravo's conditions of detention put him at an unacceptably high and
25 continuing risk of contracting the disease. He is housed in a dormitory with a large
26 common space surrounded by 22 small rooms, each of which houses four people. *Id.*

1 ¶ 17. He spends his days in close proximity to upwards of 90 people, including
2 detainees and staff. *See id.* ¶¶ 19-21. Some gloves are available, but there is no
3 requirement to use them, and most people do not. *Id.* ¶ 19. Mr. Bravo's sleeping
4 arrangements consist of four people sharing bunk beds in a small room. *Id.* ¶ 18.
5 There is not space to leave six feet between people, and people bump into each other
6 when they get on and off the bunks or move around the room. Mr. Bravo has seen
7 and heard his bunkmates cough and sneeze in the room. *Id.* His 88-person dormitory
8 shares a shower space with only six open stalls. *Id.* ¶ 19. He shares an open
9 bathroom with the four people in his bunkroom. *Id.* ¶ 18. Food is served in a
10 common cafeteria area, where Mr. Bravo sits in close proximity to other people as
11 they eat. *Id.* ¶ 21. Mr. Bravo and the other detainees walk in a tight line to and from
12 the cafeteria in close proximity to one another. *Id.* Two officers are on duty at all
13 times, and they never wear masks. *Id.* ¶ 20. Mr. Bravo finds himself in far closer
14 contact with a far greater number of people today in Adelanto than he would at home
15 with his wife and stepchildren. Even more disturbing, new individuals are constantly
16 arriving.

17 Mr. Vasquez's detention likewise leaves him in much greater danger of
18 exposure to COVID-19 than he would have experienced at home. Upon entering the
19 Adelanto Detention Center, Mr. Vasquez was brought to nurse's station immediately
20 on the other side of the door through which he entered. Vasquez Decl. ¶ 22. The
21 nurse asked if he was sick, and he explained his serious work-related injuries. *Id.*
22 The nurse then took his temperature, the first time it had been taken since he came
23 into contact with ICE officers at approximately 6:40 a.m. *Id.* ¶¶ 12, 22. The nurse
24 was wearing both gloves and a mask, but did not provide a mask, gloves, hand
25 sanitizer, or directions to wash hands to Mr. Vasquez or any of the other detainees.
26 *Id.* ¶ 22.

1 Mr. Vasquez and the other seven individuals were brought into a new room
2 for processing. *Id.* ¶ 23. Another officer was present in the room, again not wearing
3 a mask. *Id.* The processing room did not allow for six feet of space between the
4 occupants. *Id.* They were in the room for approximately an hour. *Id.*

5 After processing, Mr. Vasquez was brought to his dormitory area, which was
6 under quarantine. *Id.* ¶ 24. During the quarantine, Mr. Vasquez and other occupants
7 of his dormitory were not allowed in the cafeteria or the yard and had to spend the
8 whole day in their holding area. *Id.* ¶ 25. Officers wearing gloves and masks would
9 bring food in to-go containers with plastic-wrapped utensils directly to their holding
10 area and each dorm room would get food one at a time. *Id.* These quarantine
11 procedures were in place upon Mr. Vasquez's arrival at the facility, and they
12 remained in effect through Friday, March 20, 2020. *Id.* ¶ 26. During that time, all
13 the staff members who came in and out of his holding area wore masks and gloves.
14 *Id.* On Saturday, March 21, 2020, the quarantine was lifted and the staff stopped
15 wearing masks in Mr. Vasquez's holding area. *Id.* No one informed Mr. Vasquez
16 why the quarantine was initially in effect or why it was removed. *Id.* Mr. Vasquez
17 and his fellow detainees were not even formerly informed that the quarantine was
18 lifted, but they assume this is the case since everyone is now allowed to use the
19 cafeteria and the yard area. *Id.*

20 Mr. Vasquez's holding area houses approximately 60-70 people. *Id.* ¶ 24.
21 Within the larger area, people sleep in smaller dorm rooms with four to eight people
22 each. *Id.* Mr. Vasquez shares a dorm room with six other people. *Id.* ¶ 27. The
23 seven people total in his room sleep in four bunk beds. *Id.* The room is not large
24 enough to maintain six feet distance between occupants, and Mr. Vasquez must be
25 in close proximity to his dorm mates just to move around his bed. *Id.* The seven
26 people in his dorm also share a toilet and sink that they must clean themselves. *Id.*

1 They use a spray that is shared with everyone in the holding area. *Id.* When the
2 spray runs out, they need to wait for guards to bring more in order to clean their
3 bathroom area. *Id.* There is a common area in the holding area with tables and seats
4 that is shared by all detainees. *Id.* ¶ 28.

5 Now that the quarantine is over, all 60 to 70 people from Mr. Vasquez's
6 holding area eat in the cafeteria at the same time. *Id.* ¶ 31. They line up in close
7 proximity to one another, with only a few inches of space between one another in
8 line. *Id.* Cafeteria workers do not wear masks as they serve meals. *Id.*

9 Nobody has provided Mr. Vasquez or his fellow detainees with hand sanitizer
10 or masks. *Id.* ¶ 33. Gloves are available, but there are no requirements to use them
11 and most people do not. *Id.* ¶ 28. At least one guard is supervising the holding area,
12 and multiple guards rotate through the area over the course of the day, switching
13 four or five times each day. *Id.* ¶ 30. The guards wore masks during the quarantine
14 period, but they do not presently wear masks. *Id.*

15 Mr. Vasquez is extremely concerned about his health and well-being in this
16 detention facility during the midst of the global COVID-19 pandemic. In light of
17 his ongoing work-related injuries, Mr. Vasquez is particularly concerned about the
18 lack of adequate medical care he is receiving while in detention. *Id.* ¶¶ 32-35.

