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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

24 Wilson Calix Espinoza; Yarjelis Madueno  
25 Davila; Artem Pakhol; Ernesto Rodriguez  
26 Ceden; Ernesto Lara Carnero; Ronni Barroso  
27 Barrios; Nilsson Cano Villatoro; Yudeine  
28 Gonzalez Borges; Zoila Mayancela Zamora;  
Joaquin Mantilla Silva; Ivan Benitez Flores;  
Rudis Naranjo Rosales; and Luis Jorge  
Alfonso,

Petitioners-Plaintiffs,

v.

Chris Howard, in his official capacity as  
Warden of the La Palma Correctional Center;  
Fred Figueroa, in his official capacity as  
Warden of the Eloy Detention Center; Albert

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

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

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

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9 Respondents-Defendants.

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## INTRODUCTION

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2           1.     Petitioners-Plaintiffs (hereinafter “Petitioners”) are civil immigration  
3 detainees at the La Palma Correctional Center (“La Palma”) and Eloy Detention Center  
4 (“EDC”) who face imminent risk, including severe illness or death, if they contract COVID-  
5 19 in the detention centers where they are currently held. In this action, they ask the Court  
6 to do what numerous courts have already done: release them, so their civil detention does  
7 not become a death sentence.

8           2.     At least two judges in this district have already held that the continued  
9 detention of medically vulnerable detainees in these facilities violates the detainees’  
10 constitutional due process rights. *See, e.g., Urdaneta v. Keeton*, No. CV-20-00654-PHX-  
11 SPL (JFM), 2020 WL 2319980, at \*12 (D. Ariz. May 11, 2020) (Logan, J.) (finding a  
12 violation of due process as to one detainee at La Palma); *Gutierrez-Lopez v. Figueroa*, No.  
13 CV-20-00732-PHX-SPL (JFM), 2020 WL 2781722, at \*10 (D. Ariz. May 27, 2020)  
14 (Logan, J.) (same, as to one detainee at EDC); Order, *Patel v. Barr*, No. 2:20-CV-00709-  
15 DLR-DMF, Dkt. 35 (D. Ariz. May 21, 2020) (Rayes, J.) (same, as to one detainee at EDC)  
16 [attached hereto as Exhibit 1]; Order, *Mendoza v. Barr*, No. CV-20-00514-PHX-SPL  
17 (MTM), Dkt. 37 (D. Ariz. May 19, 2020) (Logan, J.) (same, as to one detainee at EDC)  
18 [attached hereto as Exhibit 2]. In recent weeks, however, it has become increasingly clear  
19 that the remedy awarded in those cases—purportedly improved conditions for the individual  
20 petitioners—is both inadequate and unreasonable under the circumstances presented here.  
21 No matter how many “precautions” Immigration and Customs Enforcement (“ICE”)  
22 purports to take at these facilities, detainees at La Palma and EDC nevertheless remain  
23 unreasonably exposed to COVID-19. Any measures taken by the detention centers reacting  
24 to these orders remain woefully inadequate to protect detainees with underlying medical  
25 conditions. But even assuming the remedy in those cases was workable for four detainees  
26 (and it is not), it is plainly not workable for an additional 13 medically vulnerable detainees.  
27 The *only* adequate remedy for Petitioners, then, is release.  
28

1           3.       While the rest of the world is sheltering in place, wearing masks, frequently  
2 sanitizing and washing their hands, and avoiding close contact with anyone beyond their  
3 households, Petitioners remain trapped in what are essentially tinderboxes on the verge of  
4 explosion, *still* without the ability to take the most basic measures to protect themselves as  
5 the global pandemic spreads, even with the alleged implementation of increased sanitation  
6 and protective measures at the facilities. As medical experts have warned would happen for  
7 weeks, the virus is surging in ICE detention centers across the country—including in La  
8 Palma, where, as of June 8, 2020, 78 cases of COVID-19 have been confirmed among  
9 detainees, and EDC, where 13 cases among detainees have now been reported—creating a  
10 recognized risk of harm to Petitioners that is both unconscionably high and entirely  
11 preventable. Indeed, at least one Petitioner has already tested positive for COVID-19,  
12 demonstrating the immediacy of the threat.

13           4.       COVID-19 is highly contagious, with each person infected transmitting the  
14 virus to an average of two to three other people in normal conditions, let alone in a confined  
15 environment. A single case has the potential to overwhelm not only the detention centers  
16 where Petitioners are located, but also the surrounding communities.

17           5.       Medical experts agree that reducing detention center and other carceral  
18 populations is a critical component of risk mitigation during the widespread COVID-19  
19 outbreak. A failure to heed public health advice to reduce detention center numbers will not  
20 just harm detainees—it will also have ripple effects across communities as rapid  
21 transmission of the disease in carceral settings further taxes already overburdened regional  
22 hospitals and healthcare systems.

23           6.       Infectious disease specialists warn that while conditions may be improved, *no*  
24 conditions of confinement in carceral settings can adequately manage the serious risk of  
25 harm for medically vulnerable individuals during the COVID-19 pandemic. Even with  
26 improved conditions, Petitioners live in pods, or “tanks,” and sleep in bunk beds, sharing  
27 common spaces and medical facilities with hundreds of other detainees. Even in improved  
28 conditions, Petitioners are forced to share necessities like showers, telephones, and sinks

1 with dozens of others. And even in improved conditions, Petitioners remain in the constant  
2 presence of officers and staff who continually rotate in and out of the facility, each time  
3 risking transmission of the virus to those inside and outside the detention center.

4 7. Deprived of personal protective equipment (“PPE”) and adequate medical  
5 care and placed in conditions that make it impossible to practice social distancing,  
6 Petitioners are helpless to take the only risk-mitigation steps known to limit transmission of  
7 the virus. And if the Petitioners are infected, as at least one already has been, all face a  
8 heightened risk of complications, pneumonia, sepsis, and even death within detention  
9 centers that have a track record of failing to provide adequate medical care even outside  
10 times of crisis.

11 8. Although no one is spared the risk of severe illness from COVID-19, certain  
12 individuals are at a higher risk for severe illness from COVID-19 due to age or underlying  
13 medical conditions. The United States Department of Health and Human Services Centers  
14 for Disease Control and Prevention (“CDC”) has defined these “high-risk” populations to  
15 include “[p]eople of all ages with underlying medical conditions, particularly if not well  
16 controlled, including,” as relevant here, “chronic lung disease or moderate to severe  
17 asthma,” “serious heart conditions,” “severe obesity (body mass index [BMI] of 40 or  
18 higher),” and “diabetes.” CDC, Groups at Higher Risk for Severe Illness (“CDC Higher  
19 Risk”), [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html)  
20 [higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html) (last visited June 7, 2020). However, as the CDC website explicitly  
21 recognizes, “COVID-19 is a new disease and there is limited information regarding risk  
22 factors for severe disease.” *Id.* Against this medical backdrop, and with due consideration  
23 for the heightened danger COVID-19 presents within detention facilities, numerous courts  
24 across the country have ordered the release of civil immigration detainees with underlying  
25 medical conditions, including mental illness, that do not fit squarely within the CDC-

1 recognized heightened risk categories, but that nonetheless place them at heightened risk of  
 2 contracting the virus and/or serious complications if they contract COVID-19.<sup>1</sup>

3  
 4 <sup>1</sup> See, e.g., *Jose B.R. v. Tsoukaris*, No. CV 20-3347 (MCA), 2020 WL 2744586  
 5 (D.N.J. May 27, 2020) (schizophrenia-spectrum disorder); *Juan E.M. v. Decker*, No. CV  
 6 20-4594 (KM), 2020 WL 2214586 (D.N.J. May 7, 2020) (BMI of 31.2, history of smoking,  
 7 and low oxygen levels); *Doe v. Barr (Barr II)*, No. 20-CV-02263-RMI, 2020 WL 1984266  
 8 (N.D. Cal. Apr. 27, 2020) (severe post-traumatic stress disorder (“PTSD”) and major  
 9 depressive disorder); *Durel B. v. Decker*, No. 2:20-cv-03430-KM, 2020 WL 1922140  
 10 (D.N.J. Apr. 21, 2020) (PTSD and schizophrenia-spectrum disorder); *Fofana v. Albence*,  
 11 No. 20-10869, 2020 WL 1873307 (E.D. Mich. Apr. 15, 2020) (52-year-old with high blood  
 12 pressure); *Doe v. Barr (Barr I)*, No. 20-CV-02141-LB, 2020 WL 1820667 (N.D. Cal. Apr.  
 13 12, 2020) (chronic PTSD, depression, and latent tuberculosis); *Valenzuela Arias v. Decker*,  
 14 No. 20 CIV. 2802 (AT), 2020 WL 1847986 (S.D.N.Y. Apr. 10, 2020) (unexplained mass  
 15 in chest that required surgery); *Malam v. Adducci (Malam II)*, No. 20-10829, 2020 WL  
 1809675 (E.D. Mich. Apr. 9, 2020) (55-year-old with limited mobility, hypotension, hernia,  
 16 prostate issues, and risk of cancer); *Avendano Hernandez v. Decker*, No. 20-CV-1589  
 17 (JPO), 2020 WL 1547459 (S.D.N.Y. Mar. 31, 2020) (right bundle branch block and  
 18 rhabdomyolysis); *Castillo v. Barr*, No. CV 20-00605 TJH (AFMx), 2020 WL 1502864  
 19 (C.D. Cal. Mar. 27, 2020) (58-year-old man with kidney stones, arthritis, and a hernia, and  
 20 23-year-old man who was recovering from a work-related facial fracture). See also  
 21 *Xochihua-Jaimes v. Barr*, No. 18-71460, 2020 WL 1429877 (9th Cir. Mar. 23, 2020)  
 22 (ordering *sua sponte* the release of an immigration petitioner “[i]n light of the rapidly  
 23 escalating public health crisis, which public health authorities predict will especially impact  
 24 immigration detention centers”); *Sallaj v. ICE*, 1:20-cv-00167-JJM-LDA, 2020 WL  
 25 1975819 (D.R.I. Apr. 24, 2020) (releasing 40-year-old detainee with no underlying medical  
 26 conditions, where COVID-19 was present in the facility where he was housed).

27 For cases releasing civil immigration detainees with underlying medical conditions  
 28 that meet the CDC’s “Higher Risk” criteria, see, e.g., *Ochoa v. Kolitwenzew*, No. 20-CV-  
 2135, 2020 WL 2850706 (C.D. Ill. June 2, 2020); *Robenson J. v. Decker*, No. CV 20-5141  
 (KM), 2020 WL 2611544 (D.N.J. May 22, 2020); *Geovani M.-O. v. Decker*, No. CV 20-  
 5053 (KM), 2020 WL 2511428 (D.N.J. May 15, 2020); *Santiago P. v. Decker*, No. CV 20-  
 5067 (KM), 2020 WL 2487648 (D.N.J. May 14, 2020); *Ruderman v. Kolitwenzew*, No. 20-  
 CV-2082, 2020 WL 2449758 (C.D. Ill. May 12, 2020); *Perez-Perez v. Adducci*, No. 20-  
 10833, 2020 WL 2305276 (E.D. Mich. May 9, 2020); *Favi v. Kolitwenzew*, No. 20-CV-  
 2087, 2020 WL 2114566 (C.D. Ill. May 4, 2020); *Kevin M.A. v. Decker*, No. CV 20-4593  
 (KM), 2020 WL 2092791 (D.N.J. May 1, 2020); *Pimentel-Estrada v. Barr*, No. 2:20-cv-  
 00495-RSM-BAT, 2020 WL 2092430 (W.D. Wash. Apr. 28, 2020); *Ferreira v. Decker*,  
 No. 1:20-CV-03170-AT, 2020 WL 1989417 (S.D.N.Y. Apr. 27, 2020); *Chavez Garcia v.*  
*Acuff*, No. 3:20-cv-00357-NJR, 2020 WL 1987311 (S.D. Ill. Apr. 27, 2020); *Refunjol v.*  
*Adducci*, No. 2:20-cv-02099-SDM-CMV, 2020 WL 1983077 (S.D. Ohio Apr. 27, 2020);  
*Essien v. Barr*, No. 1:20-cv-01034-WJM, 2020 WL 1974761 (D. Colo. Apr. 24, 2020);  
*Medeiros v. Martin*, No. 1:20-cv-00178-WES-PAS, 2020 WL 1969363 (D.R.I. Apr. 24,  
 2020); *Singh v. Barr*, No. 20-CV-02346-VKD, 2020 WL 1929366 (N.D. Cal. Apr. 20,  
 2020); *Zaya v. Adducci*, No. 20-10921, 2020 WL 1903172 (E.D. Mich. Apr. 18, 2020);  
*Vazquez Barrera v. Wolf*, No. 4:20-CV-1241, 2020 WL 1904497 (S.D. Tex. Apr. 17, 2020);  
*Jason Anthony W. v. Anderson*, No. 2:20-CV-3704 (BRM), 2020 WL 2121118 (D.N.J. Apr.  
 17, 2020); *Perez v. Wolf*, No. 5:19-CV-05191-EJD, 2020 WL 1865303 (N.D. Cal. Apr. 14,  
 2020); *Cristian A.R. v. Decker*, No. CV 20-3600, 2020 WL 2092616 (D.N.J. Apr. 12, 2020);  
*Bent v. Barr*, No. 19-CV-06123-DMR, 2020 WL 1812850 (N.D. Cal. Apr. 9, 2020); *Rafael*  
*L.O. v. Tsoukaris*, No. CV 20-3481 (JMV), 2020 WL 1808843 (D.N.J. Apr. 9, 2020);  
*Malam v. Adducci (Malam I)*, No. 20-10829, 2020 WL 1672662 (E.D. Mich. Apr. 5, 2020);  
*Thakker v. Doll*, No. 1:20-CV-480, 2020 WL 1671563 (M.D. Pa. Mar. 31, 2020); *Coronel*

1           9.       As of June 8, over 1,709 detainees have tested positive for COVID-19 in ICE  
2 facilities—including 78 detainees in La Palma, and 13 detainees in EDC—and at least two  
3 ICE detainees and multiple detention center staff members have already died from  
4 contracting the virus. Even against this backdrop of extreme crisis and court orders  
5 requiring action, ICE has yet to affect a comprehensive release of those detainees most at  
6 risk of contracting and suffering severe complications from COVID-19 and remains  
7 willfully blind to the harsh reality that its failure to act is resulting in the serious illness and  
8 death of those individuals within its care. If anything, the continually rising numbers at La  
9 Palma and EDC demonstrate that any increased efforts these facilities have undertaken to  
10 protect detainees pursuant to the orders in *Urdaneta*, *Gutierrez-Lopez*, *Patel*, and *Mendoza*  
11 are ineffective and unworkable, and that release is the only adequate remedy.

12           10.       Before filing suit, Petitioners notified ICE of their medical conditions and  
13 individual circumstances and formally requested that they be released in light of the harms  
14 they will experience if they contract COVID-19 while detained. Each Petitioner has a  
15 sponsor in the United States who has agreed to provide housing and take responsibility for  
16 supporting and supervising Petitioners if they are released. Yet ICE has failed to release  
17 Petitioners despite the imminent harms they face.

