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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

RAUL NOVOA, JAIME CAMPOS
FUENTES, ABDIAZIZ KARIM, and
RAMON MANCIA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

THE GEO GROUP, INC.,

Defendant.

THE GEO GROUP, INC.,

Counter-Claimant,

vs.

RAUL NOVOA, JAIME CAMPOS
FUENTES, ABDIAZIZ KARIM, and
RAMON MANCIA, individually and on
behalf of all others similarly situated,

Counter-Defendant.

Case No. 5:17-cv-02514-JGB-SHKx

Assigned to Hon. Jesus G. Bernal

**DEFENDANT THE GEO
GROUP, INC.'S OPPOSITION
TO PLAINTIFFS' *EX PARTE*
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER REQUIRING COVID-19
PREVENTION MEASURES FOR
NATIONWIDE HUSP CLASS**

Hearing Date:
None Set

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I. INTRODUCTION

Plaintiffs’ application for a Temporary Restraining Order (“TRO”) on an emergency basis does not seek relief related to COVID-19. Rather, it uses the pandemic, and the justifiable unease throughout the country, to make an end run around the remaining process in the current case and skip to the merits of whether GEO’s policies relating to detainees’ cleanup of their living areas constitutes forced labor under the Trafficking Victims Protection Act (“TVPA”) 18 U.S.C. § 1589 *et. seq.* This regrettable exploitation of the COVID-19 crisis facing the nation should not be tolerated by this Court.

Plaintiffs provide absolutely *no* evidence that detainees are at a higher risk of contracting COVID-19 by cleaning up after themselves in their general living areas. Nor do they provide a legal justification that housekeeping tasks, in the current COVID-19 environment, violate the TVPA. Indeed, it is unclear how detainees are at a higher risk of contracting COVID-19 by complying with a policy that serves to ensure that basic tenets of personal hygiene are followed. It defies reason that reducing detainees diligence and responsibility for their own personal hygiene would be an appropriate response to COVID-19—let alone one this Court should endorse. While cleanliness is always important, it is of paramount importance now.

Furthermore, a nationwide injunction is not appropriate here. Plaintiffs have not produced evidence from all facilities related to their current claims, instead relying upon declarations from only two (2) facilities. *See* ECF 253 (containing declarations from two (2) facilities). As Justice Thomas recently explained, nationwide injunctions “are beginning to take a toll on the federal court system—preventing legal questions from percolating through the federal courts, encouraging forum shopping, and making every case a national emergency for the courts and for the Executive Branch.” *Trump v. Hawaii*, 138 S. Ct. 2392, 2425, 201 L. Ed. 2d 775 (2018). This is surely true here where Plaintiffs seek nothing more than a preview of this Court’s opinion on the merits of their claim, wholly unrelated to COVID-19. This Court should not be thrust

1 into “rushed, high-stakes, low-information decisions” regarding a novel and complex
2 application of the TVPA absent concrete evidence that doing so would alleviate the
3 spread of COVID-19. *Dep’t of Homeland Sec. v. New York*, 140 S. Ct. 599, 600
4 (2020) (Gorsuch, J., concurring). For these reasons, Plaintiffs’ TRO should be denied.

5 II. GEO’S RESPONSE TO COVID-19.

6 Plaintiffs’ TRO presents a broad overview of the current pandemic facing the
7 United States, but fails to provide any information about the extensive response by
8 both GEO and ICE within detention facilities to curtail detainee exposure to COVID-
9 19 and ensure the safety and security of all those who live and work at GEO
10 facilities.¹ In so doing, Plaintiffs paint a picture of inevitable spread within the GEO
11 facilities which they claim can be redressed only through the elimination of
12 housekeeping requirements. ECF 251-1. To the contrary, GEO (and ICE) have
13 implemented expansive policies to address the COVID-19 risks and ensure the safety
14 of all detainees. Through these policies, GEO detainees are currently cohabiting
15 similar to millions across the country—with added precautions to their daily lives,
16 diligent personal hygiene, and regimented social distancing.

17 Among these measures, GEO has created policies at its facilities² consistent with

18
19 ¹ The certified class includes 12 facilities: Adelanto, Aurora, Broward, Mesa Verde, Montgomery,
20 Northwest/Tacoma, South Texas, Folkston, Joe Corley, LaSalle, Pine Prairie, and South Louisiana.
21 Because Plaintiffs bear the burden of establishing a TRO is proper, and because Plaintiffs have
22 submitted declaration evidence related only to LaSalle Ice Processing Center (“LIPC”) and Aurora
23 ICE Processing Center (“Aurora”), GEO focuses on those facilities in this response. GEO further
24 notes that the “submission of general news articles does not constitute ‘material’ evidence” and
25 therefore should not be considered to be “evidence” by this Court. *Geagea v. Holder*, 466 F. App’x
26 502, 508 (6th Cir. 2012).

27 ² For purposes of this motion, GEO addresses those facilities for which Plaintiffs’ submitted
28 evidence: LIPC and Aurora. Plaintiffs submitted three (3) declarations from detainees at the LIPC
and one (1) from Aurora. GEO also submits evidence from the Adelanto facility, even though the
named Plaintiffs were not detained during the pendency of COVID-19, their experiences are limited
to the Adelanto facility where they were detained. GEO also presents evidence from the Northwest
Ice Processing Center in Tacoma, Washington (“NWIPC”) because the declaration submitted herein
is publicly available on PACER. Given the truncated response time for this response, GEO was
limited to evidence from these facilities. Given additional time, GEO could submit information
about other facilities about which the Court has concerns. That said, Plaintiffs bear the initial burden
and have failed to present any evidence as to the majority of GEO facilities that are part of the

1 the Centers for Disease Control and Prevention’s Interim Guidance on Management of
2 Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities. *See*
3 Declaration of David Van Pelt, Exs. 1 (Dec. of Janecka), 2 (Dec. of Ceja), 3 (Dec. of
4 Cole), and 4 (Dec. of Langford). With these principles in mind, GEO has enhanced
5 information, limited exposure from outside visitors, and increased sanitation. *Id.* As a
6 result of these measures, the LIPC, Aurora, NWIDC, and the Adelanto ICE Processing
7 Center (“Adelanto Facility”) do not have any reported cases of COVID-19.³ Exs. 1, 2,
8 3, 4, and 5 (Dec. of Valdez).