19 Due to ICE's actions, Mr. Vasquez was recklessly and unnecessarily taken
20 from his home, where he had plans to visit his doctor and receive recommendations
21 for medical treatment of his serious injuries, *id.* ¶ 7, and subsequently placed in a
22 detention setting that exposes him to great risk of infection of COVID-19. The close
23 proximity he experiences every day with those in his dorm and holding area are
24 dangerous conditions at this moment of the COVID-19 outbreak. The risks of
25 introducing a new person into a detention setting, both for that person, for fellow
26 detainees, and for ICE officers and guards was widely known by experts and could

1 and should have been easily avoided if government officials had not carried out the
2 irresponsible raids that brought Mr. Vasquez into custody.

3 **F. Respondents Know the Dangers**

4 Respondents' actions show they are aware of the unprecedented threat
5 COVID-19 poses, but they have refused to extend the same protections to Mr. Bravo
6 and Mr. Vasquez that they are now extending to others. As noted, ICE relented from
7 its business-as-usual policy of continuing enforcement actions during a global
8 pandemic on March 18, 2020, just days after petitioners were detained.²⁴ And just
9 days later, on March 20, 2020, officials at Adelanto Detention Center began
10 releasing elderly detainees from custody. Pet. Ex. D., Declaration of Debbie Allen
11 ("Allen Decl.") ¶ 4. By March 22, 2020, younger individuals detained in the facility
12 were also being released. *Id.* ¶ 5. Yet Petitioners remain in Adelanto Detention
13 Center, without justification, deprived of the ability to self-isolate, denied basic
14 protective equipment, and cut off from potentially life-saving treatment if they fall
15 ill.

16 * * *

17 Petitioners filed a writ of habeas corpus and complaint for declaratory and
18 injunctive relief under the Fifth Amendment Due Process Clause on March 25, 2020.
19 Petitioners allege that they are entitled to immediate release from detention under
20 the special relationship doctrine and the state created danger doctrine, and because
21 the conditions of their detention amount to unconstitutional punishment.

22 **III. LEGAL STANDARD**

23 Petitioners are entitled to a temporary restraining order if they show: (1)
24 likely success on the merits; (2) likely irreparable harm absent preliminary relief;

25
26 ²⁴ Mejia, *supra* note 16.

1 (3) the balance of equities tips in their favor; and (4) an injunction is in the public’s
2 interest. *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105–06 (9th Cir. 2012); *Sierra*
3 *Forest Legacy v. Rey*, 577 F.3d 1015, 1021-23 (9th Cir. 2009). Plaintiffs seeking a
4 mandatory injunction must show that the law and facts clearly favor their position.
5 *See Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc). Under the
6 Ninth Circuit’s “sliding scale” approach, a stronger showing of one element may
7 offset a weaker showing of another, as long as plaintiffs “establish that irreparable
8 harm is likely.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.
9 2011).

10 IV. ARGUMENT

11 A. Petitioners are likely to succeed on the merits

12 The Due Process Clause provides that no person shall “be deprived of life,
13 liberty, or property, without due process of law.” U.S. Const. amend. V. Its
14 protections extend to “every person within the nation’s borders,” regardless of
15 immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir.
16 2014); *id.* (“Even one whose presence in this country is unlawful, involuntary, or
17 transitory is entitled to that constitutional protection.” (quoting *Mathews v. Diaz*,
18 426 U.S. 67, 77 (1976))).

19 Petitioners’ due process claim arises under the special relationship doctrine,
20 the state-created danger doctrine, and the settled prohibition on punitive
21 confinement. Petitioners are likely to succeed on the merits of these claims.

22 1. Petitioners’ state-created danger claim is likely to succeed on 23 the merits

24 Under the state-created danger doctrine, the government violates an
25 individual’s right to due process when it (1) “affirmatively place[s] [the] individual
26 in danger,” (2) by “acting with ‘deliberate indifference to [a] known or obvious

1 danger.” *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006)
2 (quoting *Munger v. City of Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000) and *L.W.*
3 *v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996)). The government affirmatively places
4 an individual in danger when it leaves “the person in a situation that [is] more
5 dangerous than the one in which [it] found him.” *Hernandez v. City of San Jose*,
6 897 F.3d 1125, 1133 (9th Cir. 2018) (quoting *Munger*, F.3d at 1086). The relevant
7 inquiry is thus whether the government’s actions “create[d] or expose[d] an
8 individual to a danger which he or she would not have otherwise faced.” *Kennedy*,
9 439 F.3d at 1061. The government acts with deliberate indifference to a known or
10 obvious danger when it “recognize[s] an unreasonable risk and actually intend[s] to
11 expose [the plaintiff] to such risks without regard to the consequences to [the
12 plaintiff].” *Hernandez*, 897 F.3d at 1135 (internal brackets omitted) (quoting *Patel*
13 *v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011)). An unreasonable risk
14 includes future harm caused by conditions of confinement. *See Helling v.*
15 *McKinney*, 509 U.S. 25, 33 (1993). Here, during a public health emergency and
16 with awareness of the risks of community transmission of COVID-19, ICE
17 deliberately conducted raids and arrested, transported, and detained Petitioners—
18 all without taking necessary precautions to protect Petitioners from transmission of
19 the virus. ICE thus acted with deliberate indifference in affirmatively exposing
20 Petitioners to a heightened risk of contracting COVID-19.