18           11.       Respondents-Defendants (hereinafter “Respondents”), through their roles as  
19 Director of the U.S. Department of Homeland Security (“DHS”), directors of ICE, and  
20 wardens of EDC and La Palma, are subjecting Petitioners to an increased risk of disease  
21 and death by unnecessarily holding them in detention centers during a global pandemic.  
22 Despite being ordered to implement improved precautionary measures in the facilities since  
23 the pandemic began, Respondents are *still* failing to follow the basic public health protocols  
24 that have been broadcasted all over the world as necessary to halt the spread of COVID-19.  
25 Compounding the risk and possible harm to Petitioners, EDC and La Palma both have  
26 documented track records of uncorrected health and safety violations.

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28 *v. Decker*, No. 20-CV-2472 (AJN), 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020); *Basank*  
*v. Decker*, No. 20 CIV. 2518 (AT), 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020).





1 Detention Center since April 26, 2019. Mr. Calix Espinoza has an intellectual disability  
2 secondary to a traumatic brain injury along with a history of adjustment disorder. He also  
3 has mixed anxiety and depressed moods. Because his intellectual disability impairs his  
4 ability to properly rationalize and communicate, Mr. Calix Espinoza risks going  
5 undiagnosed and untreated if he contracts COVID-19, which could lead to respiratory  
6 failure and death. Declaration of Dr. Patricia Lebensohn (“Lebensohn Decl.”) ¶ 4(b)  
7 [attached hereto as Exhibit 3]; *see also* Declaration of Dr. Homer Venters (“Venters Decl.”)  
8 ¶ 45 [attached hereto as Exhibit 4]. On February 4, 2020, an Immigration Judge found by a  
9 preponderance of the evidence that Mr. Calix Espinoza is mentally incompetent to represent  
10 himself in Immigration Court proceedings. Mr. Calix Espinoza has a pending asylum  
11 application based on persecution that he suffered in Honduras.

12 18. Petitioner **Joaquin Mantilla Silva** is an 18-year-old man who has been  
13 detained at La Palma since March 20, 2020. Mr. Mantilla Silva has tested positive for  
14 COVID-19 and is currently isolated in the Zuni-Alpha pod. Mr. Mantilla Silva has bilateral  
15 pneumonia, severe asthma, and severe allergies. Because of his history of lung disease and  
16 asthma, he is at increased risk of severe complication of COVID-19 including  
17 hospitalization, intensive care, and respiratory failure. Lebensohn Decl. ¶ 4(l); *see also*  
18 Venters Decl. ¶ 45. Mr. Mantilla Silva is fleeing political persecution that he faced in his  
19 home country of Venezuela, including a brutal physical beating that left him in the hospital  
20 for days. Mr. Mantilla Silva requested asylum and recently passed his credible fear  
21 interview, which is the initial step in applying for asylum.

22 19. Petitioner **Yarjelis Madueno Davila** is a 27-year-old woman who has been  
23 detained at EDC since November 13, 2019. Recently, Ms. Madueno Davila’s pod, Charlie-  
24 500, was placed in quarantine because of a possible COVID-19 positive case. Ms. Madueno  
25 Davila has hyperthyroidism and obesity with a BMI of 29.1. She was also recently  
26 diagnosed with microadenoma, which is a small brain tumor that causes frequent headaches  
27 and visual changes. Ms. Madueno Davila needs to be evaluated by an endocrinologist and  
28 a neurosurgeon to discuss treatment for her tumor, Lebensohn Decl. ¶ 4(c), but this

1 treatment will likely be delayed due to COVID-19. Ms. Madueno Davila's obesity places  
2 her at an increased risk of developing complications requiring hospitalization and intensive  
3 care if she contracts COVID-19. *Id.* Ms. Madueno Davila has a pending asylum application  
4 based on persecution at the hands of the Venezuelan government, who have already maimed  
5 and murdered two family members.

6         20. Petitioner **Artem Pakhol** is a 41-year-old journalist from Ukraine who fled  
7 the country after receiving threats related to his reporting and who has been detained at La  
8 Palma since July 22, 2019. Mr. Pakhol has suffered a series of medical conditions while  
9 detained, including hemorrhoids requiring a special diet, osteoarthritis of his hips, knees,  
10 and ankles, trouble urinating, chest pain, and back pain from his neck to his pelvis. This  
11 medical history, in addition to his severe anxiety and depression, places Mr. Pakhol at  
12 heightened risk of exacerbated health problems if exposed to COVID-19. Lebensohn Decl.  
13 ¶ 4(e).

14         21. Petitioner **Ernesto Rodriguez Cedeno** is a 32-year-old man who has been  
15 detained at La Palma since September 5, 2019. Mr. Rodriguez Cedeno suffers from asthma,  
16 which was first diagnosed when he was a child but has worsened since being detained in La  
17 Palma. He is currently housed in the Apache Alpha pod, which is the isolated unit for people  
18 with underlying medical conditions, because of his high vulnerability to COVID-19. As a  
19 result of his asthma and compromised lung functioning, Mr. Rodriguez Cedeno is at  
20 increased risk of contracting COVID-19, and he faces increased risk of severe illness or  
21 death if he contracts COVID-19. Lebensohn Decl. ¶ 4(a); *see also* Venters Decl. ¶ 45. He  
22 has a pending application for asylum based on persecution he suffered by the Venezuelan  
23 and Cuban governments.

24         22. Petitioner **Ernesto Lara Carnero** is a 33-year-old man who has been  
25 detained at La Palma since November 6, 2019. On April 27, 2020, Mr. Lara Carnero was  
26 diagnosed with asthma by the La Palma medical staff. Declaration of Ernesto Lara Carnero  
27  
28

1 (“Lara Carnero Decl.”)<sup>2</sup> ¶ 5 [attached hereto as Exhibit 8]. In addition, Mr. Lara Carnero  
2 has allergies and a history of pneumothorax after one of his lungs collapsed. Lebensohn  
3 Decl. ¶ 4(d). Mr. Lara Carnero is in need of further evaluation to determine if he has  
4 decreased lung function. This information is vital to determine whether he is at higher risk  
5 of contracting severe COVID-19. *Id.* At minimum, this medical uncertainty and his obesity,  
6 with a BMI of 29.1, place him at risk of requiring hospitalization and/or intensive care if he  
7 contracts COVID-19. *Id.* As of May 26, Mr. Lara Carnero was suffering from the following  
8 symptoms: coughing, shortness of breath, chest pain, head pain, and a lack of a sense of  
9 taste and smell. But Mr. Lara Carnero has not been isolated and, as far as he is aware, he  
10 has not been tested for COVID-19. Lara Carnero Decl. ¶¶ 5, 36. Mr. Lara Carnero has a  
11 pending asylum application based on the persecution he suffered in Mexico at the hands of  
12 a cartel and Mexican authorities.

13 23. Petitioner **Ronni Barroso Barrios** is a 25-year-old man who has been  
14 detained at EDC since August 23, 2019. He has moderate to severe asthma and a seizure  
15 disorder. Mr. Barroso Barrios is at increased risk of severe illness and death if he contracts  
16 COVID-19 because of his asthma. Lebensohn Decl. ¶ 4(k); *see also* Venters Decl. ¶ 45. He  
17 was granted asylum on May 7, 2020, but remains in detention in case DHS decides to appeal  
18 the grant of asylum. To date, DHS has not appealed, and Mr. Barroso Barrios remains in  
19 detention.

20 24. Petitioner **Nilsson Cano Villatoro** is a 26-year-old man who has been  
21 detained at La Palma since August 28, 2018. He was healthy prior to being in ICE custody,  
22 but after improper evaluation and treatment of abdominal pain while in detention, he was  
23 hospitalized and diagnosed with acute cholecystitis, which required emergency surgery.  
24 Now, Mr. Cano Villatoro has recurrent abdominal pain and has developed depression from  
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26 <sup>2</sup> The detainee declarations cited herein are formally signed by Florence Immigration  
27 & Refugee Rights Project staff, who took the detainees’ statements via telephone due to the  
28 unavailability of in-person visits as a result of the COVID-19 pandemic. *See Urdaneta*,  
2020 WL 2319980, at \*5 n.1 (admitting detainee declarations obtained via telephone due to  
the unavailability of in-person visits as a result of the COVID-19 pandemic).

1 prolonged detention and the stress of not receiving necessary medical care. COVID-19 will  
2 exacerbate Mr. Cano Villatoro's mental health problems. Lebensohn Decl. ¶ 4(f). His  
3 application for asylum was denied, and he has a pending appeal with the Board of  
4 Immigration Appeals.

5 25. Petitioner **Zoila Mayancela Zamora** is a 24-year-old woman who has been  
6 detained at EDC since July 3, 2019. Ms. Mayancela Zamora has a seizure disorder that  
7 requires medication, and heart disease including Tricuspid Insufficiency (leaky heart valve)  
8 and hypertrophic cardiomyopathy with severe pulmonary hypertension and dilation of the  
9 right cardiac cavities. She also suffers from shortness of breath with exertion. Because of  
10 her underlying heart and lung conditions, she is at increased risk for severe complications,  
11 including respiratory failure and death, if she is infected with COVID-19. *Id.* ¶ 4(j); *see also*  
12 *Venters Decl.* ¶ 45. She has a pending asylum application based on the persecution that she  
13 suffered in Ecuador.

14 26. Petitioner **Yudeine Gonzalez Borges** is a 41-year-old woman who has been  
15 detained at EDC since December 21, 2019. Mrs. Gonzalez Borges has a uterine benign  
16 tumor, BMI above 30, and one episode of elevated blood sugar without further evaluation  
17 for Type 2 Diabetes Mellitus. Her potential risk of Type 2 Diabetes places her at increased  
18 risk of severe complications if she contracts COVID-19. Lebensohn Decl. ¶ 4(h).  
19 Mrs. Gonzalez Borges has a pending application for asylum based on the persecution that  
20 she suffered in Cuba.

21 27. Petitioner **Ivan Benitez Flores** is a 26-year-old man who has been detained  
22 at La Palma since June 28, 2019. Mr. Benitez Flores has a history of torture, including  
23 suffocation and traumatic brain injury. As a result of the torture, he has lasting physical and  
24 psychological effects, including memory difficulties, poor concentration, and difficulty  
25 hearing that leads to confusion. He has also been diagnosed with PTSD and depression,  
26 which further exacerbate his physical deficits and cause him to have avoidant behaviors and  
27 a distractible disposition. Mr. Benitez Flores is at increased risk of contracting COVID-19  
28 and developing complications because of his physical and psychological conditions and

1 symptoms. Declaration of Dr. Samantha Varner (“Varner Decl.”) ¶¶ 4-5, 7-8 [attached  
2 hereto as Exhibit 5]. Mr. Benitez Flores’s symptoms, including easy confusion, poor  
3 concentration, forgetfulness, and avoidance, put him at “tremendous” risk both of becoming  
4 infected and suffering delays in treatment that could lead to complications. *Id.*; *see also*  
5 Venters Decl. ¶ 45. He has a pending application from asylum based on the torture that he  
6 suffered in Mexico.

7 28. Petitioner **Rudis Naranjo Rosales** is a 49-year-old man who has been  
8 detained at La Palma since October 4, 2019. Mr. Naranjo Rosales has a history of head  
9 trauma resulting in the removal of his spleen and placement of a VP shunt. He needs further  
10 evaluation by a neurosurgeon because his medical records show symptoms of his VP  
11 malfunctioning. Mr. Naranjo Rosales’s asplenia (no spleen) and BMI over 30 place him at  
12 risk of severe COVID-19 and other infection. In addition, his records show hyperlipidemia  
13 which could be a sign of heart disease, but he needs further evaluation. Lebensohn Decl.  
14 ¶ 4(i); *see also* Venters Decl. ¶ 45. Mr. Naranjo Rosales’s asylum application was denied  
15 and he has a pending appeal with the Board of Immigration Appeals.

16 29. Petitioner **Luis Jorge Alfonso** is a 31-year-old man who has been detained at  
17 La Palma since November 3, 2019. Mr. Jorge Alfonso has a history of chronic respiratory  
18 illnesses including allergies and asthma which requires treatment with a beta agonist  
19 inhaler. Because of his respiratory illnesses, he is at increased risk for severe COVID-19  
20 that could require intensive care with ventilation at a hospital. Lebensohn Decl. ¶ 4(g); *see*  
21 *also* Venters Decl. ¶ 45. Mr. Jorge Alfonso has a pending asylum application.

22 30. Respondent **Chris Howard** is the warden of La Palma, where Petitioners  
23 Calix Espinoza, Lara Carnero, Pakhol, Rodriguez Cedeno, Cano Villatoro, Mantilla Silva,  
24 Benitez Flores, Naranjo Rosales, and Jorge Alfonso, are being held. He is the custodian of  
25 these Petitioners and is named in his official capacity.

26 31. Respondent **Fred Figueroa** is the warden of EDC, where Petitioners  
27 Madueno Davila, Gonzalez Borges, Barroso Barrios, and Mayancela Zamora are being  
28 held. He is the custodian of these Petitioners and is named in his official capacity.



1 WL 2319980, at \*1. On March 13, 2020, President Trump declared a national emergency  
2 in response to the coronavirus pandemic. At the time, there were over 1,600 confirmed cases  
3 in the United States and at least 46 deaths.

4 38. Today, only 87 days later, over 1.95 million individuals in the United States  
5 have tested positive for COVID-19, with over 110,900 deaths reported nationwide. *See*  
6 *Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering*  
7 (CSSE), JOHNS HOPKINS UNIV. & MED., <https://coronavirus.jhu.edu/map.html> (last updated  
8 June 8, 2020). In Arizona, over 27,600 positive COVID-19 cases have been reported as of  
9 June 8, 2020, with 1,047 reported deaths. *See Data Dashboard*, Ariz. Dep't of Health  
10 Servs., <https://www.azdhs.gov/covid19>, "Data Dashboard" Tab (last accessed June 8,  
11 2020). Although over 7 million people live in Arizona, only 402,660 COVID-19 tests have  
12 been administered in the State, and hundreds of new cases are being reported each day. *See*  
13 *id.*

14 39. And as of the date of this filing, there have been 1,709 confirmed COVID-19  
15 cases among individuals in ICE custody across the country, including 78 confirmed cases  
16 at La Palma, 13 confirmed cases at EDC, and 18 confirmed cases at the nearby Florence  
17 Detention Center in Florence, Arizona. *See ICE Guidance on COVID-19*, U.S.  
18 IMMIGRATION & CUSTOMS ENFORCEMENT, <https://www.ice.gov/coronavirus>, "Confirmed  
19 Cases" Tab (last updated on June 8, 2020 at 10:10 a.m. PDT / 1:10 p.m. EDT). Notably,  
20 only 5,096 detainees in ICE custody have been tested for COVID-19, meaning that there is  
21 an over 33% positive rate among those tested. *Id.* There have also been 44 confirmed  
22 COVID-19 cases among ICE employees assigned to detention facilities, including one at  
23 EDC. *Id.*<sup>3</sup> According to Dr. Homer Venters, a physician, internist and epidemiologist with  
24 over a decade of experience in providing, improving, and leading health services for  
25 incarcerated people, "[t]his is likely just the tip of the iceberg in terms of the number of ICE  
26

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27 <sup>3</sup> These statistics do not include third-party contractors who work in ICE facilities  
28 who have tested positive for COVID-19, as ICE has stated that this information "isn't  
something [they] have to provide." Venters Decl. ¶ 12 (citation omitted).