9 As to increased information for detainees, GEO has held multiple town hall
10 meetings for detainees whereby detainees can ask medical professionals questions
11 about COVID-19. Exs. 1, 2, 3, and 4. These town halls serve to keep detainees aware
12 of the ongoing situation. *Id.* Further, detainees are provided with information about
13 COVID-19 in their living areas as well as instructional videos about how they can
14 wash their hands properly. Exs. 1, 2, 3, and 4.

15 Additionally, GEO and ICE have implemented a number of limitations to
16 reduce the introduction of any outside sources of contamination into a facility and
17 allow for social distancing. Exs. 1, 2, 3, and 4. ICE has temporarily stopped all in-
18 person visitation for detainees and their family and friends with the exception of
19 detainees’ attorney visits. Exs. 1, 2, 3, and 4. Attorneys who wish to enter the building
20 must wear Personal Protective Equipment (“PPE”) including a surgical mask, goggles,
21 and gloves. *Id.* Otherwise, all visits are restricted to videoconferencing on tablets that
22 are provided to detainees. *Id.* All individuals entering the facilities, including GEO
23 employees and ICE staff, must pass a screening for COVID-19 including completing a
24 questionnaire and having their temperature taken. Any individuals with a fever or who
25 report recent travel or symptoms on their questionnaires are denied access. *Id.* GEO

26 certified class.

27 ³ GEO reiterates that this information is limited to these facilities because of the truncated timeline
28 for a response and the fact that Plaintiffs did not provide accounts of individuals detained at other
facilities.

1 employees are instructed to stay home if ill and are not allowed to work if they show
2 any symptoms consistent with COVID-19. *Id.*

3 GEO has also placed restrictions on detainee contact within the facility to
4 decrease the spread of COVID-19. The facilities have placed restrictions on any new
5 detainees who arrive at the facility. Exs. 1, 2, 3, and 4. Detainees are screened for
6 COVID-19 exposure prior to entering the building; detainees who present symptoms
7 or other travel related risks for exposure to COVID-19 are either turned away or
8 housed in medical negative pressure rooms. Exs. 1, 2, 3, and 4. Detainees who do not
9 present symptoms are placed in separate housing, quarantined from the existing
10 population for a minimum of fourteen (14) days and monitored for signs and
11 symptoms of COVID-19. Exs. 1, 2, 3, and 4. This treatment of potentially
12 asymptomatic detainees comports with the CDC's recommendations that an
13 asymptomatic individual should avoid contact with others for seven (7) to ten (10)
14 days.⁴ Research indicates that 99% of individuals who fall ill do so within 14 days.⁵
15 Additionally, GEO has adjusted how detainees are housed to ensure that each living
16 unit or pod is significantly below its typical capacity, which provides for additional
17 space and social distancing between detainees. Exs. 1, 2, 3, 4. GEO has also worked to
18 allow social distancing during mealtimes, recreation, library use, and common area
19 use through a number of facility-specific measures based upon the unique
20 characteristics of each facility. Exs. 1, 2, 3, and 4.

21 Furthermore, GEO has implemented enhanced hygiene practices. Exs. 1, 2, 3,
22 and 4. The facilities utilize cleaning products that the EPA has deemed to be effective
23 against COVID-19. Exs. 1, 2, 3, and 4. GEO has also assessed its stock of soap and
24

25 ⁴ Centers for Disease Control and Prevention (hereinafter "CDC"), *Discontinuation of Isolation for*
26 *Persons with COVID-19 Not in Healthcare Settings*, available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html> (updated April 4, 2020) (last accessed April 7, 2020).

27 ⁵ Lauer SA, *The Incubation Period of Coronavirus Disease 2019 (COVID-19) From Publicly*
28 *Reported Confirmed Cases: Estimation and Application*, available at <https://www.ncbi.nlm.nih.gov/pubmed/32150748> (last visited April 7, 2020).

1 cleaning supplies at each facility to ensure there is no risk of a shortage in the near
2 future. *Id.* GEO diligently monitors the detainee population and ensures that all
3 detainees have access to soap and cleaning supplies at all times. *Id.* Additionally, new
4 polices require staff to increase the cleaning of high-touch surfaces, ensuring that
5 living areas and other portions of the facility are cleaned multiple times per day. *Id.*
6 GEO is not diluting disinfectants below effective levels. *Id.* GEO also plays a video
7 on a loop in all housing areas that demonstrates the proper handwashing technique. *Id.*

8 Furthermore, GEO staff have been issued surgical masks within the past week.
9 Going forward each GEO staff member will receive three (3) masks a week with
10 instructions for their use and disposal. *Id.* There can be no question that GEO is taking
11 the risks associated with COVID-19 seriously and implementing extensive measures
12 to reduce the risk of infection. *See* Exs. 1, 2, 3, and 4. GEO's measures are clearly
13 working, as there are no reported cases of COVID-19 at the LIPC, Aurora, NWIPC
14 and Adelanto Facility. Exs. 1, 2, 3, and 4.

15 III. TEMPORARY RESTRAINING ORDER

16 The standard for issuing a temporary restraining order is substantially identical
17 to the standard for issuing a preliminary injunction. *See Stuhlberg Int'l Sales Co. v.*
18 *John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Injunctive relief is an
19 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff
20 is entitled to such relief." *See Winter v. Natural Res. Defense Council, Inc.*, 555 U.S.
21 7, 2 (2008). In seeking injunctive relief, Plaintiffs "face a difficult task in proving that
22 [they are] entitled to this 'extraordinary remedy'." *See Earth Island Inst. v. Carlton*,
23 626 F.3d 462, 469 (9th Cir. 2010), *citing Winter, supra*, 555 U.S. at 23. A plaintiff
24 "must establish that he is likely to succeed on the merits, that he is likely to suffer
25 irreparable harm in the absence of preliminary relief, that the balance of equities tips
26 in his favor, and that an injunction is in the public interest." *Am. Trucking Ass'ns v.*
27 *City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (*quoting Winter, supra*, 555
28 U.S. at 20. A "possibility" of irreparable harm is insufficient; irreparable harm must

1 be likely absent an injunction. *Id.*; *see also Winter*, 555 U.S. at 22 (rejecting the Ninth
2 Circuit’s earlier rule that the “possibility” of irreparable harm, as opposed to its
3 likelihood, was sufficient in some circumstances to justify a preliminary injunction).

4 Plaintiffs bear the burden of demonstrating that each of these four (4) factors
5 are met. *DISH Network Corp. v. FCC*, 653 F.3d 771, 776-77 (9th Cir. 2011).

