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8
9 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

10
11 JOHMMY ARNALDO GARCIA,

No. 5:20-cv-796

12 Petitioner, Hon.

13 v.

**EMERGENCY NOTICE OF MOTION
AND EX PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER AS TO COVID-19-RELATED
RELEASE OF DETAINEE FROM
DETENTION**

14 CHAD T. WOLF, Acting Secretary of
Homeland Security; MATTHEW T.
15 ALBENCE, Deputy Director and
Senior Official Performing Duties of
the Director of U.S. Immigration and
16 Customs Enforcement; DAVID A.
17 MARIN, Field Office Director;
GABRIEL VALDEZ, Officer in
18 Charge; JAMES JANECKA, Warden,
Adelanto ICE Processing Center,
19 Respondents

20
21 Petitioner Johmmy Arnaldo Garcia, by and through his counsel, Hannah K.
22 Comstock, hereby moves this honorable Court for a temporary restraining order
23 enjoining Respondents from continuing to detain him and ordering his immediate
24 release from immigration detention at Adelanto. This motion is based upon Local
25 Rule 65-1; this Notice of Motion; the attached Memorandum of Points and
26 Authorities; the supporting declarations; all documents and pleadings on file in this
27 action, including the Petition for Writ of Habeas Corpus and accompanying
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1 declarations; and any further information presented to the Court in connection with
2 this application. Mr. Garcia requests a telephonic hearing on this application
3 pursuant to the Order of the Chief Judge 20-042.

4 Respectfully submitted,

5
6 Dated: 4/15/2020

IMMIGRANT DEFENDERS LAW CENTER

7 By: /s/ Hannah K. Comstock

8 Hannah K. Comstock, Esq.

9 Munmeeth K. Soni, Esq.

Counsel for Petitioner

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1 **I. INTRODUCTION¹**

2 The world is facing an unprecedented threat. The Coronavirus is a novel
3 pandemic that, as of 9:16 AM on April 15, has infected at least 2,034,309 people
4 and killed 129,913, with 26,317 deaths in the United States alone.² In San
5 Bernardino County, where the Adelanto ICE Processing Center (“Adelanto” or
6 “Facility”) is located, there have been 977 confirmed cases and thirty-one deaths.³

7 Federal, state, and local governments, as well as prosecutors, judges, and
8 correctional administrators have codified social distancing into ordinance and
9 policy, issuing “shelter-in-place” orders and releasing thousands of criminal
10 inmates to reduce prison populations. The public has been ordered to practice
11 social distancing and follow strict hygiene protocols to abate the rampant spread of
12 this novel and currently incurable disease.

13 Experts across the country have repeatedly warned that the risk posed by
14 infectious diseases in jails and prisons is significantly higher than in the
15 community, both in terms of risk of transmission, exposure, and harm to
16 individuals who become infected. With hundreds, if not thousands, of detainees
17 packed into congregate settings, nonexistent hygiene protocols, and insufficient
18 (abysmal) medical infrastructure, these facilities are operating in flagrant disregard
19 of the protocols implemented in the remainder of this country.

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23 ¹ Mr. Garcia includes this factual background in this application as a
24 summary for the Court. The complete factual background is set forth in his
25 concurrently filed Petition for Habeas Corpus and Complaint for Injunctive Relief.
26 He hereby incorporates that factual information into this motion.

27 ² *COVID-19 CORONAVIRUS PANDEMIC*, Worldometer.info (last updated
28 Apr. 15, 2020, 4:16PM GMT), <https://www.worldometers.info/coronavirus/>;
Coronavirus: United States, Worldometer.info (last updated Apr. 15, 2020,
4:16PM GMT), <https://www.worldometers.info/coronavirus/country/us/>.

³ *Coronavirus in San Bernardino County*, SBCOVID-19.com (last visited
Apr. 14, 2020, 3:11 PM), <http://sbcovid19.com/>.

1 Petitioner Johmmy Arnaldo Garcia is an immigrant detainee with critical
 2 medical and psychiatric conditions. He is currently housed in Adelanto, where the
 3 necessary preventive efforts are impossible. As a thirty-year-old man suffering
 4 from chronic asthma, hypertension, and longstanding mental health issues, the
 5 threat to his health and safety at Adelanto is not only significant, but near certain.
 6 Mr. Garcia is sitting in a ticking time bomb.