1 staff and detainees who are already infected but unaware due to the lack of testing  
2 nationwide, and the fact that people who are infected can be asymptomatic for several days.”  
3 Venters Decl. ¶¶ 1, 13; *see also Sallaj*, 2020 WL 1975819, at \*3 (“the full extent of the risk  
4 is unknown because, as of today, only sixty-eight detainees have been tested out of the five  
5 hundred eighty-one being held at [the detention center]”); *Ochoa*, 2020 WL 2850706, at  
6 \*12 (“Notably, the only way to determine if the virus is present in the facility is to do wide-  
7 spread testing for the virus....”); *Dada v. Witte*, No. 1:20-CV-00458, 2020 WL 2614616, at  
8 \*2 (W.D. La. May 22, 2020) (“Without regular testing, there is simply no way to confirm  
9 that a facility that once housed those with a highly infectious disease is now infection  
10 free.”).

11 40. COVID-19 is a highly contagious disease with a mortality rate ten times  
12 greater than influenza. *Castillo*, 2020 WL 1502864, at \*2. The CDC reports that COVID-  
13 19 “spreads easily and sustainably from person to person, and even asymptomatic infected  
14 people can spread the virus.” *Kaur v. DHS*, No. 2:20-cv-03172-ODW (MRWx), 2020 WL  
15 1939386, at \*2 (C.D. Cal. Apr. 22, 2020); *see also* Venters Decl. ¶ 41(d) (“asymptomatic  
16 transmission of COVID-19 has been identified by the CDC as an important means of  
17 transmission”); Declaration of Jaimie Meyer (“Meyer Decl.”) ¶ 5 [attached hereto as  
18 Exhibit 6].

19 41. Symptoms of COVID-19 range from mild to severe, with some carriers of the  
20 virus experiencing no symptoms at all. Meyer Decl. ¶¶ 5-6; *Urdaneta*, 2020 WL 2319980,  
21 at \*1. Severe symptoms may result in acute respiratory distress, severe pneumonia, sepsis,  
22 and death. Meyer Decl. ¶ 6; *Urdaneta*, 2020 WL 2319980, at \*1. The CDC estimates that  
23 severe illness or death occurs in 16% of COVID-19 cases. Meyer Decl. ¶ 6; *Urdaneta*, 2020  
24 WL 2319980, at \*1 (citation omitted).

25 42. The CDC and other courts have recognized that “COVID-19 presents a  
26 substantial risk of harm to all persons, and not just to detainees with higher-risk conditions.”  
27 *Gomes v. DHS*, No. 20-CV-453-LM, 2020 WL 2514541, at \*16 (D.N.H. May 14, 2020);  
28 *see, e.g., Ochoa*, 2020 WL 2850706, at \*2 (“COVID-19 can cause death or serious illness



1 in anyone”); *Zepeda Rivas v. Jennings*, No. 20-CV-02731-VC, 2020 WL 2059848, at \*2  
2 (N.D. Cal. Apr. 29, 2020) (noting the “health risks posed by the virus—not just for people  
3 in high-risk categories but for healthy people as well”); *Sallaj*, 2020 WL 1975819, at \*1  
4 (D.R.I. Apr. 24, 2020) (“And while older people with pre-existing conditions are the most  
5 vulnerable, young people without preexisting conditions have become severely ill because  
6 of Covid-19, which, in some cases, has led to death.”); *Savino v. Souza (Savino I)*, No. CV  
7 20-10617-WGY, 2020 WL 1703844, at \*7 (D. Mass. Apr. 8, 2020) (observing that “even  
8 perfectly healthy detainees are seriously threatened by COVID-19,” and that “it cannot be  
9 denied that the virus is gravely dangerous to all of us”); *Savino v. Souza (Savino II)*, No.  
10 CV 20-10617-WGY, 2020 WL 2404923, at \*8 (D. Mass. May 12, 2020) (“Though COVID-  
11 19 surely poses a greater threat to those with CDC-recognized heightened risk factors, it  
12 cannot be denied that the virus is gravely dangerous to all of us.” (citation omitted)).

13 43. Recent data support this conclusion. A study from the CDC showed that even  
14 in patients between ages 19-64 with no underlying health conditions, the total  
15 hospitalization rate was 8-8.7%. *Savino I*, 2020 WL 1703844, at \*7. In a different CDC  
16 study of hospitalized COVID-19 patients, 26% had no high-risk factors—of that  
17 subpopulation, 23% received ICU care and 5% died. *Savino I*, 2020 WL 1703844, at \*7.

18 44. Although even the young and otherwise healthy can succumb to COVID-19,  
19 older patients and patients with chronic underlying conditions are at a particularly high risk  
20 for severe cases and complications. Meyer Decl. ¶ 6; Venters Decl. ¶ 23. For example, the  
21 CDC recognizes that “[p]eople of all ages with medical conditions, particularly if not well  
22 controlled,” are at high-risk of suffering severe illness or death from COVID-19, including,  
23 as relevant here, “chronic lung disease or moderate to severe asthma,” “serious heart  
24 conditions,” “severe obesity (body mass index [BMI] of 40 or higher),” and “diabetes.”  
25 CDC Higher Risk; *Urdaneta*, 2020 WL 2319980, at \*1; *see also* Meyer Decl. ¶ 6; Venters  
26 Decl. ¶ 23.

27 45. However, as the CDC explicitly recognizes, “COVID-19 is a new disease and  
28 there is limited information regarding risk factors for severe disease.” CDC Higher Risk.

1 Against this medical backdrop, and with due consideration for the heightened danger  
2 COVID-19 presents within detention facilities, numerous courts across the country have  
3 ordered the release of civil immigration detainees without any CDC-recognized heightened  
4 risk factors who have underlying medical conditions, including mental illness, that make  
5 them more vulnerable to contracting the virus and/or serious complications if they contract  
6 COVID-19. *See supra* note 1.

7 46. With respect to mental illness, courts have recognized that, “[f]or complex  
8 reasons, individuals with serious mental illness are also particularly vulnerable to infectious  
9 diseases, and the public health strategies for preventing and slowing the spread of COVID-  
10 19, such as social distancing, may be less effective” for persons with mental illness. *Jose*  
11 *B.R.*, 2020 WL 2744586, at \*4 (footnotes and citations omitted); *see also Barr I*, 2020 WL  
12 1820667, at \*4 (noting that “[g]rowing evidence demonstrates that PTSD, anxiety/stress,  
13 and depression can lead to decreased immune response and increased risk of infections,”  
14 and that the “weakened immunity due to mental-health disorders can put detainees at  
15 increased risk of contracting and suffering from more severe forms of COVID-19” (citing  
16 declaration of Dr. Mira Zein, M.D., M.P.H., a Clinical Assistant Professor at Stanford  
17 University School of Medicine, Department of Psychiatry and Behavioral Sciences));  
18 *Ochoa*, 2020 WL 2850706, at \*11-12 (observing that the petitioner “has less ability to  
19 protect himself to COVID-19 due to his mental illness and learning disabilities,” and that  
20 the petitioner’s “mental illness and learning disabilities will likely prevent his compliance  
21 with” policies mandating detainee use of masks at all times other than eating and showering,  
22 “reduc[ing] the potential effectiveness of these policies as to Petitioner”).

23 47. In addition to greater susceptibility to infection, “treatment may be ‘more  
24 challenging and potentially less effective’” for mentally ill individuals, and as a  
25 consequence, once they contract a disease, they face “a 4- to 8-fold risk of death due to  
26 infection compared to the general population.” *Jose B.R.*, 2020 WL 2744586, at \*4 (citing  
27 Hao Yao et al., *Patients with mental health disorders in the COVID-19 epidemic*, 7 THE  
28 LANCET e21, e21 (Apr. 2020), <https://www.thelancet.com/pdfs/journals/lanpsy/>

1 [PIIS2215-0366\(20\)30090-0.pdf](#) (“Yao, Mental Health”) [attached hereto as Exhibit 29]).  
2 “For these reasons, mental- and public-health experts have already begun to sound the alarm  
3 about the increased risk that COVID-19 poses to those with serious mental illness.” *Id.*

4 48. Moreover, “[p]eople with mental health conditions could be more  
5 substantially influenced by the emotional responses brought on by the COVID-19 epidemic,  
6 resulting in relapses or worsening of an already existing mental health condition because of  
7 high susceptibility to stress compared with the general population.” Yao, Mental Health;  
8 *see also Ochoa*, 2020 WL 2850706, at \*11 (reasoning that the petitioner “faces increased  
9 punitive measures and stress during the COVID-19 pandemic in light of his mental illness  
10 and learning difficulties” and that “he has shown resistance and confusion to the COVID-  
11 19 protocols, resulting in his punishment and, no doubt, exacerbation of his mental health  
12 issues”); *see also Lebensohn Decl.* ¶ 4(c), (f).

13 49. In addition to mental illness, courts have recognized that individuals with a  
14 BMI greater than or equal to 30, while not meeting the CDC higher-risk criterion, are  
15 nonetheless at risk of developing severe COVID-19, at least when their obesity is combined  
16 with other risk factors. *See Essien*, 2020 WL 1974761, at \*7; *United States v. Foreman*, No.  
17 3:19-CR-62 (VAB), 2020 WL 2315908, at \*4 (D. Conn. May 11, 2020) (granting  
18 compassionate release for inmate with hypertension and moderate obesity given her  
19 increased risk of falling seriously ill from COVID-19, noting that defendant’s “weight—  
20 even if ... not high enough to create the highest risk—along with her age of 58, magnifies  
21 the risk”). And for sound reason—a New York City study found that a BMI greater than or  
22 equal to 30 was a comorbidity in 41.7% of hospitalizations. *Essien*, 2020 WL 1974761, at  
23 \*7 (citing Safiya Richardson et al., *Presenting Characteristics, Comorbidities, and*  
24 *Outcomes Among 5700 Patients Hospitalized With COVID-19 in the New York City Area*,  
25 *J. OF THE AM. MED. ASSOC.* (Apr. 22, 2020) at E3, [https://jamanetwork.com/journals/jama/  
26 articlepdf/2765184/jama\\_richardson\\_2020\\_oi\\_200043.pdf](https://jamanetwork.com/journals/jama/articlepdf/2765184/jama_richardson_2020_oi_200043.pdf)).

27 50. Currently, there is no widely available treatment, cure, or vaccine for COVID-  
28 19. Meyer Decl. ¶ 5; Venters Decl. ¶ 9; *see also Castillo*, 2020 WL 1502864, at \*2. As a

1 result, “[t]he only way to protect our communities is to ‘socially distance’ ourselves—avoid  
2 unnecessary human contact and maintain a safe distance of at least six feet from other  
3 people—and practice diligent hygiene, by frequently washing our hands and disinfecting  
4 commonly touched surfaces.” *Vazquez Barrera*, 2020 WL 1904497, at \*2; *see also* Venters  
5 Decl. ¶ 26 (stating that “because there is no cure for COVID-19, social distancing remains  
6 an essential means of prevention,” and that “social distancing represents one of the few  
7 tools that correctional facilities can implement to slow the spread of COVID-19”); Meyer  
8 Decl. ¶ 8. This is especially true in congregate or carceral settings. *See* Meyer Decl. ¶¶ 9-  
9 13; *Pimentel-Estrada*, 2020 WL 2092430, at \*4 (“The only way to control the virus [in  
10 these settings] is to use preventive strategies, including social distancing.” (citation  
11 omitted)).

12 **B. There Continues to Be a Heightened Risk of Severe Illness and Death**  
13 **from COVID-19 in Detention Centers.**

14 51. Many courts, including this one, have recognized that individuals in detention  
15 centers “have a heightened risk of contracting and transmitting COVID-19.” *Urdaneta*,  
16 2020 WL 2319980, at \*9 (citing *CDC, Clinical Care Guidance*,  
17 [https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-](https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html)  
18 [patients.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html) at 2); *see also* Meyer Decl. ¶¶ 9-10 (“The risk posed by infectious diseases in  
19 detention centers, jails, and prisons is significantly higher than in the community, both in  
20 terms of risk of transmission, exposure, and harm to individuals who become infected.”);  
21 *Basank*, 2020 WL 1481503, at \*3 (“The nature of detention facilities makes exposure and  
22 spread of the virus particularly harmful.”); *Bent*, 2020 WL 1812850, at \*4 (same); *Sallaj*,  
23 2020 WL 1975819k, at \*3 (“The risk of contracting COVID-19 in a detention center . . . is  
24 dangerously high.”); *Geovani M.-O.*, 2020 WL 2511428, at \*1 (“The stark reality is that  
25 ‘avoiding exposure to COVID-19 is impossible for most detainees and inmates.’”); *Castillo*,  
26 2020 WL 1502864, at \*2 (“Because of the highly contagious nature of the coronavirus and  
27 the, relatively high, mortality rate of COVID-19, the disease can spread uncontrollably with  
28

1 devastating results in a crowded, closed facility, such as an immigration detention center.”).  
2 That is especially true where, as here, there is already a documented outbreak at the facility.

3 52. CDC guidance indicates that heightened risk in detention centers is due, in  
4 part, to “the number of sources which can introduce them into a facility’s population,  
5 including detention staff, visitors, contractors, vendors, legal representatives, court staff,  
6 and new detainees; the congregate environment in which detainees ‘live, work, eat, study,  
7 and recreate’; and limited medical isolation options, hygiene supplies, and dissemination of  
8 accurate information among detainees.” *Urdaneta*, 2020 WL 2319980, at \*2 (citing *CDC*,  
9 *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in*  
10 *Correctional and Detention Facilities*, [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf)  
11 [ncov/downloads/guidance-correctional-detention.pdf](https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf) (last accessed May 11, 2020)); *see*  
12 *also Flores v. Barr*, No. CV 85-4544-DMG (AGRx), 2020 WL 2128663, at \*4 (C.D. Cal.  
13 Mar. 28, 2020) (“Medical experts fear the exceptionally rapid transmission of COVID-19  
14 in detention facilities, where medical resources such as physicians, testing kits, and  
15 protective equipment are constrained; people are unable to practice social distancing; shared  
16 facilities are not frequently or properly sanitized; soap and hand sanitizer are not provided  
17 or easily accessible to detainees; quarantine or isolation units are scarce; and there are  
18 frequent opportunities for an infected person to enter or leave the facility.”). Additionally,  
19 “there may be cultural or structural disincentives for detainees to take preventative  
20 measures, report symptoms, or seek medical care.” *Gomes*, 2020 WL 2514541, at \*4.

21 53. Even when social visitation is suspended, staff, contractors, and vendors  
22 arrive at and leave the facility daily, and the possibility of asymptomatic transmission is  
23 high. *See Castillo*, 2020 WL 1502864, at \*5 (“[T]he Government cannot deny the fact that  
24 the risk of infection in immigration detention facilities ... is particularly high if an  
25 asymptomatic guard, or other employee, enters a facility. While social visits have been  
26 discontinued at [the detention center], the rotation of guards and other staff continues.”);  
27 *Pimentel-Estrada*, 2020 WL 2092430, at \*12 (“The biggest threat comes from  
28 Respondents’ inability to identify asymptomatic carriers as staff, contractors, vendors,

1 attorneys, and visitors come and go between the detention center and the broader  
2 community where COVID-19 has been spreading.”). It is impossible to seal entry and exit  
3 to the facilities, and thus detainees housed within cannot be isolated from viruses circulating  
4 in the broader community. *See Venters Decl.* ¶ 13; *Meyer Decl.* ¶ 10; *Castillo*, 2020 WL  
5 1502864, at \*5; *Pimentel-Estrada*, 2020 WL 2092430, at \*12.