6 **a. Plaintiffs Cannot Establish A Likelihood of Success on the Merits.**

7 **i. Plaintiffs Lack Standing to Seek A TRO.**

8 The “irreducible constitutional minimum of standing” contains three (3)
9 requirements. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, a
10 plaintiff must have suffered an “injury in fact”—an invasion of a legally protected
11 interest which is (a) concrete and particularized, and (b) “actual or imminent, not
12 ‘conjectural’ or ‘hypothetical.’” *Id.* The “injury or threat of injury must be both real
13 and immediate, not conjectural or hypothetical.” *City of Los Angeles v. Lyons*, 461
14 U.S. 95, 101–2 (1983) (citations omitted). Second, the injury has to be “fairly . . .
15 trace[able] to the challenged action of the defendant, and not . . . the result [of] the
16 independent action of some third party not before the Court.” *Id.* Third, it must be
17 “likely,” as opposed to merely “speculative” that the injury will be “redressed by a
18 favorable decision.” *Id.* at 560-61 (internal citations omitted). Redressability requires
19 that there “be a causal connection between the injury and the conduct complained of”;
20 the injury cannot be the result of third party actions, *Lujan, supra*, 504 U.S. at 560, or
21 self-inflicted, *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 418 (2013).

22 The Supreme Court has held that “a plaintiff must demonstrate standing for
23 each claim he seeks to press and for each form of relief that is sought.” *Davis v.*
24 *Federal Election Com’n*, 128 S.Ct. 2759, 2769 (internal quotation marks omitted); *see*
25 *also DaimlerChrysler Corp. v. Cuno* 547 U.S. 332, 352 (2006) (“[A] plaintiff must
26 demonstrate standing separately for each form of relief sought”); *Town of Chester,*
27 *N.Y. v. Laroe Estates, Inc.*, 137 S.Ct. 1645, 1650–51 (2017). “[A] plaintiff who has
28 been subject to injurious conduct of one kind possess by virtue of that injury the

1 necessary stake in litigating conduct of another kind, although similar, to which he has
2 not been subject.” *Lewis v. Casey*, 518 U.S. 343, 358 (1996) (citing *Blum v. Yaretsky*,
3 457 U.S. 991, 999 (1982)). While the Court already found standing for Plaintiffs’ to
4 bring suit for other permanent injunctive relief, a plaintiff must demonstrate standing
5 separately for each form of relief sought, *Friends of the Earth, Inc. v. Laidlaw Envtl.*
6 *Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000), and they cannot for this request for a
7 TRO.

8 **1. Plaintiffs Cannot Establish A Concrete, Non-**
9 **Hypothetical Injury.**

10 Plaintiffs fail to establish that they would suffer a concrete, non-hypothetical
11 injury absent entry of a TRO, and therefore they lack standing to seek emergency
12 prospective relief. *Clapper*, 568 U.S. at 418. None of the Plaintiffs bringing this TRO
13 are detained, i.e., the actual movants are not the beneficiaries of any change in the
14 housekeeping policy, nor do they face any adverse consequences if the policy is not
15 changed—which forms the basis for their motion and requested relief. *See* Declaration
16 of Van Pelt ¶ 6. And, none of the movants have demonstrated an elevated risk of
17 COVID-19 due to any acts or omissions of GEO. COVID-19 was not a pressing
18 concern when this case was certified, or when Plaintiffs were detained, and therefore
19 Plaintiffs have not established that they have suffered injuries related to the COVID-
20 19 specific relief they seek here. Plaintiffs have not submitted any additional evidence
21 that would support a finding that they have standing. To be sure, there is no risk that
22 any of the named Plaintiffs, all of whom live outside of the GEO facilities, and one (1)
23 of whom lives in Somalia. Put simply, none of the Plaintiffs have met their burden to
24 show they are at an increased harm of COVID-19 because of the housekeeping
25 policies within GEO-ICE detention centers. Thus, they lack standing to bring this
26 TRO since regardless of the outcome, their status quo will remain unchanged and they
27 will suffer no injury. *See Gill v. Whitford*, 138 S.Ct. 1916, 1930 (2018) (rejecting
28 standing for a statewide gerrymandering challenge because a plaintiff’s remedy must

1 be limited to his injury).

2 **2. Plaintiffs Cannot Establish That Their Proposed Relief is**
3 **Likely to Redress Concerns about the Spread of COVID-**
4 **19.**

5 To establish standing, Plaintiffs must *also* demonstrate “a ‘substantial
6 likelihood’ that the relief sought would redress the injury. *Mayfield v. United States*,
7 599 F.3d 964, 971 (9th Cir. 2010). They cannot do so here.

8 Despite opening their brief with a bold and unsupported statement that
9 “COVID-19 has found its way into GEO detention facilities,”⁶ the GEO facilities
10 where all declarants and Plaintiffs were formerly detained⁷ currently have zero cases
11 of COVID-19. Thus there is no basis for claiming that the housekeeping duties would
12 expose detainees to a higher risk of COVID-19. And, even if COVID-19 were present
13 in the GEO facilities, Plaintiffs have failed to establish that the relief sought in this
14 case is likely to reduce the spread of COVID-19 in any meaningful way. Here,
15 Plaintiffs challenge only the housekeeping tasks within GEO’s facilities on the basis
16 that keeping one’s area clean increases the risk of COVID-19.⁸ Yet, Plaintiffs do not
17

18 _____
19 ⁶ Indeed, Plaintiffs’ concurrent motion for discovery as to COVID-19 in the various facilities makes
20 clear that Plaintiffs’ motion is premature because they currently do not possess the requisite
21 evidentiary basis for their claims.

22 ⁷ Ms. Frazer has been released from Aurora. C Ex. 2, Ceja Decl. Messiers Karim, Mancia, Novoa,
23 and Campos Fuentes were released from the Adelanto Facility before COVID-19 came to fruition.
24 Van Pelt Decl. ¶ 7. Ms. Dejaso submitted a declaration for a case unrelated to the present case which
25 states that as of March 27th she was detained at the LIPC. ECF 253-2. Ms. Bosque also submitted a
26 declaration dated March 27th for a separate case stating that she is currently detained at the LIPC.
27 ECF 253-1. Neither individual as able to sign their declaration. ECF 253-1, 235-2. Ms. Barrios did
28 not submit a declaration herself, rather her attorney submitted a declaration in an unrelated case
describing his understanding of their conversation—which creates obvious hearsay issues. ECF 253-
4. Surely, Plaintiffs could have, at a minimum reached out to Ms. Barrios’ attorney and asked him
for a declaration specific to this case but did not do so. Ms. Barrios’ declarations should not be
considered by this Court because they were not created for this action, do not directly address the
clams at issue here, and are not subject to cross-examination. To the extent the Court considers her
declaration, it states that she was detained at the LIPC as of April 1, 2020.