21 **a. ICE has affirmatively placed Petitioners in danger.**

22 At every stage of Petitioners’ arrest and detention, ICE officials and officers
23 have taken affirmative actions that have exposed Petitioners to a greater risk of
24 contracting COVID-19 than they would have otherwise faced.

25 First, ICE officials made an affirmative enforcement decision to conduct the
26 raids, which were intended to lead to the arrest and detention of individuals such as

1 Petitioners, amidst government-mandated restrictions aimed at reducing
2 community transmission of COVID-19 through social distancing. From the
3 moment officers arrived at Petitioners' doors, Petitioners were actively deprived of
4 the ability to take these basic self-protective measures.

5 Second, ICE continued to actively disregard the threat of the pandemic while
6 it processed Petitioners through the system using effectively the same procedures it
7 would have on a normal day. ICE officers conducted Petitioners' arrests,
8 transported Petitioners to a federal building, and held Petitioners there for extended
9 periods without taking necessary and basic precautions to protect Petitioners from
10 COVID-19 transmission. Preventive measures such as social distancing (*i.e.*,
11 maintaining physical separation from other persons of at least six feet), washing
12 hands or using hand sanitizer, wearing protective apparel (such as masks and
13 gloves), and disinfecting hard surfaces (such as police car seats and handcuffs) are
14 necessary to reduce the risk of COVID-19 transmission. Mishori Decl. ¶ 40.

15 During both arrests, ICE officers who were not wearing masks physically grabbed
16 Petitioners, placed them in handcuffs and/or ankle chains, and put them into
17 vehicles. Bravo Decl. ¶¶ 8, 10; Vasquez Decl. ¶¶ 13-14, 16. The officers did not
18 offer Petitioners masks, gloves, or hand sanitizer, nor did they take Petitioners'
19 temperatures or ask any detailed questions about their health. Bravo Decl. ¶ 9;
20 Vasquez Decl. ¶ 15. Following Mr. Bravo's arrest, ICE officers arrested another
21 individual, whom they handcuffed and placed in the car next to Mr. Bravo, and
22 whom Mr. Bravo subsequently learned had recently experienced flu-like
23 symptoms, which are consistent with COVID-19 symptoms. Mishori Decl. ¶ 13.

24 While transporting Petitioners to a federal building in downtown Los Angeles,
25 Petitioners sat in close proximity to ICE officers, and Mr. Bravo sat next to the
26 recently-ill individual. Bravo Decl. ¶ 11; Vasquez Decl. ¶ 15. When Mr. Bravo

1 arrived at the federal building, ICE officers who were not wearing masks took him
2 and the other individual out of the car, holding onto their arms. Bravo Decl. ¶ 12.
3 The officers brought Mr. Bravo and the other individual to a room, where they
4 were held with two other individuals for over nine hours. *Id.* Mr. Bravo was thus
5 confined for an extended period with an individual who had recently experienced
6 symptoms of COVID-19. Similarly, ICE officers confined Mr. Vasquez in a room
7 with seven other people—some of whom were coughing—for nine hours.
8 Vasquez Decl. ¶¶ 17-18. The room was too small for Mr. Vasquez and the other
9 detainees to remain six feet apart from one another. *Id.* ¶ 17.

10 ICE continued to endanger Petitioners by ignoring necessary precautions
11 when it transported them to the Adelanto Detention Facility. To transport
12 Petitioners to the detention center, ICE officers who were not wearing masks
13 handcuffed and chained Petitioners at their waists and feet, and brought them to a
14 van. Bravo Decl. ¶ 13; Vasquez Decl. ¶ 19. The officers did not provide masks or
15 gloves to Petitioners or the individuals with whom they had been confined. Bravo
16 Decl. ¶ 13; Vasquez Decl. ¶ 20. During the transports, Mr. Bravo sat in close
17 proximity to three other detainees and two ICE officers, and Mr. Vasquez sat in
18 close proximity to seven other detainees and two ICE officers. Bravo Decl. ¶ 13;
19 Vasquez Decl. ¶¶ 20-21. Upon arrival at the detention center, ICE officers
20 physically removed Petitioners from the vehicles. Bravo Decl. ¶ 14; Vasquez
21 Decl. ¶ 21. The officers placed Petitioners, together with the other detainees, into a
22 small room for medical screening. Bravo Decl. ¶ 14; Vasquez Decl. ¶ 21. The
23 ICE employee who conducted Mr. Bravo's medical screening did not wear a mask.
24 Bravo Decl. ¶ 15.

25 The ICE officers' actions in the course of arresting Petitioners, transporting
26 them to the federal building, holding them there, and then transporting them to

1 Adelanto affirmatively placed Petitioners in danger by exposing them to a greater
2 risk of contracting COVID-19 than they would have faced had they not been
3 arrested and detained. Mishori Decl. ¶ 37. The ICE officers not only failed to take
4 many necessary precautions themselves, but they also prevented Petitioners and the
5 individuals with whom they were detained—at least one of whom had recently
6 experienced symptoms consistent with COVID-19—from taking such precautions.
7 *Id.* ¶ 40 (ICE’s actions “blatantly ignore[d] current CDC guidelines to minimize
8 any exposure at this critical moment in the pandemic”); *see also Munger*, 227 F.3d
9 at 1086 (“In examining whether an officer affirmatively places an individual in
10 danger, we do not look solely to the agency of the individual, nor do we rest our
11 opinion on what options may or may not have been available to the individual.
12 Instead, we examine whether the officers left the person in a situation that was
13 more dangerous than the one in which they found him.”).