6 54. Preventative strategies utilized by the general public, like social distancing,  
7 hand washing, sanitation of surfaces, proper ventilation and PPE are neither readily  
8 available nor particularly effective in detention facilities. *Meyer Decl.* ¶¶ 8, 10-11, 25  
9 (“Social distancing is key to infection prevention, but often challenging in detention  
10 facilities that are inherently congregate.”); *Venters Decl.* ¶¶ 18-20 (describing challenges to  
11 implementing social distancing and applying hospital-level infection control measures on  
12 security staff in detention centers); *see also Santiago*, 2020 WL 2487648, at \*9 (“Within  
13 [congregate facilities], detainees ‘cannot practically adhere to social distancing guidelines  
14 or the adequate level of personal hygiene, measures which have been ‘touted as the most  
15 effective means to thwart the spread of the virus.’” (internal citation omitted)); *Perez*, 2020  
16 WL 1865303, at \*12 (“[T]he structure of detention facilities, which are designed to house  
17 multiple people in close proximity, render any sanitation efforts somewhat meaningless as  
18 detainees cannot social distance.”). As a result, once COVID-19 enters a facility, as it has  
19 in La Palma and EDC, rapid transmission and widespread outbreak is virtually inevitable.  
20 *See Venters Decl.* ¶ 17.

21 55. Respondents have not eliminated many of these risks. *See infra* Section C.  
22 The conditions of confinement do not allow for social distancing within cells, detainees  
23 interact in common spaces, employees move throughout the facility working on multiple  
24 units, and detainees are not required to follow recommendations about masks and social  
25 distancing in common spaces. Accordingly, as the COVID-19 global pandemic spreads,  
26 Petitioners are trapped in “a ‘tinderbox scenario’ where rapid outbreak is extremely likely,  
27 and extremely likely to lead to deadly results[.]” *Malam I*, 2020 WL 1672662, at \*8; *see*  
28 *also Ruderman*, 2020 WL 2449758, at \*3 (“The rapid spread of COVID-19 through

1 detention center populations could lead to a ‘tinderbox scenario,’ where patient flow from  
2 detention centers overwhelms local hospital systems, causing a devastating effect on public  
3 health.”); Venters Decl. ¶ 17 (“Once COVID-19 is inside a facility, ICE will be unable to  
4 stop the spread of the virus throughout the facility given long-existing inadequacies in ICE’s  
5 medical care and also in light of how these facilities function.”).

6 56. As Judge Steven Logan has previously summarized: “No one disputes that  
7 COVID-19 exists, that it is rapidly and pervasively spreading, that detention facilities face  
8 an acute risk of disseminating infectious diseases, or that individuals in ICE custody have  
9 contracted COVID-19.” *Urdaneta*, 2020 WL 2319980, at \*7. This acute risk has not  
10 subsided.

11 57. Medical experts agree that reducing the number of detainees is a necessary  
12 component of risk mitigation in a pandemic as widespread and serious as the one currently  
13 spreading across the United States. *See Pimentel-Estrada*, 2020 WL 2092430, at \*4  
14 (“[M]uch focus has been placed on reducing detained populations, and public health experts  
15 have recommended that authorities release detained individuals who are at high risk of  
16 serious illness or death from COVID-19. Additionally, experts have recommended the  
17 release of detainees who present a low risk of harm to the community to reduce the total  
18 number of detainees in a facility and allow for greater social distancing.” (citations  
19 omitted)). This is true not only for the facility as a whole, but for the population of people  
20 living within distinct combined spaces, such as tanks or pods. *See Venters Decl.* ¶ 41(f)  
21 (“While the overall capacity of the facility may be lower than normal, the reliance on full  
22 or nearly full housing areas subverts the original goals of having fewer people in a facility.  
23 ... Any meaningful effort to promote social distancing must include having fewer people in  
24 individual ho[u]sing areas, resulting in more sparsely populated housing areas throughout  
25 the facility, not a small number of densely packed housing areas.”).

26 58. Reducing detention center populations does not just benefit detainees and  
27 staff, it also benefits the community as a whole by reducing the burden on healthcare  
28 resources that are already in high demand. *See Arias v. Decker*, No. 20-civ-2802 (AT), 2020

1 WL 2306565, at \*11 (S.D.N.Y. May 8, 2020) (“[d]ecreasing the [ICE detention] population  
2 will ... ‘mitigate the damage’ to both the [j]ail and the surrounding community and thereby  
3 ‘reduce the death toll’” (alterations in original; internal citations omitted)). Recognizing  
4 this, many large detention settings across the country have implemented release of high-  
5 risk detainees as a measure to reduce the impact of COVID-19 on incarcerated people, staff  
6 and local health systems. Venters Decl. ¶ 3.

7 59. “[A]s public health experts have predicted, there have been significant  
8 outbreaks in detained populations where the virus spreads ‘like wildfire.’” *Pimentel-*  
9 *Estrada*, 2020 WL 2092430, at \*3; *see also* Venters Decl. ¶¶ 14-15 (providing data  
10 illustrating the “extremely rapid rate of COVID-19 infection spread in correctional  
11 settings”). For example, on April 7, 2020, ICE had confirmed 19 cases of COVID-19 in its  
12 detention facilities. *Pimentel-Estrada*, 2020 WL 2092430, at \*3. Within two weeks, that  
13 number jumped to 253. *Id.* As of April 27, the number of confirmed cases was 317. *Id.*  
14 Now, only six weeks later, that number has more than quadrupled, with ICE reporting 1,709  
15 confirmed cases. *See ICE Guidance on COVID-19*, U.S. IMMIGRATION & CUSTOMS  
16 ENFORCEMENT, <https://www.ice.gov/coronavirus>, “Confirmed Cases” Tab (last updated on  
17 June 8, 2020 at 10:10 a.m. PDT / 1:10 p.m. EDT).

18 60. In the face of this humanitarian and constitutional crisis, courts across the  
19 country, including those in the Ninth Circuit, have issued dozens of orders directing the  
20 release of individuals detained by ICE, where doing so is in the public interest and protects  
21 the individuals from the unnecessary risk they face in detention. *See supra* note 1.

22 **C. The Risks to Petitioners’ Health and Safety Remain Particularly Acute**  
23 **in the Detention Centers Where ICE Is Detaining Them.**

24 61. Courts in this district have recognized that the detention centers where the  
25 Petitioners are detained—La Palma and EDC—are especially vulnerable to rapid  
26 transmission of COVID-19. *Urdaneta*, 2020 WL 2319980, at \*10; *Gutierrez-Lopez*, 2020  
27 WL 2781722, at \*9; *Patel*, No. 2:20-CV-00709-DLR-DMF, Dkt. 35 at 3-4; *Mendoza*, No.  
28 CV-20-00514-PHX-SPL (MTM), Dkt. 37 at 4 (adopting *Urdaneta* findings and reasoning).



1 This is due to, among other things, the ongoing, sanctioned visitors to the detention centers;  
2 the unsanitary and crowded conditions within the facilities; the lack of widespread COVID-  
3 19 testing at the facilities; the failure to consistently implement risk-mitigation protocols;  
4 and the facilities' history of providing poor medical treatment. *See* Meyer Decl. ¶¶ 10-13,  
5 16-30; Venters Decl. ¶¶ 39-42; Declaration of Monika Sud-Devaraj ("Sud-Devaraj Decl.")  
6 ¶ 8 [attached hereto as Exhibit 7]; Lara Carnero Decl. ¶¶ 7, 9, 11-14, 25-26, 28, 31, 34, 36-  
7 37; Declaration of Ernesto Rodriguez Cedeno ("Rodriguez Cedeno Decl.") ¶¶ 8-11, 13-17  
8 [attached hereto as Exhibit 9]; Declaration of Yarjelis Madueno Davila ("Madueno Davila  
9 Decl.") ¶¶ 5-10, 12, 14-16 [attached hereto as Exhibit 10]; Declaration of Artem Pakhol  
10 ("Pakhol Decl.") ¶¶ 5-6, 8-16 [attached hereto as Exhibit 11]; Declaration of Marco  
11 Fernandez Sancho ("Fernandez Sancho Decl.") ¶¶ 5-10, 17 [attached hereto as Exhibit 12];  
12 Declaration of Edwin Murcia Solis ("Murcia Solis Decl.") ¶¶ 11, 13, 15 [attached hereto as  
13 Exhibit 13]; Declaration of Frank David Coca Peña ("Coca Peña Decl.") ¶¶ 10-16 [attached  
14 hereto as Exhibit 14]; Declaration of Luis Alberto Ravelo Serret ("Ravelo Serret Decl.")  
15 ¶¶ 6, 8, 12-15, 17 [attached hereto as Exhibit 15]; Declaration of Jorge Ibarra-Perez  
16 ("Ibarra-Perez Decl.") ¶¶ 7-13, 15-19 [attached hereto as Exhibit 16]; Declaration of  
17 Roberto Reina Rojas ("Reina Rojas Decl.") ¶¶ 6, 11-14 [attached hereto as Exhibit 17];  
18 Declaration of Francisco Ramon Corral ("Ramon Corral Decl.") ¶¶ 14, 16-19 [attached  
19 hereto as Exhibit 18]; Declaration of Benjamin Saucedo-Rodriguez ("Saucedo-Rodriguez  
20 Decl.") ¶¶ 4-7, 9 [attached hereto as Exhibit 19].

21 **1. Conditions in La Palma and EDC Remain Unsanitary and**  
22 **Hazardous**

23 62. Thousands of immigration detainees are housed in EDC and La Palma at any  
24 given time. EDC has a capacity for approximately 1,500 people, and La Palma can hold  
25 about 3,000 people. Sud-Devaraj Decl. ¶ 3; *see Urdaneta*, 2020 WL 2319980, at \*3.  
26 Although Respondents have made some effort to improve conditions at these facilities  
27 pursuant to the orders in *Urdaneta*, *Gutierrez-Lopez*, *Patel*, and *Mendoza*, they have not  
28 done so in a way that alleviates the risk to Petitioners. Under current conditions, which

1 purport to comply with those previous orders, Petitioners' due process rights are still being  
2 violated.

3 63. ICE detainees at both facilities have reported that the facilities are taking ad  
4 hoc, insufficient measures to contain the likelihood of transmission. Venters Decl. ¶¶ 39-  
5 41; Lara Carnero Decl. ¶¶ 7, 9, 11-14, 25-26, 28, 31, 34, 36-37; Rodriguez Cedeno Decl.  
6 ¶¶ 8-11, 13-17; Madueno Davila Decl. ¶¶ 5-10, 12, 14-16; Pakhol Decl. ¶¶ 5-6, 8-16;  
7 Fernandez Sancho Decl. ¶¶ 5-10; Murcia Solis Decl. ¶¶ 11, 13, 15; Coca Peña Decl. ¶¶ 10-  
8 16; Ravelo Serret Decl. ¶¶ 6, 8, 12-15, 17; Ibarra-Perez Decl. ¶¶ 7-13, 15-19; Reina Rojas  
9 Decl. ¶¶ 6, 11-14; Ramon Corral Decl. ¶¶ 14, 16-18, 22; Saucedo-Rodriguez Decl. ¶¶ 4-7.

10 64. At both EDC and La Palma, adequate social distancing is "impossible."  
11 Pakhol Decl. ¶ 6; Rodriguez Cedeno Decl. ¶ 8; Ramon Corral Decl. ¶ 14; Ibarra-Perez Decl.  
12 ¶ 8; Madueno Davila Decl. ¶ 5. "Detainees in each facility live in units, commonly referred  
13 to as tanks or pods. The units are comprised of individual cells which house an average of  
14 two detainees each, and have, at a minimum, a bunk bed, a sink, and a toilet." *Urdaneta*,  
15 2020 WL 2319980, at \*3. Two people typically share a small cell, even when the tank is  
16 below capacity. Pakhol Decl. ¶ 5; Fernandez Sancho Decl. ¶ 5; Ibarra-Perez Decl. ¶¶ 6-7;  
17 Saucedo-Rodriguez Decl. ¶¶ 4-5; Madueno Davila Decl. ¶ 5; *see* Lara Carnero Decl. ¶ 6.  
18 Cells in La Palma are about 12' by 7', meaning "even if cellmates are encouraged to sleep  
19 head to toe..., it will be all but impossible to maintain 6' of distance within the confines of  
20 that space." Meyer Decl. ¶ 26; *accord* Pakhol Decl. ¶ 6; Ibarra-Perez Decl. ¶ 7. It is likewise  
21 impossible for detainees with cellmates to be 6 feet apart during count, which occurs five  
22 times per day in La Palma and at least twice a day in EDC, each lasting about 1.5 hours.  
23 Ibarra-Perez Decl. ¶ 7; Madueno Davila Decl. ¶ 5.

24 65. Detainees at both facilities report an inability to socially distance themselves  
25 from other detainees and staff throughout the day, and the facilities' failure to enforce it or  
26 impose additional precautions to limit the flow of detainees in common areas. Fernandez  
27 Sancho Decl. ¶ 6; Lara Carnero Decl. ¶ 7; Pakhol Decl. ¶¶ 9-10, 12; Rodriguez Cedeno  
28 Decl. ¶¶ 8-9; Saucedo-Rodriguez Decl. ¶¶ 5-6; Coca Peña Decl. ¶¶ 10-13; Ibarra-Perez

1 Decl. ¶¶ 9-10; Ravelo Serret Decl. ¶¶ 8, 13; Madueno Davila Decl. ¶ 16; *see also* Venters  
2 Decl. ¶ 26 (“Any guidance that treats [social distancing] as merely recommended, rather  
3 than required at all times, remains inadequate to mitigate the spread of COVID-19.”); Meyer  
4 Decl. ¶ 28 (noting that “social distancing policies are meaningless if not enforced and  
5 completely deployed”). For example, in the dining area in Mohave Bravo in La Palma, there  
6 are approximately 12 tables with four seats attached and two long tables with eight seats  
7 attached. The seats are attached to each other like benches. Each table is only two to three  
8 feet apart, and the small tables are only around five feet long by five feet wide. Lara Carnero  
9 Decl. ¶ 7. Detainees generally eat “face to face,” four men at a table, close enough to “touch  
10 someone without reaching.” Pakhol Decl. ¶ 10; *see also* Ibarra-Perez Decl. ¶ 10. Even if  
11 detainees choose to eat in their cells, they must come into close contact with others while  
12 waiting in line or in a group to get their food. Coca Peña Decl. ¶¶ 11-12; Ravelo Serret ¶ 13.

13         66. In addition to the living quarters and dining area, detainees are frequently  
14 confronted with sharing limited equipment in small common areas with dozens of other  
15 individuals, including phones, computers, and other equipment. Lara Carnero Decl. ¶ 7;  
16 Fernandez Sancho Decl. ¶ 6; Ibarra-Perez Decl. ¶ 9; Saucedo-Rodriguez Decl. ¶ 6;  
17 Rodriguez Cedeno Decl. ¶ 8; Pakhol Decl. ¶ 9; Coca Peña Decl. ¶¶ 10, 13; Ravelo Serret  
18 Decl. ¶ 8. The telephones are so close to each other that “if [you] reached out [your] arm,  
19 [you] could touch the person sitting next to [you] on the phone.” Ravelo Serret Decl. ¶ 8;  
20 *see also* Lara Carnero Decl. ¶ 7 (“The telephones are only one foot apart”); Coca Peña Decl.  
21 ¶ 13; Madueno Davila Decl. ¶ 16. Compounding the problem, the cleaning solution and  
22 paper towels to wipe down the phones after each use are usually empty. Coca Peña Decl.  
23 ¶ 13; Lara Carnero Decl. ¶ 37; Saucedo-Rodriguez Decl. ¶ 6; Ramon Corral Decl. ¶ 17.