⁸ To the contrary, the CDC has made clear that cleaning one’s living area helps prevent the spread of
COVID-19. CDC, *Cleaning and Disinfection for Households*, available at

1 challenge the practice of obtaining Voluntary Work Program (“VWP”) volunteers to
2 assist with cleaning tasks in the housing areas.⁹ ECF 252-2. And, Plaintiffs do not
3 seek to have detainees who participate in that cleaning program enjoined from doing
4 so. *Id.* Thus, even if successful, any order will not enjoin all detainee cleaning, just a
5 small subset of detainees. Certainly, even assuming *arguendo* that reduced cleaning
6 could somehow help prevent the spread of COVID-19, the relief Plaintiffs seek will
7 not meaningfully stop the spread of COVID-19. Certainly, Plaintiffs have claimed that
8 cleaning their living space as part of the VWP and cleaning their common areas as
9 part of the housekeeping plan are separate tasks that have an overlap in duties. *See*
10 ECF Nos. 192-3 through 192-6. Because Plaintiffs do not seek to enjoin all cleaning
11 within the facilities, is unclear how the relief Plaintiffs seek could be logically tied to
12 the spread of COVID-19 as the same individuals would still be free to perform the
13 same or similar cleaning tasks as part of the VWP after any TRO issues.¹⁰

14 **3. Plaintiffs Do Not Present Evidence that Ceasing**
15 **Cleaning Under the Housekeeping Policies Would**
16 **Prevent or Reduce the Spread of COVID-19.**

17 Where the alleged relief will do nothing to redress prior injuries or prevent
18 future injuries, Plaintiffs do not have standing. *Stormans, Inc. v. Selecky*, 571 F.3d 960
19 (9th Cir.2009). “The line of causation between the defendant’s action and the
20 plaintiff’s harm must be more than attenuated.” *Native Vill. of Kivalina v. ExxonMobil*
21 *Corp.*, 696 F.3d 849, 867 (9th Cir. 2012) (citations and quotes omitted), cert denied, –
22

23 <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html> (last
24 visited April 7, 2020).

25 ⁹ It is altogether unclear why or how COVID-19 is more likely to spread among individuals who live
26 together and must clean up after themselves for no compensation, but somehow less likely to spread
among those who participate in the VWP. This omission is perhaps the most telling indication of
how tenuously tied to COVID-19 Plaintiffs’ motion truly is.

27 ¹⁰ GEO notes that Ms. Dejaso complains about her participation in the VWP, referencing the dollar
28 per day she is paid. These duties would continue even if Plaintiffs receive all relief they seek here as
Plaintiffs do not seek to halt the operation of the VWP. Nor could they as their claim that detainees
should be classified as “employees” does not provide relief from performing the tasks in question.

1 133 S.Ct. 2390, 185 L.Ed.2d 1116 (2013). Here, Plaintiffs present no evidence that
2 ending general housekeeping policies would make it less likely for individuals to
3 contract COVID-19 in the future. Plaintiffs concede that “[s]ocial distancing, i.e.,
4 physical separation from known or potentially infected individuals, and vigilant
5 hygiene, including washing hands with soap and water, are the only known effective
6 measures for protecting vulnerable people from COVID-19.” ECF 252-1, 10. GEO
7 currently ensures both of these measures have been implemented in its facilities. *See*
8 Exs. 1, 2, , 3, 4, 5. GEO abides by social distancing, to the extent possible in a
9 detention setting, by reducing the number of detainees in each living unit, reducing
10 who comes and goes from each facility, reducing the number of individuals who
11 participate in various programs including library time and recreation, and limiting
12 detainee contact to only those who have been screened for COVID-19 risk factors. *Id.*
13 GEO also instructs all detainees on proper handwashing and provides ample soap for
14 detainees to frequently wash their hands. *Id.* As an added precaution, GEO has
15 enhanced the cleaning of high-touch surfaces within its facilities. *Id.*

16 Plaintiffs seem to indicate that infection is inevitable, regardless of detention
17 status, explaining that “most people in the United States will be exposed to the virus
18 ‘[i]n the coming months.’” ECF 252-1, 9. At the same time, GEO has managed to
19 avoid infections at the LIPC, Aurora, NWIPC and Adelanto Facility, through the
20 implementation of its policies despite the fact that the facilities are located in
21 population centers with high infection rates including Washington and California.
22 Exs. 1, 2, 3, 4, 5. Plaintiffs offer no evidence that those who are detained will fare any
23 better in avoiding COVID-19 if they do not participate in the housekeeping policy.¹¹
24 To the contrary, CDC guidance makes clear that “routine cleaning of frequently
25 touched surfaces,” such as the housekeeping tasks performed by detainees, help to

26
27 ¹¹ The only citation related to cleanliness within ICE detention centers, as it relates to COVID-19,
28 cited the inability of a facility to “keep the detention facilities sufficiently clean to combat the spread
of the virus.” ECF 252-1 at n. 78. This is inapposite to the present case where GEO has implemented
robust cleaning measures to combat the spread of the virus. Exs. 1, 2, 3, 4, 5.

1 reduce the spread of COVID-19.¹² Thus, because Plaintiffs’ proposed relief is not
2 substantially likely to reduce the likelihood detainees will contract COVID-19,
3 Plaintiffs have not met their burden to establish causation and therefore do not have
4 standing.

5 **b. Plaintiffs Fail to Establish a Likelihood of Success on the Merits of**
6 **their TVPA claim.**

7 In Plaintiffs’ motion, they cite to the TVPA as the basis for their claim for relief
8 and likely success on the merits. ECF 252-1, 15. The TVPA makes it a penalty to
9 force individuals to work under the threat of serious harm. 18 U.S.C. § 1589. Thus,
10 Plaintiffs seek to enjoin GEO from implementing programs in its detention centers
11 whereby detainees clean their living areas. However, this cause of action is wholly
12 unrelated to COVID-19 and the potential for it to spread throughout GEO’s facilities.
13 Rather, were this Court to issue a TRO that would prohibit GEO from asking all
14 detainees to help ensure the hygiene of the detained population and corresponding
15 living areas it would be antithetical to stopping the spread of COVID-19. Further, any
16 such order would lack a legal basis in the TVPA.