7 In light of this imminent threat and ICE's steadfast refusal to follow its
 8 criminal counterparts and release its civil detainees, Mr. Garcia respectfully
 9 requests that this Court exercise its equitable powers to order his immediate release
 10 from immigrant detention to the home of his sponsor.

11 **II. FACTUAL BACKGROUND**

12 **A. Mr. Garcia is "High Risk" for COVID-19 Complications, Has Solid 13 Release Plans, and Does Not Pose a Danger to the Community**

14 Mr. Garcia is a thirty-year-old asylum seeker with asthma, hypertension,
 15 pre-diabetes, and longstanding mental health issues. Mental Health Progress Note
 16 (Jan. 13, 2020); Medical Progress Note (Nov. 19, 2019); Bell Dec'1 at 2 ¶ 8.
 17 Asthma, hypertension, and diabetes are prototypical health conditions triggering a
 18 "high-risk" designation.⁴ Each condition on its own elevates Mr. Garcia's risk to

19
 20 ⁴ *Coronavirus Disease 2019 (COVID-19): Frequently Asked Questions*,
 21 CDC.GOV (Mar. 19, 2020), https://www.cdc.gov/coronavirus/2019-ncov/faq.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavi%2F2019-ncov%2Fprepare%2Fchildren-faq.html; *Coronavirus Disease 2019, People with Asthma*, CDC.Gov (last visited Apr. 12, 2020, 5:40 PM), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html>;
 22 Emily Bamforth, *Hypertension could be a leading factor in coronavirus deaths: Here's what we know*, Cleveland.com (last updated Mar. 12, 2020), <https://www.cleveland.com/news/2020/03/hypertension-could-be-a-leading-factor-in-coronavirus-deaths-heres-what-to-know.html>;
 23 Dave Fornell, *FSC Council on Hypertension Says ACE-1 and ARBs Do Not Increase COVID-19 Mortality*, DiagnosticandInterventionalCardiology.com (Mar. 16, 2020), <https://www.dicardiology.com/content/esc-council-hypertension-says-ace-i-and-arbs-do-not-increase-covid-19-mortality>.
 24 Ex. 3 - Gwen Mitchell et al., *Expert Declaration Submitted by Experts in Psychology & Social Work on the Known*

1 suffering complications from COVID-19; when taken in the aggregate, along with
 2 his mental health conditions, Mr. Garcia's risk to is compounded to a frightening
 3 measure.

4 Mr. Garcia has been a Lawful Permanent Resident since 2011 and currently
 5 in removal proceedings based on a 2018 conviction for arson. Bell Dec'1 at 2–3 ¶
 6 11. This conviction, and his two other convictions, were the result of undiagnosed
 7 mental illness and consequent homelessness. *Id.* at 3 ¶¶ 13–15. Before his
 8 conviction, he struggled to cope with his significant past trauma and fell into using
 9 alcohol and drugs and eventually became homeless. *Id.* at 3 ¶¶ 12–15. From
 10 March 2017 through April 2018, Mr. Garcia was arrested and sustained three
 11 convictions while homeless. *Id.* at 3 ¶¶ 13–15.

12 First, in March 2017, he was arrested for grand theft and convicted of
 13 section 487(a) of the California Penal Code. *Id.* at 3 ¶ 13. The police report
 14 indicated that Mr. Garcia disassembled a wheelchair allegedly owned by his
 15 neighbor to sell the wheels. *Id.*

16 Second, in April 2018, he was arrested for being under the influence of a
 17 controlled substance. *Id.* at 3 ¶ 14. The police report indicated that Mr. Garcia
 18 approached an officer seeking protection from people who were hiding in a nearby
 19 bush and trying to hurt him. *Id.*

20 Third, and lastly, in 2018, Mr. Garcia was arrested and convicted of arson
 21 for lighting a trashcan on fire while homeless. Bell Dec'1 at 2–3 ¶ 11. This
 22 conviction is the sole reason he is currently in removal proceedings. In 2019, upon
 23
 24
 25

26 *Impact of Adverse Experiences, Extreme Social Isolation & Public Health*
 27 *Pandemics* 4–5 (Mar. 30, 2020) (opining that A person's anxiety, depression, and
 28 psychosis, among others, can impact their ability to “adhere to treatment or
 necessary preventative protocols, increasing the likelihood of poor disease
 management.”)