24         67. Detainees in each unit also share shower facilities. Ramon Corral Decl. ¶ 17;  
25 Pakhol Decl. ¶ 11. In the Hopi-Charlie unit at La Palma, for example, there are four  
26 individual showers for 80 detainees to share. Pakhol Decl. ¶ 11. Porters spray the showers,  
27 but they are not clean. *Id.* The toilets in the cells in both EDC and La Palma do not have  
28 lids and sometimes malfunction, Saucedo-Rodriguez Decl. ¶ 5; Madueno Davila Decl. ¶¶ 5,

1 11; Pakhol Decl. ¶¶ 6-7, resulting in exposure to fecal material and risk of fecal-oral  
2 infection of COVID-19. Venters Decl. ¶¶ 22, 39(h).

3 68. Detainee access to PPE in both facilities is scarce. *See* Venters Decl. ¶ 39(f).  
4 For example, only detainees who work in cleaning are given gloves. Lara Carnero Decl.  
5 ¶ 8; Ibarra-Perez Decl. ¶ 17. And although detainees were eventually given at least one  
6 disposable mask—long after the CDC recommended their use, *see* Venters Decl. ¶ 39(f)—  
7 detainees report having difficulty obtaining additional or replacement masks. Ramon Corral  
8 Decl. ¶ 16; Rodriguez Cedeno ¶ 16. Moreover, detainees were not given instructions on  
9 how to properly wear the masks, nor are they consistently required, encouraged, or educated  
10 on the importance of wearing them in the common areas inside the housing units. Fernandez  
11 Sancho Decl. ¶¶ 8-9; Lara Carnero Decl. ¶ 9; Rodriguez Cedeno Decl. ¶ 8; Ibarra-Perez  
12 Decl. ¶ 11; *see* Venters Decl. ¶ 41(b). As a result, the “vast majority” of detainees reportedly  
13 do not wear their masks. Fernandez Sancho Decl. ¶ 8-9; *see also* Ibarra-Perez Decl. ¶ 11;  
14 Reina Rojas Decl. ¶ 14; Ravelo Serret Decl. ¶ 17.

15 69. Similarly, the use of PPE for staff at both facilities has been inconsistent and  
16 ineffective. Venters Decl. ¶ 39(e). Indeed, facility staff at La Palma have not been  
17 consistently using PPE around vulnerable detainees, let alone general population detainees.  
18 Mr. Murcia Solis, a detainee at La Palma who is detained in Apache Alpha, the isolated  
19 tank with people with underlying medical conditions who are at higher risk for  
20 complications with COVID-19, explained that even in a unit occupied by people with  
21 underlying medical conditions, officers do not regularly wear masks. Murcia Solis Decl.  
22 ¶¶ 4-5, 11. Even when they do wear them, multiple detainees in Apache Alpha report that  
23 the officers take them off to cough, eat, and while they are in the office. *Id.* ¶ 11; Rodriguez  
24 Cedeno Decl. ¶ 17; Reina Rojas Decl. ¶ 13. Detainees in other units in La Palma and EDC  
25 likewise report that staff “almost never” enter the units with gloves, and do not always wear  
26 masks or plastic coverings. Lara Carnero Decl. ¶¶ 11-12, 31; *see also* Saucedo-Rodriguez  
27 Decl. ¶ 7; Lara Carnero Decl. ¶ 26; Ibarra-Perez Decl. ¶ 17; Madueno Davila Decl. ¶ 14. In  
28 addition, several detainees at La Palma report that staff do not always change their PPE

1 when moving between units, Lara Carnero Decl. ¶¶ 13-14, 26; Ibarra-Perez Decl. ¶¶ 17-19;  
2 Coca Peña Decl. ¶ 16, “subverting the purpose of limiting the transfer of COVID-19.”  
3 Venters Decl. ¶ 41(a).

4 70. As with PPE, access to hygiene and sanitation products is scarce in both EDC  
5 and La Palma. *See* Venters Decl. ¶ 39(b). For example, while detainees are given shampoo,  
6 they have limited, if any, access to soap, and no access to hand sanitizer. *See* Pakhol Decl.  
7 ¶ 14; Saucedo-Rodriguez Decl. ¶ 6 (“some days we don’t even have soap to wash our hands  
8 with. Today it has been about four days that we haven’t had soap”); Lara Carnero Decl.  
9 ¶ 37; Ibarra-Perez Decl. ¶¶ 15-16; Ramon Corral Decl. ¶ 18; Rodriguez Cedeno Decl. ¶ 10;  
10 Madueno Davila Decl. ¶ 10 (“[W]e get three little containers of shampoo about 1.5 ounces  
11 each (50 mL) per week. We do not get soap.”). Moreover, soap or shampoo is generally  
12 made available—if at all—via a communal dispenser, Saucedo-Rodriguez Decl. ¶ 6; Lara  
13 Carnero Decl. ¶ 37, Ramon Corral Decl. ¶ 18, which is “neither practical nor desirable  
14 f[ro]m an infection control standpoint,” Venters Decl. ¶ 39(b). *See also id.* ¶ 39(b) (“This  
15 approach would actually require cleaning of the soap jugs in some manner and would likely  
16 lead to considerable spillage. Soap dispensers should be located at hand washing stations  
17 and should [be] filled by a small number of trained individuals, so as to limit spillage and  
18 the spread of COVID-19.”). In the Charlie-500 unit in EDC, detainees are no longer given  
19 trash bags for the trash bins and are given only a limited supply of toilet paper, which they  
20 use to clean. Madueno Davila Decl. ¶ 13.

21 71. Neither facility is professionally cleaned or disinfected; rather, detainees in  
22 both facilities are responsible for cleaning the facilities through the Voluntary Work  
23 Program. Reina Rojas Decl. ¶ 12; Madueno Davila Decl. ¶ 12; *see also* Venters Decl.  
24 ¶ 39(g). And at least on May 27, 2020, the Charlie-500 unit in EDC did not have any  
25 detainees in the Voluntary Work Program, and therefore did not have anyone cleaning the  
26 pod. Madueno Davila Decl. ¶ 12. Common areas are cleaned mainly at night, Rodriguez  
27 Cedeno Decl. ¶ 11, and the cleaning solution detainees are provided is diluted. Reina Rojas  
28 Decl. ¶ 12; Rodriguez Cedeno Decl. ¶ 10; Ibarra-Perez Decl. ¶¶ 15-16; Ramon Corral Decl.

1 ¶ 18; Madueno Davila Decl. ¶ 12. Sometimes cleaning supplies run out, and the officers  
2 never have a plan to keep detainees constantly equipped with what they need. Murcia Solis  
3 Decl. ¶ 15; *see also* Lara Carnero Decl. ¶ 37 (as of May 26, 2020, it had been “almost 8  
4 days since they brought us chlorine” to clean cells); Pakhol Decl. ¶ 14 (ran out of gloves to  
5 clean the tank). For example, over Memorial Day weekend, detainees at the Apache Alpha  
6 unit in La Palma, the medically vulnerable unit, ran out of disinfectant, shampoo,  
7 toothpaste, and trash bags, which were not restocked until Tuesday, May 26. Ravelo Serret  
8 Decl. ¶ 15; Coca Peña Decl. ¶ 14; Reina Rojas Decl. ¶ 12.

9 72. Detainees also consistently report that they are not provided verbal  
10 information on COVID-19 or instructions on basic preventative measures from ICE or  
11 facility staff. *See* Venters Decl. ¶ 40; Fernandez Sancho Decl. ¶ 7; Ibarra-Perez Decl. ¶ 14;  
12 Ramon Corral Decl. ¶ 22 (“ICE has never explained anything about COVID-19 to us....  
13 We have received no official information.”); Rodriguez Cedeno Decl. ¶ 9.

14 73. Lack of timely access to health care is also an issue at both facilities, with  
15 multiple detainees reporting that sick call requests go unaddressed for hours, days, or even  
16 weeks. Venters Decl. ¶ 39(a); *see* Reina Rojas Decl. ¶ 6; Rodriguez Cedeno Decl. ¶¶ 13-  
17 14; Murcia Solis Decl. ¶ 13; Ravelo Serret Decl. ¶ 6; Ramon Corral Decl. ¶ 19; *see also*  
18 Madueno Davila Decl. ¶¶ 7-9. As Dr. Venters explains in his expert declaration, the  
19 reported delays in receiving medical attention indicate there is no effective process to  
20 effectively and timely segregate those with symptoms of COVID-19. Venters Decl. ¶ 39(a).  
21 Indeed, Petitioner Lara Carnero, a detainee who is currently housed in the Mohave Bravo  
22 unit in La Palma, states in his declaration that someone in his unit exhibiting possible  
23 COVID-19 symptoms and coughing was not seen for more than 24 hours after staff was  
24 notified. Lara Carnero Decl. ¶ 25. In some cases, detainees wait a week to see a doctor after  
25 complaining of cough, chest pain, and shortness of breath. *Id.* ¶ 34. According to  
26 Dr. Venters, “[b]ecause sick call represents the primary means by which people can report  
27 symptoms of COVID-19, this type of deficiency increases the likelihood that people will  
28

1 deteriorate while awaiting care, and also spread their infection to other detainees and staff.”

2 Venters Decl. ¶ 39(a).

3 74. The opportunities for transmission in environments like those described in La  
4 Palma and EDC—where people live in close, crowded quarters and “must share dining  
5 halls, bathrooms, showers, and other common areas”—are significant. Meyer Decl. ¶ 11;  
6 *see also* Venters Decl. ¶ 18.

7 75. Now that it has entered both facilities, it is all but inevitable that COVID-19  
8 will spread rapidly and uncontrollably in these detention centers, where individuals are held  
9 in close confinement and given limited access to hygiene and sanitation supplies,  
10 information, and medical care. *See* Meyer Decl. ¶¶ 11-20; Venters Decl. ¶¶ 17-22, 39-42.  
11 Moreover, without widespread testing that includes asymptomatic individuals,  
12 Respondents’ efforts to address the virus suffer “significant shortcomings,” even with  
13 increased cleaning and social distancing measures. *Jose B.R.*, 2020 WL 2744586, at \*10-  
14 11 (crediting increased cleaning and social distancing efforts but nevertheless ordering  
15 release of detainee after noting that dormitory-style pods make social distancing impossible,  
16 there was no evidence that social distancing had been enforced in the facility’s common  
17 areas, and the facility had not conducted widespread testing of asymptomatic detainees).

18 76. Indeed, the situation in La Palma is so dire that five members of Congress  
19 wrote a letter to ICE officials on May 29 highlighting the “alarming accounts” of  
20 “appalling” living conditions reported by detainees and stressing the need for action as “the  
21 situation at La Palma is escalating.” *See* Letter from Ann Kirkpatrick, Raul Grijalva, Bennie  
22 G. Thompson, Ruben Gallego, and Greg Stanton, Members of Congress, to Matthew T.  
23 Albence, Deputy Director, ICE, and Henry Lucero, Executive Associate Director, ICE  
24 (May 29, 2020) [attached hereto as Exhibit 20]. And the outbreak at La Palma has now been  
25 labeled “one of the largest in the nation.” *See* Daniel Gonzalez, *COVID-19 outbreak at ICE*  
26 *detention center in Eloy has ballooned into one of the largest in the nation*,  
27 *AZCENTRAL.COM* (May 31, 2020) [attached hereto as Exhibit 21].

28

1           77. The situation at EDC is no less dire, as demonstrated by reports of similar  
2 conditions from EDC detainees and the same inconsistent and inadequate policies at both  
3 facilities. *See* Venters Decl. ¶¶ 39, 42. If anything, the outbreak at La Palma is a blueprint  
4 for what is beginning to happen at EDC, where confirmed cases jumped from zero to four  
5 in two days last week, and from four to 13 over the weekend.

## 6                           **2. The Facilities Remain Open to Outside Contamination**

7           78. The Eloy Immigration Court has remained open during the pandemic, but  
8 with unpredictable and sporadic closures and court practices. Declaration of Jessica Anleu  
9 (“Anleu Decl.”) ¶¶ 4, 13 [attached hereto as Exhibit 30]. When the court is open, and  
10 assuming a detainee’s pod is not under quarantine, detainees and their attorneys are still  
11 often appearing in person at immigration hearings. Sud-Devaraj Decl. ¶¶ 3-4, 6, 8; Anleu  
12 Decl. ¶ 13.

13           79. The courtroom setup at the Eloy Immigration Court does not allow for  
14 detainees or other individuals to practice social distancing or otherwise avoid exposure to  
15 the virus, and ICE does not appear to be taking sufficient, if any, measures to rearrange  
16 courtrooms to accommodate social distancing or ensure that tables or other equipment are  
17 sanitized between hearings. Sud-Devaraj Decl. ¶ 6. First, to get to the Eloy Immigration  
18 Court, attorneys must be escorted down a hallway into a smaller hallway outside the  
19 courtrooms. Inside the courtrooms, which are about 30 feet long by 30 feet wide, there are  
20 long rows of benches in the back that frequently fill with 10-20 detainees at master calendar  
21 hearings. *Id.* Although immigration judges, government counsel, and some court staff have  
22 begun appearing by video or phone in some instances, guards, detainees and their attorneys,  
23 and interpreters are generally still present in the courtrooms. Maintaining the recommended  
24 six feet of space between people is “nearly impossible.” *Id.*

25           80. Although the Executive Office for Immigration Review (“EOIR”) has issued  
26 standing orders allowing (but not requiring) attorneys to appear telephonically for all  
27 hearings, legal staff still frequently enter the detention centers to prepare their clients, gather  
28 signatures, and assess their cases. *Id.* ¶ 8. Because there is no other effective, consistently



1 functional, and confidential manner to communicate with clients, contact visits are the only  
2 realistic options attorneys have for conducting the in-depth private conversations required  
3 for representation in bond or other matters. Thus, despite EOIR’s standing order permitting  
4 telephonic appearances, attorneys and other individuals are still frequently entering and  
5 leaving the detention centers. *Id.*

6 81. Although ICE now requires attorneys to wear PPE before entering the  
7 detention centers, ICE only started providing PPE (including masks, gloves, or goggles)  
8 months after COVID-19 was declared a pandemic and state and local governments  
9 implemented lockdowns. *See id.* ¶ 10. Moreover, the inconsistent and ineffective use of  
10 masks, gloves, and other protective equipment by detention center staff, *see Venters Decl.*  
11 ¶ 39(e), makes this a wholly ineffective measure to prevent COVID-19 from entering via  
12 people who regularly go back and forth between the detention centers and the larger  
13 community. *See id.* ¶ 13 (“Staff are more likely to bring COVID-19 into a facility, based  
14 solely on their movement in and out every day.”); *Pimentel-Estrada*, 2020 WL 2092430, at  
15 \*12 (“The biggest threat comes from Respondents’ inability to identify asymptomatic  
16 carriers as staff, contractors, vendors, attorneys, and visitors come and go between the  
17 detention center and the broader community where COVID-19 has been spreading.”).