17 Plaintiffs do not indicate how it is a violation of the TVPA to require routine
18 cleaning of an individual’s living area in the midst of a pandemic.¹³ Plaintiffs instead
19 state that “GEO’s acquisition of free labor by threatening Class Members with reprisal
20 violates the TVPA.” ECF 252-1. But, this lacks a basis rooted in the current COVID-
21 19 crisis and instead relies upon Plaintiffs’ class certification arguments. Plaintiffs
22 provide no legal support for how the TVPA would apply to prevent GEO from
23 requiring detainees to contribute to cleaning their own areas during a pandemic to
24

25 ¹² Cleaning and Disinfection for Households, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html>

26 ¹³ Plaintiffs’ reliance upon previously filed briefs in support of their ongoing claims for relief are
27 insufficient to establish why *emergency* relief is appropriate here, as a result of COVID-19. Plaintiffs
28 cannot vaguely allege injuries related to COVID-19 that are unrelated to their claim for relief and
satisfy their burden to establish a likelihood of success on the merits.

1 ensure they *avoid* serious harm. Nor do Plaintiffs explain how the TVPA provides a
2 basis for this Court to order GEO to test detainees of COVID-19 or provide PPE to
3 detainees. As Plaintiffs have failed to establish a legal basis for relief, they have
4 equally failed to establish a likelihood of success on the merits. *Tillett v. Bureau of*
5 *Land Mgmt.*, No. CV 14-73-BLG-SPW, 2014 WL 12543843, at *1 (D. Mont. June 11,
6 2014) (“[Plaintiff] fails to state a legal basis for a preliminary injunction. Vague
7 references to laws without further analysis are insufficient.”); *Cannabis Sci., Inc. v.*
8 *Afaneh*, No. 2:13-CV-00114-GMN, 2013 WL 273219, at *3 (D. Nev. Jan. 23, 2013)
9 (failure to establish a legal basis for a claim indicates a Plaintiff cannot show a
10 likelihood of success on the merits).

11 Plaintiffs cite to *Barrientos* for the proposition that detention facilities are not
12 excluded from the reach of the TVPA, which they claim establishes they are likely to
13 succeed on the merits of their underlying claim (unrelated to COVID-19). *Barrientos*
14 *v. CoreCivic, Inc.*, 2020 WL 964358 (11th Cir. Feb. 28, 2020). Yet, when read in full,
15 *Barrientos* explicitly endorsed the housekeeping procedures at issue in this action
16 stating:

17 To be clear, our opinion should not be read to call into question the
18 legality of . . . longstanding requirements that detainees or inmates be
19 required to perform basic housekeeping tasks . . . in the interest of
20 maintaining order in an immigration detention facility, the PBNDS
21 authorize punishments for detainees who, among other things, refuse to
22 complete basic personal housekeeping tasks or organize work stoppages.
23 *See generally* PBNDS § 3.1. Our decision should likewise not be read to
24 imply that these basic disciplinary measures, on their own, give rise to
25 TVPA liability.

26 *Id.* at *7 (emphasis added). Here, the relief sought is directly contrary to
27 *Barrientos*, relief from general housekeeping requirements without any showing of
28 “serious harm.” Thus, *Barrientos* does not provide Plaintiffs a colorable basis for
claiming they are likely to succeed on the merits.

To the extent that Plaintiffs will argue that COVID-19 itself is the “serious

1 harm” which Plaintiffs in the facility face, it is not a harm imposed by GEO. Indeed it
2 is an external force that no one, neither this Court, nor GEO can control. Surely, the
3 omnipresent threat of COVID-19 cannot be fairly attributed to an intention of GEO to
4 threaten harm to detainees—a threshold issue for TVPA liability. *See* ECF 252-1, 22
5 (citing *US v. Dann*, 652 F.3d 1160, 1170 (9th Cir. 2011)). Rather, any TVPA claim is
6 limited to the threats, that if proven, would allegedly be within GEO’s control, as
7 enumerated by Plaintiffs in their brief as the threats of solitary confinement,
8 disciplinary housing transfers, loss of privileges, and criminal prosecution—none of
9 which are alleged to occur during the current COVID-19 crisis. ECF 252.1.

10 Indeed, it appears that instead of tying the motion to any current concern related
11 to COVID-19, Plaintiffs attempt shortcut to the merits of the TVPA claim in this case
12 in order to obtain a ruling from this Court that they are likely to prevail on the merits.
13 As support, Plaintiffs offer evidence previously submitted in connection with their
14 motion for class certification which is wholly unrelated to the COVID-19 pandemic.
15 In short, they seek to have critical policies that lie at the core of this case litigated
16 through a truncated, emergency process. Because Plaintiffs fail to tie their requested
17 relief under the TVPA to the impact of COVID-19, or any legal basis in the TVPA,
18 Plaintiffs have failed to establish a likelihood of success on the merits and their
19 motion should be denied.

20 **c. Plaintiffs Have an Available Remedy at Law.**

21 Throughout their brief, Plaintiffs cite to *Hernandez v. Wolf*, No. 5:20-cv-00617-
22 TJH in support of their position.¹⁴ Yet, rather than strengthen Plaintiffs’ position,
23

24 ¹⁴ Plaintiffs cite extensively to the documents in *Hernandez v. Wolf* in support of their position, but
25 fail to attach those documents to their submission rendering it impossible for GEO to respond to the
26 substance of the same. Therefore, this Court should not consider that case, beyond the minute
27 entries, in reaching a conclusion here. All documents in case number 5:20-cv-00617-TJH, save for
28 the minute entries upon which GEO bases its understanding of the case, have been sealed from
public view and are not accessible to the public or individuals who are not parties to that litigation. It
is not clear to GEO how Plaintiffs obtained these sealed documents or the consequences of quoting
their text in public filings with this Court.

1 *Hernandez* undermines Plaintiffs’ position. In *Hernandez*, a detainee sought release
2 from an ICE detention facility on the basis of a petition for writ of habeas corpus.
3 *Hernandez v. Wolf*, No. 5:20-cv-00617-TJH, Dkt. No. 1. The basis for his motion was
4 the spread of COVID-19 and his particular risk factors. The court entered a TRO
5 releasing Mr. Hernandez. Likewise, other cases cited by Plaintiffs in their brief
6 indicate that individuals who are at higher risk of COVID-19 have an adequate
7 remedy at law through habeas relief, negating the need for injunctive relief.