14 Finally, ICE is presently detaining Petitioners in conditions that expose them
15 to unacceptable risks from COVID-19, far greater than they would face if left in
16 their homes. Mishori Decl. ¶¶ 44-52. As the virus continues its potentially
17 exponential spread, it is all but certain to find its way into Adelanto, if it has not
18 already. There it will find a tinderbox of involuntary crowding and
19 underpreparedness.

20 ICE has placed Mr. Bravo in a dormitory of about 88 people, and Mr.
21 Vasquez in a dormitory of about 60 to 70 people, where all of the people share a
22 common space and shower space. Bravo Decl. ¶ 19; Vasquez Decl. ¶¶ 24, 28. ICE
23 does not provide masks or hand sanitizer to detainees, and although gloves are
24 available, many people do not wear them. Bravo Decl. ¶ 19; Vasquez Decl. ¶ 28.
25 Mr. Bravo’s dormitory is staffed by two ICE officers at all times; these officers do
26 not wear masks. Bravo Decl. ¶ 20. Similarly, although the ICE officers in Mr.

1 Vasquez’s dormitory wore masks while the dormitory was under quarantine, they
2 no longer do so. Vasquez Decl. ¶ 29. At mealtimes, Petitioners are forced into
3 close proximity with other detainees when they line up to receive their meals (from
4 ICE employees who do not wear masks) and eat at communal tables. Bravo Decl.
5 ¶ 21; Vasquez Decl. ¶ 30. At night, Mr. Bravo shares a small room with three
6 other people, and Mr. Vasquez shares a room with six other people, sleeping in
7 bunkbeds less than six feet apart. Bravo Decl. ¶ 18; Vasquez Decl. ¶ 27. Each
8 Petitioner shares an open bathroom with the other detainees in his room. Bravo
9 Decl. ¶ 18; Vasquez Decl. ¶ 27.

10 ICE’s affirmative detention of Petitioners in these conditions places them at
11 heightened risk of contracting COVID-19. Mishori Decl. ¶ 49 (“The living
12 conditions are not amenable to the necessary social distancing and hygiene
13 measures that would be necessary to contain or minimize spread of the virus[.]”);
14 *see also Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 888 (E.D. Cal. 2009)
15 (recognizing that crowding in prisons makes them “vulnerable to outbreaks of
16 communicable disease”). ICE’s confinement of Petitioners in close proximity with
17 other detainees and ICE officers renders Petitioners entirely unable to practice
18 social distancing, the primary measure recommended to avoid transmission of the
19 virus. Moreover, ICE’s actions have prevented Petitioners from taking other
20 preventive measures to reduce their risk of infection, such as wearing masks or
21 using hand sanitizer. Nor have ICE officers at the detention center taken necessary
22 precautions to avoid transmitting the virus to detainees. ICE’s detention of
23 Petitioners thus continues to expose them to a greater risk of contracting COVID-
24 19 than they would face if they were able to remain in their homes and take
25 precautions to protect themselves.

1 If that comes to pass, or if anyone else at Adelanto contracts COVID-19, the
2 consequences will be dire for *everyone* at the facility (including Petitioners).
3 Detention facilities in general are not appropriately equipped to deal with an
4 outbreak of a disease as dangerous and contagious as COVID-19. Mishori Decl. ¶
5 24. Adelanto in particular has been cited for the inadequacy of its medical
6 facilities. *See* CRCL Report On Adelanto ICE Processing Center, On-site
7 Investigation Report at 1, 4-5. As a result, the risks of contracting COVID-19 are
8 all the more severe (and potentially fatal) for those in Petitioners’ position.

9 **b. ICE acted with deliberate indifference to a known or**
10 **obvious danger.**

11 The second prong of the state-created danger doctrine requires that the
12 government act with “deliberate indifference to a known or obvious danger,” *i.e.*,
13 that it “recognize[] an unreasonable risk and actually intend[] to expose [the
14 plaintiff] to such risks without regard to the consequences to [the plaintiff].”
15 *Kennedy*, 439 F.3d at 1062 (internal brackets omitted) (quoting *Grubbs*, 92 F.3d at
16 900); *Hernandez*, 897 F.3d at 1135 (internal brackets omitted) (quoting *Patel*, 648
17 F.3d at 974).

18 Here, community transmission of COVID-19 was a “known or obvious
19 danger” at the time ICE officials decided to undertake the raids in which ICE
20 officers arrested Petitioners. Mishori Decl. ¶¶ 35, 39. As of March 16, 2020—the
21 day of the raids—the federal government had declared a national emergency due to
22 the COVID-19 outbreak, California and Los Angeles had been in a state of
23 emergency for almost two weeks, the Los Angeles Unified School District had
24 ordered the closure of all of its campuses, and the mayor of Los Angeles had
25 placed significant restrictions on business establishments in order to slow
26

1 community transmission of the virus.²⁵ A Los Angeles Times article describing
 2 the raids made plain that ICE officials and officers were well-aware of the
 3 unreasonable and immediate risk of community transmission of COVID-19.
 4 Brittny Mejia, *California coronavirus lockdown: ICE agents make arrests*, L.A.
 5 Times (Mar. 17, 2020), [https://www.latimes.com/california/story/2020-03-17/for-](https://www.latimes.com/california/story/2020-03-17/for-ice-agents-its-business-as-unusual-day-after-sweeping-coronavirus-order)
 6 [ice-agents-its-business-as-unusual-day-after-sweeping-coronavirus-order](https://www.latimes.com/california/story/2020-03-17/for-ice-agents-its-business-as-unusual-day-after-sweeping-coronavirus-order)
 7 (describing COVID-19’s “effects across the agency,” including ICE officials’
 8 concerns about “limiting contact with the public” and cancellations of events that
 9 ICE officers were to attend); *see also Hernandez*, 897 F.3d at 1137 (officers’
 10 actions with knowledge of “immediate danger” of risk constitute deliberate
 11 indifference).