1 completing his criminal sentence, ICE arrested Mr. Garcia and transferred him to
2 the ICE Adelanto Processing Center. *Id.*

3 In criminal custody, Mr. Garcia was diagnosed with several psychological
4 mental illnesses, as detailed more fully in the corresponding petition for writ of
5 habeas corpus. While detained, he has had no behavioral issues. *Id.* at 3 ¶ 15.

6 **B. Conditions at Adelanto Detention Facility**

7 Social distancing at Adelanto is impossible. Adelanto has capacity to hold,
8 under normal circumstances, nearly 2000 civil immigration detainees. Even at
9 seventy-five percent capacity, Adelanto’s population of 1,455 people still face the
10 same bleak reality.

11 Mr. Garcia shares a single dormitory-type room with three other men and
12 eats all three meals every day with nearly thirty other people. Bell Dec’1 at 3–4 ¶
13 17. These conditions are dangerous, especially at mealtimes when “[t]he guards,
14 detainees and cafeteria workers do not regularly wear gloves or masks to prevent
15 the spread of the coronavirus.” *Bravo Castillo v. Barr*, 2020 WL 1502864, at *2
16 (C.D. Cal. 2020); *Hernandez v. Wolf*, CV 20-60017-TJH (KSx) (C.D. Cal. Apr. 1,
17 2020), ECF No. 17, at *5 (same). In a setting like Adelanto’s, “social distancing is
18 an oxymoron.”⁵

19 The bathroom conditions are no different. Mr. Garcia is forced to share a
20 shower seven other men. Bell Dec’1 at 3–4 ¶ 17. Toilets, sinks, and showers are
21 communal, allowing countless opportunities for respiratory droplets to contaminate
22 hard, frequently encountered surfaces. Ex. 2 - Romines Dec’1 at pp. 9–10 ¶¶ 21–
23 22; Ex. 1 - Meyer Dec’1 at p. 2 ¶ 9. The soap supply is regularly low in Mr.
24 Garcia’s shared bathroom and he has not been given hand sanitizer. Bell Dec’1 at
25

26
27 ⁵ Letter from Scott A. Allen et al., to House Committee on Homeland
28 Security, et al., (Mar. 19, 2020) at 4, *available at*
<https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>.

1 3–4 ¶ 17. These conditions welcome spread of the virus, as “[i]t may be difficult
2 or impossible for detainees to have access to sufficient soap and water to wash
3 their hands as frequently as public health officials recommend.” Ex. 2 - Romines
4 Dec’l at pp. 10–11 ¶ 22; Ex. 1 - Meyer Dec’l at p. 2 ¶ 11.

5 Medical staff have accused Mr. Garcia of “feigning” symptoms of his
6 mental illness “for secondary gain,” and he fears the same reaction if he sought
7 treatment for COVID-19. Bell Dec’l at 4 ¶ 18. If Mr. Garcia required immediate
8 care, he would be relegated to Adelanto’s historically negligent and deficient
9 medical care—a finding confirmed by DHS’ own watchdog organization.
10 According to DHS’ Office of the Inspector General, detainees at Adelanto receive
11 “untimely and inadequate medical care” that routinely falls below ICE minimum
12 standards. Adelanto has a small medical staff, and DHS internal reviews find high
13 turnover rates and limited experience among nurses at the facility. There are
14 shortages of medical staff at Adelanto, resulting in long delays and cancelled
15 appointments for those seeking care at the facility.

16 Adelanto is not a self-contained environment. ICE has restricted detainee
17 movement between wards, but that does shield them from the conditions in other
18 wards and the outside community because DO movement is not limited. As Field
19 Officer Valdez recently explained, “DO’s ... are continually moving through
20 [Adelanto] during their shifts, presenting documents to detainees for signature,
21 serving NTA’s, serving parole documents, serving notices and decisions, speaking
22 with detainees, conducting detainee interviews, answering detainee requests in
23 person, conducting observation of the facility, among other duties.” Defendants’
24 Supp’l Filing of Declaration of Gabriel Valdez ISO Opp. to TRO, *Torres v.*
25 *Nielsen*, 18-02604-JGB-SHL (C.D. Cal. Apr. 6, 2020), ECF No. 139-1 at 4 ¶ 11.