8 **d. Plaintiffs Will Not Suffer Immediate Irreparable Harm in the**
9 **Absence of Injunctive Relief.**

10 To satisfy the second requirement for injunctive relief, Plaintiffs must show that
11 it is “likely”—not merely possible—that they will suffer irreparable harm. *See L.A.*
12 *Mem’l Coliseum Comm’n v. Nat’l Football League*, 634 F.2d 1197, 1201 (9th Cir.
13 1980). Moreover, the threat of a likely injury must be “immediate.” *See Caribbean*
14 *Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). Indeed, Plaintiffs
15 concede that the “single most important prerequisite for the issuance of a preliminary
16 injunction” is irreparable harm. ECF 252-1, 24.

17 Here, Plaintiffs will not suffer any harm regardless of the outcome of their
18 motion. Plaintiffs are no longer detained and do not participate in the housekeeping
19 policy or related tasks currently. The likelihood that Plaintiffs are exposed to COVID-
20 19 has absolutely no relationship to whether the housekeeping policies are enforced at
21 GEO facilities. Thus, Plaintiffs cannot establish this critical prerequisite to a TRO, and
22 for that reason alone their motion must be denied. Even assuming *arguendo* that
23 Plaintiffs’ were to refile their TRO to include an individual who is currently detained;
24 a current detainee would likewise not suffer immediate and irreparable harm in the
25 absence of injunctive relief.

26 Eliminating the housekeeping policies temporarily would not alter detainees’
27 movements within the facility or vis-à-vis one another, rendering it an utterly
28 ineffective means of addressing COVID-19. As noted above, detainees would still be

1 able to interact, mingle, participate in cleaning tasks in the VWP, and make contact
2 with common living area surfaces (subject to GEO’s COVID-19 policies)—all
3 potential risks for COVID-19. But the detainees would have no responsibility for
4 cleaning those same areas. Thus, halting the housekeeping policies would not only fail
5 to make headway in preventing the spread of COVID-19, it would be antithetical to
6 the CDC’s recommendations for preventing the spread. The CDC has recommended
7 that all individuals practice “routine cleaning of frequently touched surfaces” within
8 their homes, including tables, desks, toilets, faucets, sinks, and handles—as may be
9 cleaned in the housekeeping program.¹⁵ The CDC does not explicitly recommend that
10 individuals have others clean up after them and instead suggests that those who
11 cohabitate should be cognizant of keeping high touch surfaces clean.¹⁶ Thus, Plaintiffs
12 proposed relief would not meaningfully reduce the spread of COVID-19, and in fact
13 would be inconsistent with the clear guidance from the CDC.

14 On the other hand, if Plaintiffs’ TRO does not enter, GEO will continue to
15 implement its rigorous COVID-19 response plan including implementing the social
16 distancing procedures, enhanced cleaning procedures, and informational campaigns as
17 described in Section II *supra* and the declarations attached to this response. These
18 steps, unlike those Plaintiffs seek as relief, would continue to have a meaningful
19 impact in reducing the spread of COVID-19 within GEO’s facilities. Exs. 1, 2, 3, 4, 5.
20 Because all aspects of GEO’s COVID-19 response would continue absent suspension
21 of the housekeeping policies and because Plaintiffs have offered no evidence
22 whatsoever that suspension of the policies would have a meaningful impact upon the
23 spread of COVID-19, Plaintiffs cannot show immediate irreparable harm in the
24 absence of injunctive relief. In fact, based upon the same facts presented here, another
25 District Court recently concluded that the threat of COVID019 in the NWIPC did not
26

27 ¹⁵ Cleaning and Disinfection for Households, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html>

28 ¹⁶ *Id.*

1 meet the standard for irreparable harm, explaining:

2
3 “[G]iven the measures [GEO is] currently taking, the court cannot
4 conclude either that the spread of COVID-19 inside the NWDC is
5 inevitable, or that Respondents will be unable to contain it if it
6 occurs. No one can entirely guarantee safety in the midst of a
7 global pandemic. However, the standard under which the court
8 evaluates Petitioners’ second TRO motion is not guaranteed
9 safety—an impossible standard to meet no matter the
circumstances—but rather a likelihood of irreparable harm. The
evidence before the court does not meet that standard.

10 *Dawson v. Asher*, Case No. C20-040JLR-MAT (W. D. Wash. April 8, 2020). Thus, a
11 TRO should not issue.

12 **e. The Balance of the Equities and the Public Interest Weighs Against a**
13 **Preliminary Injunction.**

14 **i. The Public Interest is Served by Following the Directives of**
15 **Public Health Officials, Not the Whims of Plaintiffs’ Counsel.**

16 Moreover, the public interest is best served by allowing the orderly medical
17 processes and protocols implemented by government professionals. *See Youngberg v.*
18 *Romeo*, 457 U.S. 307, 322-23 (1982) (urging judicial deference and finding
19 presumption of validity regarding decisions of medical professionals concerning
20 conditions of confinement). Here, the best methods for preventing spread of COVID-
21 19 have been created by top officials within the federal government which have been
22 implemented by GEO. Exs. 1, 2, 3, and 4 (explaining that GEO’s guidance has been
23 created based upon CDC recommendations and those from ICE). These measures
24 include ensuring adequate stocks of hygiene and cleaning supplies, informing detained
25 individuals about the importance of personal hygiene, and “routinely cleaning and
26 disinfecting surfaces and objects that are frequently touched.”¹⁷ None of the

27
28 ¹⁷ Centers of Disease Control, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/faq.html>

1 information submitted by Plaintiffs runs contrary to this guidance. Rather, Plaintiffs
2 submit extensive information from the CDC in support of their motion— conceding it
3 is the proper authority to provide policies for a COVID-19 response. ECF 252-1. Yet
4 Plaintiffs seek to eliminate one of the many measures GEO is taking in accordance
5 with CDC guidance. Exs. 1, 2, 3, 4, 5, *supra* note 18. Because Plaintiffs’ request for a
6 TRO would run directly contrary to the guidance from professional health officials,
7 the public interest weighs against issuance of a TRO.