12 With full awareness of the significant risks that close contact and increased
 13 exposure to others posed to Petitioners, ICE officials deliberately chose to proceed
 14 with the raids and the detention of Petitioners. By placing Petitioners in close
 15 contact with others during the raids and housing them in a crowded facility with a
 16 history of insufficient medical care, ICE officials clearly acted with deliberate
 17 indifference to the risk of COVID-19 transmission. *See Hernandez v. Cty. of*
 18 *Monterey*, 110 F. Supp. 3d 929, 942–43 (N.D. Cal. 2015) (finding fact that jail’s
 19 practices regarding tuberculosis did not conform to the standards of the CDC and
 20

21
 22 ²⁵ Proclamation No. 9994, 85 F.R. 15,337 (Mar. 18, 2020) (proclamation issued Mar. 13, 2020); Governor Gavin
 23 Newsom, Proclamation of a State of Emergency (Mar. 4, 2020), available at [https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)
 24 [content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf); Office of Mayor Eric Garcetti, *Mayor Garcetti*
 25 *Strengthens Readiness Against Coronavirus by Declaring Local Emergency* (Mar. 4, 2020), [https://](https://www.lacity.org/highlights/mayor-garcetti-strengthens-readiness-against-coronavirus-declaring-local-emergency)
 26 www.lacity.org/highlights/mayor-garcetti-strengthens-readiness-against-coronavirus-declaring-local-emergency;
 27 Howard Blume et al., *Los Angeles Unified district to close all schools* (Mar. 13, 2020), [https://www.latimes.com/](https://www.latimes.com/california/story/2020-03-13/los-angeles-schools-closure-possible-cornavirus)
 28 [california/story/2020-03-13/los-angeles-schools-closure-possible-cornavirus](https://www.latimes.com/california/story/2020-03-13/los-angeles-schools-closure-possible-cornavirus); Mayor Eric Garcetti, Public Order
 Under City of Los Angeles Emergency Authority (Mar. 15, 2020), available at [http://lamayor.org/sites/g/files/](http://lamayor.org/sites/g/files/wph446/f/article/files/Mayor%20Garcetti%20Emergency%20Order%20-%20March%2015%202020.pdf)
[wph446/f/article/files/Mayor%20Garcetti%20Emergency%20Order%20-%20March%2015%202020.pdf](http://lamayor.org/sites/g/files/wph446/f/article/files/Mayor%20Garcetti%20Emergency%20Order%20-%20March%2015%202020.pdf).

1 others to “strongly indicate[] deliberate indifference” and granting preliminary
2 injunction).

3 These raids were carried out as part of the federal government’s systematic
4 intensification of immigration enforcement in sanctuary cities such as Los Angeles.
5 Caitlin Dickerson et al., *‘Flood the Streets’: ICE Targets Sanctuary Cities With*
6 *Increased Surveillance* N.Y. Times (Mar. 5, 2020), [https://www.nytimes.com/](https://www.nytimes.com/2020/03/05/us/ICE-BORTAC-sanctuary-cities.html)
7 [2020/03/05/us/ICE-BORTAC-sanctuary-cities.html](https://www.nytimes.com/2020/03/05/us/ICE-BORTAC-sanctuary-cities.html). By undertaking the raids and
8 detaining Petitioners amidst the COVID-19 pandemic, ICE and its officers have
9 acted without regard for the consequences to Petitioners and with the intent to
10 instill fear in immigrant communities during a time of already heightened public
11 anxiety. Mishori Decl. ¶ 36 (“[C]onducting these raids was a reckless decision by
12 the government that unnecessarily put countless people at risk of exposure to the
13 coronavirus.”). ICE’s actions thus satisfy the second prong of the state-created
14 danger doctrine. *Cf. J.P. v. Sessions*, No. LA CV18-06081 JAK, 2019 WL
15 6723686, at *36 (C.D. Cal. Nov. 5, 2019) (federal government “‘acted with
16 deliberate indifference to a known or obvious danger’ by implementing the [family
17 separation] policy with awareness of the potential harm it would cause and
18 intending to use that as a basis to deter future attempts by those similarly situated
19 to enter the United States” (internal brackets omitted) (quoting *Hernandez*, 897
20 F.3d at 1137, and *Kennedy*, 439 F.3d at 1062)).

21 **2. Petitioners’ special relationship claim is likely to succeed**
22 **on the merits**

23 When the government takes custody of a person, the government creates a
24 “special relationship” that entails assuming responsibility for the person’s safety and
25 well-being. *See, e.g., Henry A. v. Willden*, 678 F.3d 991, 998 (9th Cir. 2011). The
26 government violates the Due Process Clause when it takes custody of a person “and

1 at the same time fails to provide for his basic human needs – e.g., food, clothing,
2 shelter, *medical care*, and *reasonable safety*.” *DeShaney v. Winnebago Cty. Dep’t*
3 *of Soc. Servs.*, 489 U.S. 189, 200 (1989) (emphasis added). Due process for civil
4 detainees, like those held in immigration facilities, “requires more than minimal
5 necessities.” *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004); *Unknown Parties*
6 *v. Nielsen*, No. CV-15-00250-TUC-DCB, 2020 WL 813774, at *3 (D. Ariz. Feb. 19,
7 2020).