26 The inefficacy of ICE’s response to COVID-19 is currently playing out at
27 the national level. To date, at least eighty-nine detainees and twenty-one ICE
28

1 employees at its detention centers have already been infected with COVID-19.⁶
 2 ICE insists that there are no officially confirmed cases of COVID-19 at Adelanto,
 3 yet, ICE has quarantined several housing units since March 13 and an Immigration
 4 Judge sitting in the Adelanto Courthouse has been on medical leave since March
 5 19 for undisclosed reasons.⁷ Adding another layer of suspicion, ICE has not
 6 released information about infected staff members working at its private facilities,
 7 like Adelanto.⁸ It would be unreasonable for Mr. Garcia to *not* operate under the
 8 assumption that COVID-19 exists at Adelanto. The Government’s head-in-the-
 9 sand approach to “managing” COVID-19 simply cannot shield Adelanto from the
 10 virus, as underscored by the nearly 100 detainees who have tested positive in other
 11 facilities operating under the same approach.

12 **III. NOTICE TO OPPOSING PARTY**

13 On April 14, 2020, Mr. Garcia’s counsel provided notice to the United States
 14 Attorney’s Office that this application would be filed. *Soni Dec’l at 1 ¶¶ 1.* In
 15 advance of filing, Mr. Garcia’s counsel provided government counsel an
 16 unredacted copy of the habeas corpus petition and this application along with
 17 supporting documentation. *Id.* at 1 ¶ 2.

18 **IV. LEGAL ARGUMENT**

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 21 ⁶ *ICE Guidance on COVID-19*, ICE.Gov (last visited Apr. 15, 2020, 9:28
 22 AM), <https://www.ice.gov/coronavirus>.

23 ⁷ Amnesty International, “*We Are Adrift, About To Sink*”: *The Looming*
 24 *Covid-19 Disaster In United States Immigration Detention Facilities* 19 (Apr. 7,
 2020), available at
 25 <https://www.amnesty.org/download/Documents/AMR5120952020ENGLISH.PDF>.

26 ⁸ *Compare ICE Guidance on COVID-19*, *supra* note 6 (reporting one ICE
 27 employee and five detainees testing positive for COVID-19 at Hudson County
 28 Jail), with John Heinis, *County jail COVID-19 update: 4th worker dies, 26 in*
custody tested positive, 87 Cos self-isolating, HudsonCountyView.com (Apr. 7,
 2020, 3:24 PM), [https://hudsoncountyview.com/county-jail-covid-19-update-4th-](https://hudsoncountyview.com/county-jail-covid-19-update-4th-worker-dies-26-in-custody-tested-positive-87-cos-self-isolating/)
[worker-dies-26-in-custody-tested-positive-87-cos-self-isolating/](https://hudsoncountyview.com/county-jail-covid-19-update-4th-worker-dies-26-in-custody-tested-positive-87-cos-self-isolating/) (reporting five
 COVID-19 related deaths of civil employees at the Hudson County Correctional
 Facility and seven ICE detainees testing positive).

1 Mr. Garcia is entitled to a temporary restraining order if he shows: (1) a
2 likelihood of success on the merits; (2) that he is likely to suffer irreparable harm
3 in the absence of preliminary relief; (3) that the balance of equities tips in his
4 favor; and (4) that an injunction is in the public interest. *Winter v. Natural Res.*
5 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbard Int’l Sales Co. v. John D.*
6 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary
7 injunction and temporary restraining orders are “substantially identical”).

8 The Ninth Circuit has adopted a “sliding scale” approach wherein, “a
9 stronger showing of one element may offset a weaker showing of another.”
10 *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012) (per curiam) (citations
11 omitted). Thus, a petitioner is entitled to a temporary restraining order if “serious
12 questions going to the merits [are] raised and the balance of hardships tips sharply
13 in [petitioner’s] favor.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
14 (9th Cir. 2011). Put differently, to succeed under the “serious question” test, Mr.
15 Garcia must show that he is likely to suffer irreparable injury and that an injunction
16 is in the public’s interest. *Id.* at 1132.