8 **ii. The Provision of Class-Wide Testing and Personal Protective**
9 **Equipment (PPE) is Contrary to the Public Interest.**

10 As part of the relief sought, Plaintiffs ask this Court to order GEO to test all
11 members of the certified class in this case. ECF 252-1, 7.¹⁸ The certified class includes
12 a large number of individuals who are not detained (including the named Plaintiffs) a
13 similarly large number of individuals who are no longer within the United States
14 (including Plaintiff Karim in Somalia), and all individuals currently detained who are
15 also class members. ECF 252-1, 7. In the alternative, Plaintiffs seek *weekly* testing of
16 all class members who are currently detained.¹⁹ ECF 252-2 4. Thus, Plaintiffs seek
17 relief for not only those individuals who are subject to the current housekeeping
18 policies, but also for those individuals detained throughout the United States. There
19 can be no question that the class members include individuals spread across the world.
20 Plaintiffs seek this relief at the expense of the needs of the public. Across the United
21 States the inability to obtain access to COVID-19 testing has hampered patient care.²⁰

22 _____
23 ¹⁸ GEO notes that in their proposed order, Plaintiffs seek weekly testing of all class members who
24 participate in general housekeeping tasks. ECF 252-2. It is unclear which form of relief Plaintiffs are
25 seeking due to these inconsistent representations. Nevertheless, this section applies equally to either
26 form of testing.

27 ¹⁹ All detainees are responsible for cleaning up after themselves as required by ICE’s PBNDS and
28 therefore every detainee would be eligible for testing under Plaintiffs’ proposed relief.

29 ²⁰ Sheila Kaplan, *Despite Promises, Testing Delays Leave Americans ‘Flying Blind’*, available at
30 <https://www.nytimes.com/2020/04/06/health/coronavirus-testing-us.html> (last accessed April 7,
31 2020) (“Doctors and officials around the country say that lengthy delays in getting results have
32 persisted and that continued uneven access to tests has prolonged rationing and hampered patient
33 care.”).

1 To that end, the CDC has made clear, “[n]ot everyone needs to be tested for COVID-
2 19.”²¹ Those who seek testing are advised that “[w]hile supplies of these tests are
3 increasing, it may still be difficult to find a place to get tested.”²² In fact, the Office of
4 the Inspector General recently investigated the challenges that hospitals are facing in
5 addressing the current COVID-19 pandemic. Chief among the challenges cited by the
6 Inspector General was “that severe shortages of testing supplies and extended waits
7 for test results limited hospitals’ ability to monitor the health of patients and staff.”²³
8 Thus, reducing the supply of this already limited resource, without a clear justification
9 for doing so (including by following the qualifications delineated by the CDC), would
10 be a detriment to the public who would face additional shortages in order to test
11 detainees who are not presenting symptoms and do not meet CDC or medical
12 guidelines for testing (presuming GEO could even obtain a sufficient number of tests
13 to satisfy the requests herein).

14 Likewise, PPE is in limited supply across the nation. The same Inspector
15 General Report made clear that “widespread shortages of personal protective
16 equipment (PPE) put staff and patients at risk.”²⁴ The shortages are well known to the
17 CDC, which advises that “PPE shortages are currently posing a tremendous challenge
18 to the US healthcare system because of the COVID-19 pandemic. Healthcare facilities
19 are having difficulty accessing the needed PPE and are having to identify alternate
20 ways to provide patient care.”²⁵ To that end, the CDC provides stringent guidance for
21

22 ²¹ Centers for Disease Control and prevention, *Testing for COVID-19*, available at
23 <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html> (last accessed April 7,
2020).

24 ²² *Id.*

25 ²³ Office of the Inspector General, *Hospital Experiences Responding to the COVID-19 Pandemic:*
26 *Results of a National Pulse Survey March 23-27, 2020*, available at
27 [https://oig.hhs.gov/oei/reports/oei-06-20-
200300.asp?utm_source=web&utm_medium=web&utm_campaign=covid-19-hospital-survey-04-06-
2020](https://oig.hhs.gov/oei/reports/oei-06-20-00300.asp?utm_source=web&utm_medium=web&utm_campaign=covid-19-hospital-survey-04-06-2020) (last visited April 7, 2020).

28 ²⁴ *Id.*

²⁵ Centers for Disease Control, *Strategies to Optimize the Supply of PPE and Equipment*,
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html> (last visited April 7, 2020).

1 the use of PPE, focused on ensuring medical professionals have what they need and
2 discouraging use by those who are not infected or who do not need it.²⁶ Thus, like
3 with testing, drawing from the currently limited supply of PPE and taking from the
4 hospitals that need it as a merely precautionary measure would be to the detriment of
5 the general public. Accordingly, to provide this relief to Plaintiffs would be counter to
6 the public interest.

7 **iii. A Nationwide Injunction is Against the Public Interest to Have**
8 **Issues Presented to District Courts Nationwide.**

9 Justice Thomas made clear that the authority of a district court to enter a
10 nationwide injunction is tenuous at best. *Hawaii*, 138 S. Ct. at 2429 (Thomas, J.
11 concurring) (“In sum, universal injunctions are legally and historically dubious. If
12 federal courts continue to issue them, this Court is dutybound to adjudicate their
13 authority to do so.”). The Ninth Circuit has similarly indicated that nationwide
14 injunctions should be properly limited, explaining that “nationwide injunctive relief
15 may be inappropriate where a regulatory challenge involves important or difficult
16 questions of law, which might benefit from development in different factual contexts
17 and in multiple decisions by the various courts of appeal.” *Los Angeles Haven*
18 *Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664 (9th Cir. 2011) And, the balance of courts
19 agree that “nationwide injunctive relief is discouraged where it would ‘substantially
20 thwart the development of important questions of law’ and prevent other courts from
21 ruling on the validity of the regulation. *See e.g., United States v. Mendoza*, 464 U.S.
22 154, 160, 104 S.Ct. 568, 78 L.Ed.2d 379 (1984); *see also Virginia Society for Human*
23 *Life, Inc. v. Federal Election Commission*, 263 F.3d 379, 393 (4th Cir. 2001).