8 To state a claim under the special relationship doctrine, a plaintiff must show:
9 “(i) the defendant made an intentional decision with respect to the conditions under
10 which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial
11 risk of suffering serious harm; (iii) the defendant did not take reasonable available
12 measures to abate the risk, even though a reasonable official in the circumstances
13 would have appreciated the high degree of involved . . . ; and (iv) by not taking such
14 measures, the defendant caused the plaintiff’s injuries.” *Gordon v. Cty. of Orange*,
15 888 F.3d 1118, 1124-25 (9th Cir. 2018); *see also Martinez v. Geo Grp., Inc.*, No.
16 EDCV 18-1125-R, 2019 WL 3758026, at *3 (C.D. Cal. Apr. 30, 2019) (applying
17 *Gordon* to claims about Adelanto Detention Center’s failure to attend to a detainee’s
18 medical needs); *J.P.*, 2019 WL 6723686, at *32-33 (applying *Gordon* to claims
19 about conditions of confinement in civil immigration detention). The government’s
20 conduct with respect to reasonable available measures must be “objectively
21 unreasonable, a test that will necessarily turn on the facts and circumstances of each
22 particular case.” *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016)
23 (quoting *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473-74 (2015)).

24 When Respondents arrested and detained Petitioners, they created a special
25 relationship that required them to provide Petitioners with medical care and
26 reasonable safety. Respondents made the intentional decisions to conduct

1 immigration enforcement raids against Petitioners during a pandemic with local
2 community spread, placing Petitioners at continued risk of suffering serious harm.
3 *See Parsons v. Ryan*, 754 F.3d 657, 679 (9th Cir. 2014) (recognizing that inadequate
4 health and safety measures at a detention center cause cognizable harm to every
5 inmate). Petitioners were subjected to close physical contact with ICE officers,
6 Adelanto staff, and other detainees without access to precautionary measures
7 mandated by experts, government officials, and the CDC to protect people from
8 infection. Respondents now continue to hold Petitioners in close-proximity in
9 detention facilities while releasing others back to their communities. According to
10 experts, as well as government officials and the CDC, these conditions put
11 Petitioners at far greater risk of exposure to COVID-19, which subjects them to a
12 risk of serious illness and death—a risk that is in turn further exacerbated by being
13 detained in a facility with a history of poor and inadequate medical care. *See Brown*
14 *v. Plata*, 563 U.S. 493, 532 (2011) (observing that “all prisoners [] are at risk so long
15 as the State continues to provide inadequate care,” and those who are not yet sick
16 are not “remote bystanders”—they are the “next potential victims”). Even under the
17 Eighth Amendment analysis applicable to prisoners who have been convicted of a
18 crime, leaving detainees without the assurance that their health and safety will be
19 adequately attended to causes each and every one of them a cognizable harm.
20 *Parsons*, 754 F.3d at 679. That must be even more true for civil detainees like
21 Petitioners.

22 Respondents did not take reasonable available measures to abate the risk of
23 exposure to COVID-19. Given the extensive guidance from federal, state, and local
24 officials, the most reasonable and effective measure to abate the risk for Petitioners
25 would have been to delay these non-urgent enforcement raids until after
26 management of the pandemic. At minimum, precautionary measures recommended

1 by experts during arrests and detention could have been taken, and Respondents
2 could have provided necessary supplies and space for Petitioners to avoid exposure
3 while detained. The failure to take these measures was objectively unreasonable in
4 light of the local, state, and federal guidance on the pandemic that was publicized at
5 the time of the raids and throughout Petitioners' detention.

6 By failing to take these measures, Respondents subjected and continue to
7 subject Petitioners to a substantial and increased risk of contracting COVID-19, and
8 becoming seriously ill as a result. *See Xochihua-Jaimes*, No. 18-71460, at *1.
9 (sua sponte ordering release of a detainee in light of the current "rapidly escalating
10 public health crisis, which public health authorities predict will especially impact
11 immigration detention centers").

12 **3. Petitioners' punitive detention claim is likely to succeed on**
13 **the merits**

14 Petitioners' due process claim is also likely to succeed under a punitive
15 detention theory. At the same time as the federal government is imploring all
16 Americans to take drastic measures to protect themselves and their loved ones from
17 the life-threatening effects of COVID-19, Respondents have prevented Petitioners
18 from taking even basic self-protective steps, placing them at a severely increased
19 risk of contracting the virus. The endangering of Petitioners' lives and well-being—
20 as well as that of surrounding communities—is excessive in relation to any
21 legitimate governmental objective here and thus violates the Constitution.

22 When the federal government detains an immigrant, the immigrant is
23 considered a civil detainee, even if they have a prior criminal conviction. *See*
24 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As civil detainees, immigrants are
25 afforded greater protection by the Fifth Amendment's Due Process Clause than
26 convicted prisoners or even pretrial criminal detainees. Unlike a convicted prisoner,

1 who may be punished as long as the punishment is not “cruel and unusual,” *Pierce*
2 *v. Cty. of Orange*, 526 F.3d 1190, 1205 (9th Cir. 2008), a civil detainee may not be
3 punished at all prior to an adjudication of guilt. *Bell v. Wolfish*, 441 U.S. 520, 535
4 (1970); *Jones*, 393 F.3d at 932. And civil immigration detainees “must be afforded
5 more considerate treatment” than criminal pretrial detainees. *See Unknown Parties*,
6 2020 WL 813774, at *12 (citing *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982)).