18 82. On March 30, 2020, the National Association of Immigration Judges publicly  
19 called attention to EOIR’s woefully inadequate response to the COVID-19 crisis in  
20 immigration courts, noting that the government’s policies have “ranged from unacceptable  
21 to unconscionable” and have “put us all at risk.” *The National Association of Immigration*  
22 *Judges Urgently Calls for Immediate Implementation of Required Health and Safety*  
23 *Measures for the Immigration Courts During the Coronavirus Pandemic*, NAT’L ASS’N  
24 IMMIGRATION JUDGES (Mar. 30, 2020) [attached hereto as Exhibit 22]. As Immigration  
25 Judges themselves put it, “EOIR’s failure to take prompt, appropriate and sufficient action  
26 on court closures has created a dangerous environment placing at risk the health and lives  
27 of . . . judges, court staff, practitioners, detained respondents, and all individuals who  
28 interface with the court process as well as the broader community.”

1           83. Although ICE has taken steps to limit some visitors to the detention centers,  
2 in addition to attorneys and legal staff, ICE staff, officers, medical staff, and court staff also  
3 enter and exit the detention centers on a daily basis. Sud-Devaraj Decl. ¶ 8; *see also* Meyer  
4 Decl. ¶ 10; Venters Decl. ¶ 13. These sanctioned visitors and employees to the detention  
5 centers make it impossible to shield detainees from potential exposure to the virus, the only  
6 way medical professionals know to slow the spread of the virus in the absence of a vaccine  
7 or treatment. Meyer Decl. ¶¶ 10-11; *see also* *Castillo*, 2020 WL 1502864, at \*5 (“[T]he  
8 Government cannot deny the fact that the risk of infection in immigration detention facilities  
9 ... is particularly high if an asymptomatic guard, or other employee, enters a facility. While  
10 social visits have been discontinued at [the detention center], the rotation of guards and  
11 other staff continues.”).

### 12                                   **3. EDC and La Palma Have Documented Histories of Poor Medical** 13                                   **Treatment**

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

27           85. Indeed, in 2019, a mumps outbreak at La Palma resulted in the quarantine of  
28 dozens of immigration detainees for several weeks. *See* Matthew Casey, *ICE: Roughly 400*

1 *Immigration Detainees Quarantined in Arizona*, ARIZ. PUB. MEDIA (Mar. 14, 2019) (noting  
2 that about 15% of the approximately 2,200 detainees being quarantined nationally were in  
3 Arizona, primarily at La Palma) [attached hereto as Exhibit 26].

4 86. This was not the first time a contagious disease required quarantine at one of  
5 these facilities. In 2016, a measles outbreak at EDC resulted in 31 cases of measles,  
6 including 9 staff members, in part because ICE’s personnel policies did not require staff  
7 members to be vaccinated. *See* Heather Venkat et al., *Notes from the Field: Measles*  
8 *Outbreak at a United States Immigration and Customs Enforcement Facility — Arizona,*  
9 *May-June 2016*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 26, 2017) [attached  
10 hereto as Exhibit 27]. The CDC’s report on the measles outbreak notes that—despite its  
11 immediate recommendations to take certain preventative measures—ICE’s “slow  
12 compliance with vaccination recommendations and incomplete implementation of  
13 exclusion recommendations, and restrictions on enforcing them, might have prolonged this  
14 outbreak.” *Id.*

15 87. These past outbreaks of contagious diseases in La Palma and EDC strongly  
16 suggest that these facilities are poorly equipped and ill-prepared to handle COVID19. In  
17 fact, ICE’s response to COVID-19 has similarly been slow, inconsistent, and insufficient,  
18 despite its efforts to manage the situation and comply with the orders in *Urdaneta,*  
19 *Gutierrez-Lopez, Patel, and Mendoza.* *See* Meyer Decl. ¶¶ 13-14; Venters Decl. ¶¶ 39-42.

20 88. In light of their failure to provide consistent access to basic hygiene and  
21 adequate health care even under normal circumstances, it appears unlikely that EDC and La  
22 Palma will be able to competently and safely respond to the COVID-19 pandemic. Recent  
23 guidance from ICE regarding the agency’s COVID-19 response is not reassuring. *See*  
24 Venters Decl. ¶¶ 24-34 (describing how ICE’s guidelines contradict or omit several  
25 important CDC guidelines). Despite any measures Respondents are purportedly taking, the  
26 scientific reality is that “ICE has not been able to stop the entry of COVID-19 into its  
27 facilities,” and once COVID-19 is inside a facility, “ICE will be unable to stop the spread  
28

1 of the virus throughout the facility given long-existing inadequacies in ICE’s medical care  
2 and also in light of how these facilities function.” *Id.* ¶¶ 12, 17.

3 89. As explained in Dr. Venters’ expert declaration, Respondents’ protocols “are  
4 deficient and at odds with CDC recommendations regarding detention settings in a manner  
5 that threatens the health and survival of ICE detainees, including the Plaintiffs in this  
6 action.” Venters Decl. ¶ 25. For example, the protocols:

- 7 • fail to state any specific way that Respondents provide for enhanced social  
8 distancing, an essential means of preventing an outbreak (*id.* ¶¶ 26, 30(a));
- 9 • identify a list of factors that place people at higher risk but omit recognized  
10 risk factors identified by the CDC (*id.* ¶ 27);
- 11 • fail to identify any particular measures for protecting these higher risk  
12 individuals (*id.* ¶ 28);
- 13 • omit “vital elements” of CDC guidance on preventing the spread of COVID-  
14 19 inside detention facilities, including guidance on the importance of staff  
15 communication about risk reduction, and “critical aspects” of cleaning and  
16 disinfection outlined by the CDC (*id.* ¶ 30);
- 17 • outline an isolation plan that ignores important facility limitations (*id.* ¶ 32);  
18 and
- 19 • fail to address the lack of comprehensive COVID-19 testing in ICE facilities  
20 (*id.* ¶ 33).

21 90. Moreover, the ICE COVID-19 protocols and guidance specify that “isolation  
22 rooms” will be used to monitor people who are at risk or symptomatic with COVID-19.  
23 Venters Decl. ¶ 32. But as Dr. Venters explains:

24 When patients are placed into locked cells, the level of  
25 monitoring is dramatically reduced. Many of the cells  
26 contemplated or utilized for medical isolation in detention  
27 settings are the same cells or cell design used for punishment in  
28 the form of solitary confinement. These housing areas often  
lack basic elements required for medical evaluation, including  
a clinical examination room, and they also lack direct  
observation of people inside these cells. As a result, the very  
patients who are identified as being at high risk or even

1 identified as having COVID-19 symptoms may be transferred  
2 into settings where their deterioration is less likely to be  
detected or addressed.

3 *Id.* This is consistent with the declaration of Mr. Fernandez Sancho, who describes stark  
4 conditions in medical isolation, including 23 hours and 45 minutes a day locked in a cell,  
5 with no recreation or entertainment, poor nutrition, and inadequate medical checks. *See*  
6 Fernandez Sancho Decl. ¶¶ 14-20. As reflected in several detainee declarations, “these  
7 punitive conditions are dissuading detainees from reporting COVID-19 related symptoms,  
8 undermining any efforts to identify and segregate those who may be COVID-19 positive.”  
9 Venters Decl. ¶ 41(c); *see* Fernandez Sancho Decl. ¶ 22; Ibarra-Perez Decl. ¶ 13 (attesting  
10 that he knows of about seven men who have had COVID-19 symptoms and did not report  
11 it because they did not want to go to medical isolation and that two with symptoms of  
12 COVID-19 were in his pod at the time of the declaration).

13 91. Indeed, “[t]he practice of relying on punitive isolation as a primary response  
14 to COVID-19 not only discourages the reporting of symptoms, it decreases the likelihood  
15 that health staff will conduct meaningful medical assessments of sick patients, leading to  
16 increased risk of decompensation inside a locked cell.” Venters Decl. ¶ 41(c); *see also*  
17 Meyer Decl. ¶ 12 (“isolation of people who are ill in solitary confinement results in  
18 decreased medical attention and increased risk of death”).

19 92. “In addition, this practice of relying primarily on isolation as COVID-19  
20 response causes new health problems in the form of risk for suicide and self-harm.” Venters  
21 Decl. ¶ 32(c); *see also* Meyer Decl. ¶ 12 (noting the “known detrimental mental health  
22 effects of solitary confinement”); Varner Decl. ¶ 7 (“From a medical standpoint [Petitioner  
23 Benitez Flores] absolutely should not be held in solitary confinement and if he is, the risk of  
24 psychological decompensation and its sequelae including possible self harm is high.”).  
25 Thus, all individuals at EDC and La Palma—even if they do not have an underlying medical  
26 condition—are at greater risk of severe harm and death if they contract COVID-19 in these  
27 facilities. It is also not clear that this harmful medical isolation is even effective at mitigating  
28 the spread of COVID-19, unless the isolation room is a “specialized negative pressure

1 room.” Meyer Decl. ¶ 12; *see also* Venters Decl. ¶ 32(c) (noting that “isolation units often  
2 drive increased physical interaction between staff and patients, in the form of increased  
3 handcuffing, escorting individuals to and from showers and other out of cell encounters,  
4 and increased uses of force due to the psychological stress these units cause”).

5 93. Most importantly, it does not appear that ICE is actually and consistently  
6 implementing the measures it claims to be taking. *See* Venters Decl. ¶¶ 39-42. As noted  
7 above, detainees continue to report significant delays in receiving medical attention,  
8 inadequate cleaning and access to cleaning and hygiene supplies, an inability to socially  
9 distance, and a lack of verbal instructions on basic preventative measures, such as how to  
10 properly wear masks and other PPE. *Id.* ¶ 40. As Dr. Meyer explains, “[e]ven the most  
11 comprehensive protocols and policies that are informed by science are totally meaningless  
12 if not *implemented, enforced, and continuously monitored.*” Meyer Decl. ¶ 30 (emphasis  
13 added).

14 94. Petitioners, all of whom have underlying medical conditions that put them at  
15 “increased risk of severe COVID 19,” Lebensohn Decl. ¶ 4; *see also* Varner Decl. ¶¶ 4-5,  
16 7-8, are in “significantly higher” danger in these facilities than they would be if they were  
17 released to the outside community, Meyer Decl. ¶ 9; *see also Ruderman*, 2020 WL  
18 2449758, at \*13 (“Petitioner’s risk is obviously substantially reduced when Petitioner is in  
19 control of social distancing and other preventative measures, rather than relying on the  
20 voluntary actions of dozens of fellow detainees and detention staff to take preventative  
21 measures.”). Because of the “lack of access to even the most basic infection control, and  
22 other COVID-19 measures included in CDC guidelines,” the irreparable harm Petitioners  
23 will suffer if they remain in the La Palma and EDC facilities is imminent. *See* Venters Decl.  
24 ¶¶ 44-48.

1                   **D. Petitioners Face a Heightened Risk of Severe Harm if They Contract**  
2                   **COVID-19 While Detained.**

3           95. The 13 Petitioners in this case—all in civil immigration custody at La Palma  
4 or EDC—face unprecedented, unnecessary, and imminent harm now that COVID-19 has  
5 begun to spread in the detention centers where ICE is holding them.

6           96. The following Petitioners have CDC-recognized heightened risk factors: Mr.  
7 Mantilla Silva, Mr. Rodriguez Cedeno, Mr. Lara Carnero, Mr. Barroso Barrios, Mr. Jorge  
8 Alfonso, and Ms. Mayancela Zamora.

9           97. Petitioner Mantilla Silva has bilateral pneumonia, severe asthma, severe  
10 allergies, and recently tested positive for COVID-19. Because of Mr. Mantilla Silva’s  
11 history of lung disease and asthma, he is at increased risk of severe complication of COVID-  
12 19 including hospitalization, intensive care, and respiratory failure. Lebensohn Decl. ¶ 4(l);  
13 *see also* Venters Decl. ¶ 45; CDC Higher Risk (identifying “[p]eople with chronic lung  
14 disease or moderate to severe asthma” as at higher risk for severe illness from COVID-19);  
15 *Ferreya*, 2020 WL 2612199, at \*6.

16           98. Petitioner Rodriguez Cedeno suffers from asthma, which has worsened since  
17 being detained in La Palma. As a result of his asthma and compromised lung functioning,  
18 Mr. Rodriguez Cedeno is at increased risk of contracting COVID-19, and he faces increased  
19 risk of severe illness or death if he contracts COVID-19. Lebensohn Decl. ¶ 4(a); *see also*  
20 Venters Decl. ¶ 45; CDC Higher Risk (identifying “[p]eople with chronic lung disease or  
21 moderate to severe asthma” as persons at higher risk for severe illness from COVID-19);  
22 *Ferreya*, 2020 WL 2612199, at \*6 (finding that petitioner’s asthma placed him at  
23 “particular risk for suffering grave illness or death from COVID-19”; rejecting argument  
24 that petitioner’s asthma did not place him in high-risk category because it was not  
25 “moderate-to-severe” asthma, noting that “CDC guidelines provide that people with  
26 asthma, or other respiratory problems are at a heightened risk of severe illness or death from  
27 contracting COVID-19,” and that “a recent CDC report shows that asthma was one of the  
28

1 most common underlying conditions for younger people (18–49 years old) hospitalized  
2 with COVID-19 in the United States”).

3 99. Petitioner Lara Carnero has asthma, allergies, a history of pneumothorax after  
4 one of his lungs collapsed, and obesity, with a BMI of 29.1. Lara Carnero Decl. ¶ 5;  
5 Lebensohn Decl. ¶ 4(d). As of May 26, Mr. Lara Carnero was exhibiting COVID-19  
6 symptoms, including coughing, shortness of breath, chest pain, head pain, and a lack of  
7 taste and smell. Lara Carnero Decl. ¶¶ 5, 36. But he has not been isolated and, as far as he  
8 is aware, has not been tested for COVID-19. *Id.* ¶ 36. According to Dr. Lebensohn, the  
9 medical uncertainty surrounding whether Mr. Lara Carnero has decreased lung function and  
10 his obesity place him at risk of requiring hospitalization and/or intensive care if he contracts  
11 COVID-19. Lebensohn Decl. ¶ 4(d). In addition, the CDC and courts have recognized that  
12 people with asthma, which Mr. Lara Carnero was recently diagnosed with, Lara Carnero  
13 Decl. ¶ 5, are at increased risk for grave illness or death from COVID-19. *Ferreyra*, 2020  
14 WL 2612199, at \*6 (finding that petitioner’s asthma placed him at “particular risk for  
15 suffering grave illness or death from COVID-19”; rejecting argument that petitioner’s  
16 asthma did not place him in high-risk category because it was not “moderate-to-severe”  
17 asthma, noting that “CDC guidelines provide that people with asthma, or other respiratory  
18 problems are at a heightened risk of severe illness or death from contracting COVID-19,”  
19 and that “a recent CDC report shows that asthma was one of the most common underlying  
20 conditions for younger people (18–49 years old) hospitalized with COVID-19 in the United  
21 States”); CDC Higher Risk (identifying people with “moderate to severe asthma” as at  
22 higher risk for severe illness from COVID-19).

23 100. Petitioner Barroso Barrios has moderate to severe asthma and a seizure  
24 disorder. Mr. Barroso Barrios is at increased risk of severe illness and death if he contracts  
25 COVID-19 because of his asthma. Lebensohn Decl. ¶ 4(k); *see also* Venters Decl. ¶ 45;  
26 CDC Higher Risk (identifying people with “moderate to severe asthma” as at higher risk  
27 for severe illness from COVID-19); *Ferreyra*, 2020 WL 2612199, at \*6.