17 Mr. Garcia satisfies each of these requirements. Accordingly, this Court
18 should use its equitable power to order his immediate release, as it and other
19 federal courts have done in several nearly identical cases. *See Bravo Castillo v.*
20 *Barr*, 2020 WL 1502864, at *1 (C.D. Cal. 2020) (granting immigrant detainees’
21 motion for temporary restraining order and releasing two detainees because of
22 Coronavirus threat); *Hernandez v. Wolf*, CV 20-60017-TJH (KSx) (C.D. Cal. Apr.
23 1, 2020), ECF No. 17 (granting immigrant detainee’s motion for temporary
24 restraining order and releasing immigrant detainee because of Coronavirus threat);
25 *Hernandez Velasquez v. Wolf*, CV 20-00627-TJH (GJS) (C.D. Cal. Apr. 2, 2020),
26 ECF. No. 32 (granting temporary restraining order for immediate release of
27 immigrant detainee); *Chernykh v. Valdez*, CV 16-2184-RGK, 2017 WL 3000013

1 (C.D. Cal. May 22, 2017) (granting immigrant detainee’s motion for preliminary
2 injunction ordering her release pending disposition of habeas corpus petition);
3 *Xochihua-Jaimes v. Barr*, No. 18-71460, 2020 WL 1429877, at *1 (9th Cir. Mar.
4 24, 2020) (“In light of the rapidly escalating public health crisis, which public
5 health authorities predict will especially impact immigration detention centers, the
6 court *sua sponte* orders that Petitioner be immediately released from detention. .
7 .”); *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 54 (D.D.C. 2002) (ordering
8 preliminary injunction releasing immigration detainee); *Ali v. Ashcroft*, 213 F.R.D.
9 390 (W.D. Wash. 2003) (granting injunctive relief ordering release of detainees
10 with final removal orders), *aff’d*, 346 F.3d 873 (9th Cir. 2003), opinion withdrawn
11 on denial of reh’g sub nom; *Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005), as
12 amended on reh’g (Oct. 20, 2005).

13 **A. Mr. Garcia is Likely to Succeed on the Merits**

14 **1. The Fifth Amendment’s Due Process Clause Prohibits Any Punitive** 15 **Conditions of Civil Confinement and Requires Mr. Garcia’s Release**

16 When the Government detains a person for the violation of an immigration
17 law, the person is a civil detainee, even if he has a prior criminal conviction. *See*
18 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). A civil detainee is entitled to more
19 considerate treatment than criminal detainees, whose conditions of confinement are
20 designed to punish. *See Youngberg v. Romeo*, 457 U.S. 307, 321–22 (1982).
21 Accordingly, under the Fifth Amendment’s Due Process Clause, a civil detainee
22 “cannot be subjected to conditions that ‘amount to punishment.’” *King v. Cnty. of*
23 *Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018)

24 The Ninth Circuit has interpreted this principle to mean that a civil
25 detainee’s conditions of confinement cannot be equal to or more restrictive than
26 that of their criminal counterpart. *Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir.
27 2004). Conditions are therefore presumptively punitive, and thus presumptively
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1 unconstitutional, when they are similar to or worse than those of criminal pretrial
2 detainees. *Id.*; *see also King*, 885 F.3d at 557. It likewise follows that
3 “[c]onditions of confinement that violate the Eighth Amendment will necessarily
4 violate the Fifth Amendment” for immigration detainees. *Doe v. Kelly*, 878 F.3d
5 710, 714 (9th Cir. 2017) (“...decisions defining the constitutional rights of
6 prisoners establish a floor for Plaintiffs’ constitutional rights.”); *City of Revere v.*
7 *Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983). Put differently, an
8 immigrant detainee can establish a Fifth Amendment due process violation under
9 standards far less onerous than the Eighth Amendment’s cruel and unusual
10 punishment standard.

11 “[W]hen the State takes a person into its custody and holds him there against
12 his will, the Constitution imposes upon it a corresponding duty to assume some
13 responsibility for his safety and general well being.” *Helling v. McKinney*, 509
14 U.S. 25, 32 (1993) (*DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S.
15 189, 199–200 (1989)). The Eighth Amendment—and by extension, the Due
16 Process clause—requires that “inmates must be furnished with the basic human
17 needs, one of which is ‘reasonable safety.’” *Id.* (quoting *DeShaney*, 489 U.S. 189,
18 200 (1989)). As such, the Government violates the Eighth Amendment if it
19 confines a detainee in unsafe conditions. *Id.* (“It is ‘cruel and unusual punishment
20 to hold convicted criminals in unsafe conditions.’” (quoting *Youngberg v. Romeo*,
21 457 U.S. 307, 315–16(1982)).