7 To establish a violation of the Due Process Clause, Petitioners need not show
8 that Respondents intended to subject them to punishment. *See Pierce*, 526 F.3d at
9 1205. Under the standard that governs here, a restriction is “punitive” if it is
10 “excessive in relation to [its non-punitive purpose]’ or is ‘employed to achieve
11 objectives that could be accomplished in so many alternative and less harsh
12 methods.’” *Jones*, 393 F.3d at 933-34 (alteration in original) (quoting *Demery v.*
13 *Arpaio*, 378 F.3d 1020, 1028 (9th Cir. 2004); *Hallstrom v. City of Garden City*, 991
14 F.2d 1473, 1484 (9th Cir. 1993)). A presumption of punishment arises when a civil
15 detainee is held in similar or more restrictive conditions than his criminal
16 counterparts. *See Jones*, 393 F.3d at 932; *see also Torres v. U.S. Dep’t of Homeland*
17 *Sec.*, 411 F. Supp. 3d 1036, 1065 (C.D. Cal. 2019) (finding a presumption of
18 punitiveness where plaintiffs “allege[d] conditions at Adelanto and policies by ICE
19 that are not ‘more considerate’ than at criminal facilities”). To rebut this
20 presumption, the government must show that its actions are not excessive in relation
21 to a legitimate, nonpunitive purpose. *King v. Cty. of Los Angeles*, 885 F.3d 548, 558
22 (9th Cir. 2018).

23 Even assuming Respondents have a legitimate, nonpunitive interest in
24 continuing to enforce the immigration laws, the arrest and detainment of Petitioners
25 is excessive in relation to that interest. A presumption of punishment arises because
26 Petitioners are subjected to worse conditions than many convicted prisoners. Across

1 the country—including in the Central District of California—decisionmakers are
2 releasing convicted prisoners to prevent them and surrounding communities from
3 suffering bodily harm or death from COVID-19. *See US Jails Begin Releasing*
4 *Prisoners to Stem Covid-19 Infections*, BBC News (Mar. 19, 2020),
5 <https://www.bbc.com/news/world-us-canada-51947802>; Shelly Insheiwat, *L.A.*
6 *County Releases 1,700 Inmates to Lessen Jail Population Due to COVID-19 Crisis*,
7 Fox 11 L.A. (Mar. 24, 2020), [https://www.foxla.com/news/l-a-county-releases-](https://www.foxla.com/news/l-a-county-releases-1700-inmates-to-lessen-jail-population-due-to-covid-19-crisis)
8 [1700-inmates-to-lessen-jail-population-due-to-covid-19-crisis](https://www.foxla.com/news/l-a-county-releases-1700-inmates-to-lessen-jail-population-due-to-covid-19-crisis).

9 To rebut the presumption of punitiveness, a “bare assertion of the requirement
10 of keeping [] detainees . . . will not suffice.” *Torres*, 411 F. Supp. 3d at 1065
11 (alteration in original) (quoting *Jones*, 393 F.3d at 934) (rejecting defendants’
12 proposed justification that they were “required by statute to maintain a secure facility
13 for certain immigrants, pending the outcome of their proceedings”). But even if
14 Respondents could articulate a legitimate, nonpunitive interest, endangering the
15 lives and wellbeing of Petitioners and surrounding communities is excessive in
16 relation to that interest. Detention itself exposes Petitioners to an unacceptable risk
17 of contracting COVID-19 and suffering bodily harm or death as a result.
18 Respondents have confined Petitioners in close quarters with many other
19 individuals, any of whom could already be infected even if asymptomatic. The virus
20 spreads rapidly in close quarters, often severely infecting not only older individuals
21 or those with preexisting conditions but also younger, previously healthy people.
22 Moreover, if COVID-19 begins to spread in Adelanto, there is no indication that the
23 facility has adequate equipment, staff, or resources to treat large numbers of severely
24 ill detainees.

25 Since arresting Petitioners, ICE has subverted its ordinary immigration
26 enforcement procedures by curtailing its raids and releasing detainees in order to

1 stop the spread of COVID-19. In ICE’s own view, the deadly effects of COVID-19
2 outweigh the usual imperatives of immigration enforcement. And no risk to the
3 community justified the arrest and detention of these particular individuals under
4 these conditions. Mr. Bravo and Mr. Vasquez have been in the United States for
5 approximately 28 and 18 years, respectively, and each has only one minor, years-old
6 criminal incident to his name.

7 For these reasons, Petitioners are likely to succeed on the merits of their claim
8 that their arrests and detention violate the Fifth Amendment Due Process Clause.

9 **B. Petitioners have suffered, and will continue to suffer, irreparable harm**

10 Petitioners have experienced, and continue to experience, irreparable harm as
11 the COVID-19 pandemic continues to surge. “It is well established that the
12 deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”
13 *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v.*
14 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). Petitioners have demonstrated that
15 ICE’s actions in conducting the raids and arresting, transporting, and detaining
16 Petitioners have violated Petitioners’ Fifth Amendment due process rights. It thus
17 “follows inexorably from [the] conclusion that the government’s current policies are
18 likely unconstitutional . . . that Plaintiffs have also carried their burden as to
19 irreparable harm.” *Id.* at 995.

20 But the injury here goes beyond the harm that generally flows from a
21 constitutional violation. The Ninth Circuit has deemed the spread of COVID-19 a
22 “rapidly escalating public health crisis” that “public health authorities predict will
23 especially impact immigration detention centers”—and, as Petitioners’ evidence
24 demonstrates, has already impacted the Adelanto Detention Facility. *Xochihua-*
25 *Jaimés*, No. 18-71460, at *1; Allen Decl. ¶¶ 4-5. Even without the extraordinary
26 strain on medical resources caused by the spreading pandemic, the Ninth Circuit has

1 recognized that persons in immigration detention suffer irreparable injury due to “the
2 subpar medical and psychiatric care in ICE detention facilities.” *Hernandez*, 872
3 F.3d at 994. This already “subpar” care has been pushed beyond its limits by the
4 COVID-19 outbreak.