24 Here, there can be no question that the TVPA claims brought by Plaintiffs raise
25 novel and complex issues of law. These issues should not be resolved, nationwide,
26 where other Courts are grappling with similar issues. Indeed, the district court in
27

28 ²⁶ *Id.*

1 *Barrientos* has this exact issue, the application of the TVPA to detention facilities that
2 implement discipline consistent with the PBNDS, pending before it. *See e.g.*
3 *Barrientos v. CoreCivic*, M.D. Ga. Case No. 4:18-cv-00070-CDL, 2018 WL 1836209
4 (M.D.Ga.). Likewise, the Southern District of California is grappling with the same
5 issue. *See Owino v. CoreCivic*, S. D. Cal. Case No. 3:17-cv01112-JLS-NLS. While
6 these are a few examples, many courts across the country are dealing with the same
7 issue. *See e.g., Menocal v. GEO*, D. Colo. Case No. 1:14-cv-02887. Some of these
8 cases have been pending for years and extensive discovery has occurred. These cases
9 should not be superseded by a TRO in this case which would impact facilities in most
10 federal appellate circuits. This is particularly true where Plaintiffs have provided scant
11 evidence to support their motion, relying upon recycled declarations from other cases,
12 and addressing only two (2) of the twelve (12) facilities for which they seek an
13 injunction. The TVPA issues should be allowed to move through the district courts
14 and provide guidance to those addressing this novel issue.

15 Additionally, courts across the nation are grappling with the appropriate
16 response to COVID-19 in detention settings. This is evident through Plaintiffs' own
17 submissions which consist largely of declarations that are pending before other district
18 courts across the country. There are countless other motions across the country
19 seeking release from custody or other changes in policy at ICE facilities as a result of
20 COVID-19. *See e.g. Fabiola-Almeida v. Barr*, 20-cv-490-RSM-BAT, Dkt. No. 11
21 (W.D. Wash. Apr. 6, 2020). Courts have reached varied results, including the astute
22 analysis from the Chief United States District Judge for the Western District of
23 Washington. Judge Martinez's recent order is instructive here:

24 “[T]he court cannot conclude either that the spread of COVID-19
25 inside NWDC is inevitable, or that the Attorney General will be unable
26 to contain it if it occurs. No one can entirely guarantee safety in the
27 midst of a global pandemic. However, the standard under which the
28 court evaluates [Plaintiff's] TRO motion is not guaranteed safety—an
impossible standard to meet no matter the circumstances—but rather a

1 likelihood of irreparable harm. The evidence before the court does not
2 meet that standard.”

3 *Patel v. Barr*, 20-cv-488-RSM-BAT, Dkt. No. 9 (W.D. Wash. April 2, 2020); *but see*
4 *Basank v. Decker*, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020) (granting a TRO in
5 connection with a writ of habeas corpus on the basis that Plaintiffs had established
6 likely due process violations). The differing decisions in each judicial district provide
7 for additional considerations for future courts addressing similar issues. This judicial
8 marketplace of ideas is helpful to all other judges who are sure to face similar issues in
9 the coming months. Thus, should the Court conclude injunctive relief is permissible
10 here, which it should not, it should enter relief only as to those facilities for which
11 Plaintiffs have submitted evidence: LIPC and Aurora. Under no circumstances would
12 a broader injunction be appropriate in this case.

13 **IV. PLAINTIFFS MUST PAY A BOND**

14 Under Federal Rule of Civil Procedure 65(c), a court may issue a temporary
15 restraining order “only if the movant gives security in an amount that the court
16 considers proper to pay the costs and damages sustained by any party found to have
17 been wrongfully enjoined or restrained.” A court may execute the bond on a
18 restraining order if it finds that “the enjoined or restrained party was ‘wrongfully
19 enjoined or restrained.’” *Nintendo of America, Inc. v. Lewis Galoob Toys, Inc.*, 16
20 F.3d 1032 (9th Cir. 1994). “[A] party has been wrongfully enjoined within the
21 meaning of Rule 65(c) when it turns out the party enjoined had the right all along to
22 do what it was enjoined from doing.” *Id.* at 1036. Here, should the Court issue
23 injunctive relief, which it should not, Plaintiffs should be required to pay a bond
24 consistent with the Rule. “The district court may dispense with the filing of a bond
25 when it concludes there is no realistic likelihood of harm to the defendant from
26 enjoining his or her conduct.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919(9th
27 Cir.2003). Here, Plaintiffs cannot establish that there is no likelihood of harm in
28 enjoining GEO’s conduct. Indeed, any TRO would require significant restructuring of

1 the current facility protocols with respect to COVID-19 in the midst of an already
2 trying time. Additionally, there can be no question that Plaintiffs have not provided
3 any precedential authority that would indicate that if a TRO were to issue, it would be
4 likely that the TRO would not later be reversed. Nor have they provided a sufficient
5 showing on the merits to justify confidence that any TRO would not be quickly
6 reversed. For these reasons, Plaintiffs should be required to submit a bond, the amount
7 of which, would be set by this Court. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th
8 Cir. 2009). At a minimum, this bond should include GEO’s “potential defense costs,
9 an offer which if accepted would itself ensure that Defendants’ expenses will be
10 reimbursed” if injunctive relief is reversed. *Id.*

11 **V. THE RELIEF AVAILABLE UNDER THE TVPA IS LIMITED**

12 The only statute upon which Plaintiffs base their claim for relief upon is the
13 TVPA. As detailed above, the connection between the TVPA and detainees risk of
14 contracting COVID-19 by regularly cleaning their living areas is tenuous at best. And,
15 even if this Court were to grant relief to Plaintiffs in the form of a TRO under the
16 TVPA—contrary to the clear balance of the equities above—under the TVPA, it could
17 only enjoin the use of labor that is obtained under the threat of serious harm (even
18 though no labor is so obtained). That is to say, the Court could enjoin GEO from
19 enforcing certain types of punishments for detainees who refuse to clean their living
20 areas during the COVID-19 pandemic. However, even if the Court were to order
21 temporary relief under the TVPA, GEO would still be able to request that detainees
22 clean their areas more frequently (absent any punishment or coercion) and could
23 emphasize the importance of cleanliness during the current COVID-19 pandemic.
24 Further, there can be no doubt that the TVPA does not provide for the provision of
25 PPE as a remedy for a violation of the TVPA.

26 Additionally, to the extent Plaintiffs’ proposed order seeks to have this Court
27 take judicial notice of the facts and findings in *Hernandez v. Wolf*, No. 5:20-cv-00617-
28 TJH, this relief should not be granted. As detailed above, the pleadings and documents

1 in *Hernandez* are sealed from public viewing and inaccessible to GEO and its counsel.
2 Thus, GEO is unable to review or rebut any points therein. Thus, they are an improper
3 subject of judicial notice.

4 **VI. CONCLUSION**

5 For the reasons listed herein, Plaintiffs' Ex Parte Motion for a Temporary
6 Restraining Order should be denied.

7 Dated: April 8, 2020

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