28



1           101. Petitioner Jorge Alfonso has a history of chronic respiratory illnesses  
2 including allergies and asthma which requires treatment with a beta agonist inhaler. Because  
3 of his respiratory illnesses, he is at increased risk for severe COVID-19 that could require  
4 intensive care with ventilation at a hospital. Lebensohn Decl. ¶ 4(g); *see also* Venters Decl.  
5 ¶ 45; CDC Higher Risk (identifying people with “moderate to severe asthma” as at higher  
6 risk for severe illness from COVID-19); *Ferreya*, 2020 WL 2612199, at \*6 (finding that  
7 petitioner’s asthma placed him at “particular risk for suffering grave illness or death from  
8 COVID-19”; rejecting argument that petitioner’s asthma did not place him in high-risk  
9 category because it was not “moderate-to-severe” asthma, noting that “CDC guidelines  
10 provide that people with asthma, or other respiratory problems are at a heightened risk of  
11 severe illness or death from contracting COVID-19,” and that “a recent CDC report shows  
12 that asthma was one of the most common underlying conditions for younger people (18–49  
13 years old) hospitalized with COVID-19 in the United States”).

14           102. Petitioner Mayancela Zamora has a seizure disorder that requires medication,  
15 and heart disease including Tricuspid Insufficiency (leaky heart valve) and hypertrophic  
16 cardiomyopathy with severe pulmonary hypertension and dilation of the right cardiac  
17 cavities. She also suffers from shortness of breath with exertion. Because of her underlying  
18 heart and lung conditions, she is at increased risk for severe complications, including  
19 respiratory failure and death, if she is infected with COVID-19. Lebensohn Decl. ¶ 4(j); *see*  
20 *also* Venters Decl. ¶ 45; CDC Higher Risk (noting that “[s]erious heart conditions,  
21 including . . . cardiomyopathies, and pulmonary hypertension, may put people at higher risk  
22 for severe illness from COVID-19”); *Kevin M.A.*, 2020 WL 2092791, at \*3 (recognizing  
23 that hypertension is an objectively serious medical condition that places individuals at a  
24 “high probability of developing severe disease from COVID-19”); *Perez-Perez*, 2020 WL  
25 2305276, at \*5 (noting that pulmonary hypertension is a CDC risk factor and citing a study  
26 of COVID-19 data from Wuhan, China, which “revealed that individuals with hypertension  
27 face about a 6% rate of death, a rate that is about 3.5% higher than otherwise healthy  
28 individuals and comparable with death rates of people suffering from diabetes (7.3%) and

1 respiratory disease (6.3%)”); *Fofana*, 2020 WL 1873307, at \*9 (rejecting argument that  
2 high blood pressure does not significantly increase an individual’s susceptibility to severe  
3 COVID-19-related complications, and emphasizing that a “CDC study of hospitalization  
4 rates reported on April 8, 2020 revealed that 74% of hospitalized patients were aged 50  
5 years old or older, 54.4% were male and 49.7% had hypertension”).

6 103. Petitioner Calix Espinoza has an intellectual disability, history of adjustment  
7 disorder, and mixed anxiety and depressed moods. According to Dr. Lebensohn, because  
8 Mr. Calix Espinoza’s intellectual disability impairs his ability to properly rationalize and  
9 communicate, he risks going undiagnosed and untreated if he contracts COVID-19, which  
10 could lead to respiratory failure and death. Lebensohn Decl. ¶ 4(b); *see also* Venters Decl.  
11 ¶ 45; *Jose B.R.*, 2020 WL 2744586, at \*4 (“individuals with serious mental illness are also  
12 particularly vulnerable to infectious diseases, and the public health strategies for preventing  
13 and slowing the spread of COVID-19, such as social distancing, may be less effective”);  
14 *Ochoa*, 2020 WL 2850706, at \*11-12 (observing that the petitioner “has less ability to  
15 protect himself to COVID-19 due to his mental illness and learning disabilities,” and that  
16 the petitioner’s “mental illness and learning disabilities will likely prevent his compliance  
17 with” policies mandating detainee use of masks at all times other than eating and showering,  
18 “reduc[ing] the potential effectiveness of these policies as to Petitioner”); Yao, Mental  
19 Health (observing that, “[w]hen epidemics arise, people with mental health disorders are  
20 generally more susceptible to infections,” and that “[p]ossible explanations include  
21 cognitive impairment, little awareness of risk, and diminished efforts regarding personal  
22 protection in patients”).

23 104. Petitioner Pakhol has suffered a series of medical conditions while detained,  
24 including hemorrhoids requiring a special diet, osteoarthritis of his hips, knees, and ankles,  
25 trouble urinating, chest pain, and back pain from his neck to his pelvis. According to Dr.  
26 Lebensohn, this medical history, in addition to his severe anxiety and depression, places  
27 him at heightened risk of exacerbated health problems if exposed to COVID-19. Lebensohn  
28 Decl. ¶ 4(e); *see also Barr I*, 2020 WL 1820667, at \*4 (noting that “[g]rowing evidence

1 demonstrates that PTSD, anxiety/stress, and depression can lead to decreased immune  
2 response and increased risk of infections,” and that the “weakened immunity due to mental-  
3 health disorders can put detainees at increased risk of contracting and suffering from more  
4 severe forms of COVID-19”); *Ochoa*, 2020 WL 2850706, at \*11 (noting that petitioner with  
5 mental health issues “has shown resistance and confusion to the COVID-19 protocols,  
6 resulting in his punishment and, no doubt, exacerbation of his mental health issues”); Yao,  
7 Mental Health (“[p]eople with mental health conditions could be more substantially  
8 influenced by the emotional responses brought on by the COVID-19 epidemic, resulting in  
9 relapses or worsening of an already existing mental health condition because of high  
10 susceptibility to stress compared with the general population”).

11 105. Petitioner Cano Villatoro has developed depression from prolonged detention  
12 and the stress of not receiving necessary medical care. According to Dr. Lebensohn,  
13 COVID-19 will exacerbate Mr. Cano Villatoro’s mental health problems. Lebensohn Decl.  
14 ¶ 4(k); *see also* Yao, Mental Health; *Ochoa*, 2020 WL 2850706, at \*11.

15 106. Petitioner Benitez Flores has a history of traumatic brain injury, PTSD, and  
16 depression. According to Dr. Varner, Mr. Benitez Flores is at increased risk of developing  
17 complications with COVID-19 because of his decreased ability to communicate stemming  
18 from his memory deficits, poor concentration, and avoidant behaviors, which can delay  
19 detection and treatment of COVID-19. Varner Decl. ¶¶ 3-5, 7-8; *see also* Venters Decl.  
20 ¶ 45; *Barr I*, 2020 WL 1820667, at \*4; *Ochoa*, 2020 WL 2850706, at \*11-12 (observing  
21 that the petitioner “has less ability to protect himself to COVID-19 due to his mental illness  
22 and learning disabilities”); Yao, Mental Health (observing that, “[w]hen epidemics arise,  
23 people with mental health disorders are generally more susceptible to infections,” and that  
24 “[p]ossible explanations include cognitive impairment, little awareness of risk, and  
25 diminished efforts regarding personal protection in patients”).

26 107. Petitioner Madueno Davila has hyperthyroidism, obesity with a BMI of 29.1,  
27 and microadenoma, which is a small brain tumor that causes frequent headaches and visual  
28 changes. According to Dr. Lebensohn, Ms. Madueno Davila’s obesity places her at an

1 increased risk of developing complications requiring hospitalization and intensive care if  
2 she contracts COVID-19. Lebensohn Decl. ¶ 4(c); *see also Essien*, 2020 WL 1974761, at  
3 \*7 (citing a New York City study finding that a BMI greater than or equal to 30 was a  
4 comorbidity in 41.7% of hospitalizations).

5 108. Petitioner Gonzalez Borges has a uterine benign tumor, BMI above 30, and  
6 one episode of elevated blood sugar without further evaluation for Type 2 Diabetes  
7 Mellitus. According to Dr. Lebensohn, because of her obesity and potential risk of Type 2  
8 Diabetes, Ms. Gonzalez Borges has an increased risk of severe complications if she  
9 contracts COVID-19. Lebensohn Decl. ¶ 4(h); *see also Essien*, 2020 WL 1974761, at \*7.

10 109. Petitioner Naranjo Rosales has a history of head trauma resulting in the  
11 removal of his spleen and placement of a VP shunt, obesity with a BMI over 30, and  
12 hyperlipidemia, which could be a sign of heart disease. Lebensohn Decl. ¶ 4(i). According  
13 to Dr. Lebensohn, his asplenia (no spleen) and BMI over 30 place him at risk of severe  
14 COVID-19 and other infection. *Id.*; *see also Essien*, 2020 WL 1974761, at \*7.

15 110. Because of Petitioners' serious underlying medical conditions, the prevalence  
16 of risk factors in their medical histories, the fact that COVID-19 is deadly and  
17 unpredictable, and the fact that contracting COVID-19 in EDC or La Palma inevitably leads  
18 to isolation in terribly detrimental and dangerous conditions, all 13 Petitioners are at  
19 imminent risk of serious and irreversible harm, including severe illness and death, if they  
20 contract COVID-19 in EDC or La Palma.

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

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

28

1 112. Through counsel, all Petitioners submitted detailed humanitarian parole  
 2 release requests to ICE, which described the medical conditions and other circumstances  
 3 that render them highly vulnerable to adverse outcomes from COVID-19.<sup>4</sup> As of this filing,  
 4 the government has not acted to release any of the Petitioners in this case.

## 5 CAUSES OF ACTION

### 6 COUNT I

#### 7 **Violation of Fifth Amendment Due Process Clause – Special Relationship**

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

11 114. When the government takes custody of a person, the government creates a  
 12 “special relationship” that entails assuming responsibility for the person’s safety and well-  
 13 being. *See, e.g., Henry A. v. Willden*, 678 F.3d 991, 998 (9th Cir. 2012). The government  
 14 violates the Due Process Clause when it takes custody of a person “and at the same time  
 15 fails to provide for his basic human needs – e.g., food, clothing, shelter, *medical care*, and  
 16 *reasonable safety*.” *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200  
 17 (1989) (emphasis added). Due process “*mandates* that civil immigration detainees are  
 18 entitled to more than minimal human necessities.” *Castillo*, 2020 WL 1502864, at \*3  
 19 (emphasis added) (citing *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004)); *Unknown*  
 20 *Parties v. Nielsen*, No. CV-15-00250-TUC-DCB, 2020 WL 813774, at \*2 (D. Ariz. Feb.  
 21 19, 2020).

22 115. To state a claim under the special relationship doctrine, a plaintiff must show:  
 23 “(i) the defendant made an intentional decision with respect to the conditions under which  
 24

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25 <sup>4</sup> Petitioner Calix Espinoza has a bond that he is unable to pay because of his  
 26 indigency. Petitioner Mantilla Silva’s pro bono counsel has been unable to file a request for  
 27 a bond hearing due to changes in the time of COVID-19. *See Anleu Decl.* ¶¶ 4, 13.  
 28 Petitioners Mayancela Zamora and Benitez Flores were denied bond after they presented  
 their requests *pro se*. Finally, because the rest of the Petitioners presented to U.S.  
 immigration authorities at the border seeking asylum, they were classified as arriving aliens,  
 making them ineligible for bond. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

1 the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of  
2 suffering serious harm; (iii) the defendant did not take reasonable available measures to  
3 abate the risk, even though a reasonable official in the circumstances would have  
4 appreciated the high degree of involved . . . ; and (iv) by not taking such measures, the  
5 defendant caused the plaintiff’s injuries.” *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124-  
6 25 (9th Cir. 2018); *see also Unknown Parties*, 2020 WL 813774, at \*3 (applying *Gordon*  
7 to claims about inhumane and punitive treatment in civil immigration detention); *Martinez*  
8 *v. Geo Grp., Inc.*, No. EDCV 18-1125-R, 2019 WL 3758026, at \*2-3 (C.D. Cal. Apr. 30,  
9 2019) (applying *Gordon* to claims about detention center’s failure to attend to a detainee’s  
10 medical needs); *J.P. v. Sessions*, No. Civ. 18-06081 JAK (SKx), 2019 WL 6723686, at \*31-  
11 33 (C.D. Cal. Nov. 5, 2019) (applying *Gordon* to claims about conditions of confinement  
12 in civil immigration detention).

13 116. Inadequate health and safety measures at a detention center cause cognizable  
14 harm to every detained person. *See Parsons v. Ryan*, 754 F.3d 657, 679 (9th Cir. 2014);  
15 *Castillo*, 2020 WL 1502864, at \*3. As the Supreme Court observed in the context of the  
16 California prison system, “all prisoners [] are at risk so long as the State continues to provide  
17 inadequate care.” *Brown v. Plata*, 563 U.S. 493, 532 (2011). Those who are not yet sick are  
18 not “remote bystanders”—they are the “next potential victims.” *Id.*; *see also Helling v.*  
19 *McKinney*, 509 U.S. 25, 33 (1993) (holding that the government cannot “be deliberately  
20 indifferent to the exposure of inmates to a serious, communicable disease on the ground  
21 that the complaining inmate shows no serious current symptoms”). This is particularly true  
22 here because, in the case of COVID-19, even those who do not appear to be sick may  
23 already be infected. Meyer Dec. ¶ 20; Venters Decl. ¶ 41(d) (“asymptomatic transmission  
24 of COVID-19 has been identified by the CDC as an important means of transmission”);  
25 *Castillo*, 2020 WL 1502864, at \*5 (“The science is well established – infected,  
26 asymptomatic carriers of the coronavirus are highly contagious.”).

27 117. When Respondents detained Petitioners, they created a special relationship  
28 that required them to provide Petitioners with medical care and reasonable safety. Instead

1 of fulfilling that requirement, Respondents have placed Petitioners at continued risk of  
2 suffering serious harm during a deadly pandemic with local community spread. *See*  
3 *Pimentel-Estrada*, 2020 WL 2092430, at \*13 (“Given the evidence that Respondents are  
4 unlikely to prevent the introduction of COVID-19 to the NWIPC and the evidence that the  
5 virus is likely to spread quickly throughout the facility, the Court concludes Petitioner has  
6 made a clear showing that he faces a substantial risk of serious harm due to conditions of  
7 his present confinement and the fact that he is at a higher risk for serious illness or death  
8 from COVID-19.”); *Parsons*, 754 F.3d at 679 (recognizing that inadequate health and safety  
9 measures at a detention center cause cognizable harm to every detainee). Despite  
10 Respondents’ purported efforts to comply with the orders in *Urdaneta*, *Patel*, *Mendoza*, and  
11 *Gutierrez-Lopez*, Petitioners are still subjected to close physical contact with ICE officers,  
12 detention center staff, and other detainees without adequate PPE, cleaning or hygiene  
13 supplies, and are unable to effectively practice social distancing or other measures mandated  
14 by experts, government officials, and the CDC to protect people from infection.

15 118. According to experts, these conditions put Petitioners at significant risk of  
16 exposure to COVID-19, which in turn subjects them to risk of serious illness and death. *See*  
17 *Venters Decl.* ¶¶ 44-48; *Meyer Decl.* ¶¶ 9-30; *Lebensohn Decl.* ¶ 4; *Varner Decl.* ¶¶ 4-5, 8.