5 “COVID-19 is a serious disease,” with a “fatality rate . . . about ten times
6 higher than a severe seasonal influenza, even in advanced countries with highly
7 effective health care systems.” Mishori Decl. ¶ 9. Preliminary data from China
8 demonstrate that “serious illness, sometimes resulting in death, occurs in up to 16%
9 of cases.” *Id.* By their actions in arresting Petitioners, detaining them at the Los
10 Angeles federal building, and transporting them to the federal building and
11 subsequently to the Adelanto Detention Facility—all without taking necessary
12 precautions—Defendants have already increased Petitioners’ risk of contracting
13 COVID-19. This heightened danger is exacerbated by Petitioners’ continued
14 detention at the Adelanto Detention Facility, where Defendants’ failure to take
15 necessary preventative measures and to provide adequate medical care greatly
16 increases Petitioners’ risk of infection.

17 **C. The balance of the equities and the public interest weigh decidedly in**
18 **Petitioners’ favor.**

19 Both of the remaining factors weigh overwhelmingly in favor of Petitioners.
20 By deliberately conducting immigration enforcement raids during a public health
21 crisis, the government needlessly endangered Petitioners for the sole purpose of
22 terrorizing their communities. As discussed *supra*, the government continues to
23 endanger Petitioners in their confinement, subjecting them to an unreasonably
24 heightened risk of serious illness, severe bodily harm, or death from COVID-19.
25 Whereas relief for Petitioners is literally a matter of life or death, such relief would
26 cause no harm to the government, because the government has no interest in

1 engaging in the unconstitutional immigration enforcement and detention practices to
2 which it has subjected—and continues to subject—Petitioners. *See Rodriguez v.*
3 *Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (“[Government] cannot suffer harm
4 from an injunction that merely ends an unlawful practice.”). Moreover, the
5 government’s ongoing violation of Petitioners’ constitutional rights *per se* militates
6 in favor of granting a temporary restraining order. *Ariz. Dream Act Coal. v. Brewer*,
7 757 F.3d 1053 (9th Cir. 2014) (“[B]y establishing a likelihood that Defendants’
8 policy violates the U.S. Constitution, Plaintiffs have also established that both the
9 public interest and the balance of the equities favor a preliminary injunction.”);
10 *Melendres*, 695 F.3d at 1002 (“[I]t is always in the public interest to prevent the
11 violation of a party’s constitutional rights.” (quoting *Sammartano v. First Judicial*
12 *Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002))).

13 Releasing Petitioners to a medical facility where they can be tested and
14 quarantined until results are known is also in the public interest. COVID-19 is a
15 highly contagious virus to which no person is immune. Mishori Decl. ¶ 8
16 (“[E]veryone is at risk of infection because our immune systems have never been
17 exposed to or developed protective responses against this virus.”). On average, each
18 person infected transmits the virus to two or three more people, such that a single
19 infected individual may trigger the virus’s exponential transmission. *Id.* Nor is
20 transmission limited to detainees—ICE officers, contractors, and vendors who
21 become infected with COVID-19 within the detention facility are likely to spread
22 the virus to their families and communities, resulting in widespread exposure in the
23 communities where these individuals live. *Id.* ¶¶ 18, 41-43.

24 ICE conducted the raids in which its officers arrested Petitioners during a
25 period of known community transmission of COVID-19 in the Los Angeles region.
26 *Id.* ¶¶ 35, 39. During the raids, ICE officers repeatedly violated Centers for Disease

1 Control guidelines by engaging in prolonged physical contact with Petitioners and
2 repeatedly putting Petitioners in close proximity to both the officers and other
3 detainees. Bravo Decl. ¶¶ 8-11; Vasquez Decl. ¶¶ 13-16; Mishori Decl. ¶ 40. Any
4 of these individuals—the ICE officers, the other detainees, or Petitioners—could
5 have been affected by asymptomatic community transmission of COVID-19,
6 Mishori Decl. ¶ 39, and Petitioners have not been tested for the virus. Releasing
7 Petitioners to a medical facility where they can be tested and quarantined if necessary
8 will not only reduce Petitioners’ risk of infection, but will also reduce the risk of an
9 outbreak of COVID-19 at the Adelanto Detention Facility. Such an outbreak would
10 not only “overwhelm[] the already strained health infrastructure within the facility,”
11 but would likely sweep rapidly into the surrounding communities, overburdening
12 hospitals and healthcare facilities with an influx not only of detainees, but also of
13 ICE officers, contractors, vendors, and members of the communities in which they
14 live. *Id.* ¶ 22.

15 Finally, releasing Petitioners will likely deter ICE from engaging in further
16 raids that violate the constitutional rights of immigrants like Petitioners. Such raids
17 have a chilling effect on immigrant communities, deterring community members
18 from accessing necessary healthcare services. Cessation of unconstitutional ICE
19 raids during the COVID-19 pandemic will make it more likely that community
20 members in need of healthcare will feel sufficiently secure to seek it out. The public
21 interest thus also favors provisional relief.

22 V. CONCLUSION

23 For the foregoing reasons, Petitioners’ request for a temporary restraining
24 order that secures their immediate release should be granted.

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Dated: March 25, 2020

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