18 119. Although Respondents have taken some additional measures to curtail the  
19 spread of COVID-19 in response to the orders in *Urdaneta*, *Patel*, *Mendoza*, and *Gutierrez-*  
20 *Lopez*, these are insufficient and unworkable when applied to a broader swathe of detainees.  
21 Even with these additional measures, Petitioners are unable to adequately protect  
22 themselves from the virus when they share cells and common spaces with other detainees  
23 who are not social distancing, wearing masks, or using the (inadequate and inconsistent)  
24 sanitation and hygiene supplies provided by Respondents. This continued failure is  
25 objectively unreasonable in light of the local, state, and federal guidance on the pandemic  
26 that has been widely publicized since the COVID-19 pandemic was declared. *See Flores*,  
27 2020 WL 2128663, at \*1 (noting that COVID-19 “has reached pandemic status”;  
28 governments and public agencies “have taken extraordinary measures to attempt to curtail

1 exponential rates of infection of this highly contagious disease”; and medical experts,  
2 including the CDC, urge social distancing, frequent handwashing, and use of hand  
3 sanitizer); *Helling*, 509 U.S. at 33 (noting that the Eighth Amendment required a remedy  
4 where “inmates in punitive isolation were crowded into cells and . . . some of them had  
5 infectious maladies[,] . . . even though it was not alleged that the likely harm would occur  
6 immediately and even though the possible infection might not affect all of those exposed”);  
7 *Rafael L.O.* 2020 WL 1808843, at \*8 (“With the conditions as currently described, at-risk  
8 detainees – including Petitioners – cannot practically adhere to social distancing guidelines  
9 or the adequate level of personal hygiene, that have been touted as the most effective means  
10 to thwart the spread of the virus. Against this backdrop, Petitioners have demonstrated  
11 irreparable harm should they remain in confinement.”); *Jose B.R.*, 2020 WL 2744586, at  
12 \*13-14 (ordering detainee’s release where detainee could not “practically adhere to social  
13 distancing guidelines or the adequate level of personal hygiene to stop the spread of the  
14 virus”).

15 120. By failing to take the necessary measures to adequately protect Petitioners  
16 and curtail the spread of the virus, Respondents have subjected and continue to subject  
17 Petitioners to a substantial risk of contracting COVID-19. *See Parsons*, 754 at 679  
18 (discussing the harms inherent in inadequate public health and medical care provisions in  
19 detention); *Xochihua-Jaimes*, 2020 WL 1429877, at \*1 (ordering *sua sponte* release of a  
20 detainee in light of the current “rapidly escalating public health crisis, which public health  
21 authorities predict will especially impact immigration detention centers”). The risk is  
22 augmented by the La Palma and EDC facilities’ well-documented history of health and  
23 safety failures, and by the reported presence of individuals with confirmed and potential  
24 COVID-19 symptoms in detention at the facilities.

25 121. For these reasons, Petitioners’ detention violates the Fifth Amendment Due  
26 Process Clause.



**COUNT II****Violation of Fifth Amendment Protection Against Punitive Detention**

1  
2  
3 122. When the federal government detains an immigrant, the immigrant is  
4 considered a civil detainee, even if they have a prior criminal conviction. *See Zadvydas*,  
5 533 U.S. at 690. As civil detainees, immigrants are afforded greater protection by the Fifth  
6 Amendment’s Due Process Clause than convicted prisoners or even pretrial criminal  
7 detainees. Unlike a convicted prisoner, who may be punished as long as the punishment is  
8 not “cruel and unusual,” *Pierce v. Cty. of Orange*, 526 F.3d 1190, 1205 (9th Cir. 2008), a  
9 civil detainee may not be punished at all. *Bell v. Wolfish*, 441 U.S. 520, 535 (1970); *Jones*,  
10 393 F.3d at 932. And civil immigration detainees “must be afforded ‘more considerate  
11 treatment’” than criminal pretrial detainees. *See Unknown Parties*, 2020 WL 813774, at \*12  
12 (citing *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982)).

13 123. “Numerous courts across the country have considered whether, in light of the  
14 COVID-19 pandemic, the continued confinement of ICE detainees or conditions of  
15 confinement at federal detention facilities amounts to punishment in violation of the Fifth  
16 Amendment’s substantive due process clause. In the Ninth Circuit, the majority of district  
17 courts that have considered the issue have concluded there is a likelihood plaintiffs will  
18 prevail on those claims.” *Rodriguez Alcantara v. Archambeault*, No. 20-CV-0756 DMS  
19 (AHG), 2020 WL 2315777, at \*8 (S.D. Cal. May 1, 2020) (citations omitted). These  
20 decisions now include at least four from this district, where this Court found that four  
21 similarly situated Petitioners succeeded on the merits of their Due Process claims. *See*  
22 *Urdaneta*, 2020 WL 2319980, at \*12 (finding a violation of due process as to one detainee  
23 at La Palma); *Gutierrez-Lopez*, 2020 WL 2781722, at \*10 (same, as to one detainee at  
24 EDC); *Patel*, No. 2:20-CV-00709-DLR-DMF, Dkt. 35 (same, as to one detainee at EDC);  
25 *Mendoza*, No. CV-20-00514-PHX-SPL (MTM), Dkt. 37 (same, as to one detainee at EDC).

26 124. To establish a violation of the Due Process Clause, Petitioners need not show  
27 that Respondents intended to subject them to punishment, *see Pierce*, 526 F.3d at 1205, or  
28 that they acted with deliberate indifference, *Jones*, 393 F.3d at 933. A restriction is

1 “punitive” if it is “excessive in relation to [its non-punitive purpose]’ or is ‘employed to  
2 achieve objectives that could be accomplished in so many alternative and less harsh  
3 methods.’” *Jones*, 393 F.3d at 933-34 (alteration in original) (quoting *Demery v. Arpaio*,  
4 378 F.3d 1020, 1028 (9th Cir. 2004)); *Hallstrom v. City of Garden City*, 991 F.2d 1473,  
5 1484 (1993)). A presumption of punishment arises when a civil detainee is held in similar  
6 or more restrictive conditions than his criminal counterparts. *See Jones*, 393 F.3d at 932;  
7 *see also Torres v. DHS*, 411 F. Supp. 3d 1036, 1065 (C.D. Cal. 2019) (finding a presumption  
8 of punitiveness where plaintiffs “allege[d] conditions at [ICE detention center] and policies  
9 by ICE that are not ‘more considerate’ than at criminal facilities”). To rebut this  
10 presumption, the government must show that its actions are not excessive in relation to a  
11 legitimate, nonpunitive purpose. *King v. Cty. of Los Angeles*, 885 F.3d 548, 558 (9th Cir.  
12 2018).

13 125. Here, a presumption of punishment arises because Petitioners, *civil*  
14 immigration detainees, are subjected to worse conditions than many convicted prisoners.  
15 Government agencies across the country, including the Federal Bureau of Prisons, have  
16 taken prompt action to systematically and “aggressively” screen at-risk *criminal* detainees  
17 for potential home confinement and have systematically released large numbers of criminal  
18 detainees to prevent them and surrounding communities from suffering bodily harm or  
19 death from COVID-19. *See, e.g., Update on COVID-19 and Home Confinement*, FEDERAL  
20 BUREAU OF PRISONS, [https://www.bop.gov/resources/news/20200405\\_covid19\\_home](https://www.bop.gov/resources/news/20200405_covid19_home_confinement.jsp)  
21 [confinement.jsp](https://www.bop.gov/resources/news/20200405_covid19_home_confinement.jsp) (last updated Apr. 5, 2020); Timothy Williams et al., ‘*Jails Are Petri*  
22 *Dishes*’: *Inmates Freed as the Virus Spreads Behind Bars*, N.Y. TIMES (Mar. 30, 2020)  
23 [attached hereto as Exhibit 28]; *United States v. Garlock*, No. 18-CR-00418-VC-1, 2020  
24 WL 1439980, at \*1 (N.D. Cal. Mar. 25, 2020) (*sua sponte* extending the defendant’s  
25 surrender date for his criminal sentence, and explaining: “To avoid adding to the chaos and  
26 creating unnecessary health risks, offenders who are on release and scheduled to surrender  
27 to the Bureau of Prisons in the coming months should, absent truly extraordinary  
28 circumstances, have their surrender dates extended until this public health crisis has

1 passed.”); *United States v. Stephens*, No. 15-CR-95 (AJN), 2020 WL 1295155 (S.D.N.Y.  
2 Mar. 19, 2020); *Matter of Extradition of Toledo Manrique*, No. 19-MJ-71055-MAG-1  
3 (TSH), 2020 WL 1307109, at \*1 (N.D. Cal. Mar. 19, 2020) (“The risk that this vulnerable  
4 person will contract COVID-19 while in jail is a special circumstance that warrants bail.”).  
5 To rebut the presumption of punitiveness, a “bare assertion of the requirement of keeping  
6 [ ] detainees . . . will not suffice.” *Torres*, 411 F. Supp. 3d at 1065 (alteration in original)  
7 (quoting *Jones*, 393 F.3d at 934) (rejecting defendants’ proposed justification that they were  
8 “required by statute to maintain a secure facility for certain immigrants, pending the  
9 outcome of their proceedings”). Moreover, even assuming Respondents have a legitimate,  
10 nonpunitive interest in continuing to detain Petitioners, endangering the lives and wellbeing  
11 of Petitioners and surrounding communities is “excessive in relation to Respondents’  
12 objectives.” *Kaur*, 2020 WL 1939386, at \*4; *see also Urdaneta*, 2020 WL 2319980, at \*12  
13 (“While Respondents may have legitimate objectives for detaining Petitioner, they have  
14 identified no single legitimate purpose served by detaining Petitioner under conditions that  
15 pose an objectively unreasonable risk of harm to him. That is because these conditions serve  
16 no legitimate government objective.”); *Rodriguez Alcantara*, 2020 WL 2315777, at \*8  
17 (“Although ‘under normal circumstances’ the confinement of ICE detainees ‘pending  
18 removal proceedings is rationally related to the legitimate governmental interest of ensuring  
19 their appearance for their deportation proceedings and preventing danger to the  
20 community[,]’ the current circumstances, and in particular, the circumstances at Otay Mesa,  
21 are anything but normal.”) (internal citation omitted); *Thakker*, 2020 WL 1671563, at \*8  
22 (considering substantially similar conditions at Pennsylvania ICE detention centers and  
23 holding that there was “no rational relationship between a legitimate government objective  
24 and keeping Petitioners detained in unsanitary, tightly-packed environments—doing so  
25 would constitute a punishment to Petitioners”).

26       126. Detention itself exposes Petitioners to an unacceptable risk of contracting  
27 COVID-19 and suffering bodily harm or death as a result. Respondents have confined  
28 Petitioners in close quarters with many other individuals, any of whom could already be

1 infected even if asymptomatic. The virus spreads rapidly in close quarters, often severely  
2 infecting not only older individuals or those with preexisting conditions but also younger,  
3 previously healthy people. Moreover, now that COVID-19 is spreading in La Palma and  
4 EDC, there is no indication that the facilities have adequate equipment, staff, or resources  
5 to treat large numbers of severely ill detainees.

6 127. Despite Respondents' adoption of *some* measures to attempt to mitigate the  
7 spread of COVID-19 and comply with the orders in *Urdaneta*, *Patel*, *Mendoza*, and  
8 *Gutierrez-Lopez*, the substantial, unjustified threat of serious harm to Petitioners remains  
9 due to conditions inherent in detention settings as well as Respondents' continued failures  
10 to provide adequate sanitation and hygiene supplies. Indeed, whether Respondents "ha[ve]  
11 taken reasonable steps overall to combat the spread of COVID-19 is not the question the  
12 Court is confronted with here. Rather, this Court asks whether this Petitioner's continued  
13 confinement during this global pandemic is justified by the Government's legitimate  
14 interest in Petitioner's detention." *Ochoa*, 2020 WL 2850706, at \*12.

15 128. "Respondents contend the precautions they've implemented . . . in recent  
16 weeks facilitate social distancing and increased sanitization, but nothing prevents  
17 asymptomatic staff from transmitting the disease to detainees and detainees necessarily  
18 remain housed in cohorts and share cramped living, dining, and restroom quarters." *Kaur*,  
19 2020 WL 1939386, at \*4.

20 129. Since the rise of COVID-19, ICE has modified its ordinary immigration  
21 enforcement procedures by curtailing its raids and interior enforcement in order to stop the  
22 spread of COVID-19. There is no legitimate reason to continue to detain Petitioners under  
23 these circumstances—circumstances that, in ICE's view, outweigh the usual imperatives of  
24 immigration enforcement. And no risk to the community justifies the detention of these  
25 particular individuals under these conditions, particularly where Petitioners have minimal  
26 or no criminal histories. *See Thakker*, 2020 WL 1671563, at \*8 ("We note that ICE has a  
27 plethora of means *other than* physical detention at their disposal by which they may monitor  
28 civil detainees and ensure that they are present at removal proceedings, including remote

1 monitoring and routine check-ins. Physical detention itself will place a burden on  
2 community healthcare systems and will needlessly endanger Petitioners, prison employees,  
3 and the greater community. We cannot see the rational basis of such a risk.”); *Castillo*, 2020  
4 WL 1502864, at \*6 (finding that the “balance of the equities tip[ped] sharply in favor of the  
5 Petitioners,” and there was “no harm to the Government” in ordering Petitioners’ release  
6 and “very low” flight risk “given the current global pandemic” even though both Petitioners  
7 had committed prior criminal offenses).

8 130. As Judge John Jones III recently concluded: “Respondents’ Facilities are  
9 plainly not equipped to protect Petitioners from a potentially fatal exposure to COVID-19.  
10 While this deficiency is neither intentional nor malicious, should we fail to afford relief to  
11 Petitioners we will be a party to an unconscionable and possibly barbaric result. Our  
12 Constitution and laws apply equally to the most vulnerable among us, particularly when  
13 matters of public health are at issue. This is true even for those who have lost a measure of  
14 their freedom. If we are to remain the civilized society we hold ourselves out to be, it would  
15 be heartless and inhumane not to recognize Petitioners’ plight. And so we will act.”  
16 *Thakker*, 2020 WL 1671563, at \*9.

17 131. Particularly where, as here, Respondents have adequate “alternate means of  
18 ensuring Petitioner[s’] appearance at removal proceedings,” *Kaur*, 2020 WL 1939386, at  
19 \*4, Respondents’ continued detention of Petitioners violates the Fifth Amendment’s  
20 protection against punitive detention.

### 21 **PRAYER FOR RELIEF**

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

- 23 (1) Assume jurisdiction over this matter;
- 24 (2) Issue a Writ of Habeas Corpus on the ground that Petitioners’ continued  
25 detention violates the Due Process Clause and order Petitioners’ immediate  
26 release;

- 1 (3) In the alternative, issue injunctive relief ordering Respondents to immediately  
2 release Petitioners on the ground that their continued detention violates the  
3 Due Process Clause;
- 4 (4) Issue a declaration that Respondents' continued detention in civil immigration  
5 custody of Petitioners violates the Due Process Clause;
- 6 (5) Award Petitioners their costs and reasonable attorneys' fees in this action  
7 under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28  
8 U.S.C. § 2412, and on any other basis justified under law; and
- 9 (6) Grant any other and further relief that this Court deems just and proper.

10 Dated: June 8, 2020

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