22 It follows that the Government may not “ignore a condition of confinement
23 that is sure or very likely to cause serious illness.” *Helling*, 509 U.S. at 33. This
24 extends to protection from an “unsafe, life-threatening condition” such as an
25 infectious disease. *Id.*; *see Hutto v. Finney*, 437 U.S. 678, 682 (1978) (Eighth
26 Amendment violation found where, among other things, inmates in punitive
27 isolation were crowded into cells and some had infectious maladies such as
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1 hepatitis and venereal disease); *Johnson v. Pleasant Valley State Prison*, 505 F.
2 App’x 631, 632 (9th Cir. 2013) (Ninth Circuit reversed dismissal of prisoner’s suit
3 alleging *Helling* violations based on exposure to Valley Fever, a dangerous fungal
4 infection). Accordingly, “[a] civil detainee’s constitutional rights are violated if a
5 condition of his confinement places him at substantial risk of suffering serious
6 harm, such as the harm caused by a pandemic.” *Bravo Castillo*, 2020 WL
7 1502864, at *1 (citing *Smith v. Washington*, 781 F. App’x 595, 598 (9th Cir.
8 2019)).

9 The Eighth Amendment’s protections extend to “unreasonable risks of
10 serious damage to [a prisoner’s] future health,” even if the person has yet to suffer
11 any ill effects. *Helling*, 509 U.S. at 33 (“It would be odd to deny an injunction to
12 inmates who plainly proved an unsafe, life-threatening condition in their prison on
13 the ground that nothing yet had happened to them. The Courts of Appeals have
14 plainly recognized that a remedy for unsafe conditions need not await a tragic
15 event.”) Courts may also account for person’s individual circumstances and
16 medical histories in determining whether a health risk rises to the level of an
17 Eighth Amendment violation. *See Graves v. Arpaio*, 623 F.3d 1043, 1049 (9th Cir.
18 2010) (holding that district court did not err in concluding that dangerously high
19 temperatures posed a significant health risk to certain inmates taking psychotropic
20 medications in violation of the Eight Amendment).

21 In the Ninth Circuit, the question is not whether the prisoner has suffered
22 actual harm; it is whether there is “serious risk of substantial harm.” *Thomas v.*
23 *Ponder*, 611 F.3d 1144, 1151 n.5 (9th Cir. 2010) (emphasis in original); *Beagle v.*
24 *Schwarzenegger*, 107 F. Supp. 3d 1056, 1065 (E.D. Cal. 2014) (“The case law
25 from the Ninth Circuit and the Supreme Court support Plaintiffs’ contention that an
26 inmate’s mere exposure to a dangerous condition may provide grounds for an
27 Eighth Amendment claim.”) An individual’s heightened risk of harm due to
28

1 preexisting conditions are thus certainly probative to the more protective Fifth
2 Amendment Due Process analysis.

3
4 **2. Mr. Garcia’s Confinement at Adelanto Exposes him to a Substantial
Risk of Serious Harm from COVID-19**

5
6 Mr. Garcia’s continued detention at Adelanto exposes him to a very real risk
7 of severe illness, if not death, from COVID-19. Public health experts agree: “[t]he
8 risk posed by infectious diseases in jails and prisons is significantly higher than in
9 the community, both in terms of risk of transmission, exposure, and harm to
10 individuals who become infected.” Ex. 1 - Meyer Dec’1 at 2 ¶ 7. This has already
11 proven true at ICE detention facilities throughout the nation and it is only a matter
12 of time before Adelanto joins its sister facilities. Nothing in ICE’s April 10
13 *COVID-19 Pandemic Response Requirements* changes the heightened risk facing
14 Mr. Garcia at Adelanto, nor does it cure the facility’s abysmal record of
15 substandard medical treatment. *See generally Fraihat v. ICE*, CV 19-05146-JGB
16 (C.D. Cal. Aug. 19, 2019).

17 First, Mr. Garcia and his fellow detainees have none of the personal
18 protective equipment required to protect against COVID-19. Bell Dec’1 at 3–4 ¶
19 17. ICE’s newly updated guidelines fail to confront recent guidance from the
20 Centers for Disease and Prevention urging individuals to wear cloth face coverings
21 in public to prevent the spread of the virus. Not surprisingly, Adelanto Officers
22 frequently patrol the Facility without face masks, even when escorting a detainee
23 with COVID-19 symptoms to the medical center. *Id.* Cleaning is even less
24 consistent, with Mr. Garcia observing officers only sporadically cleaning door
25 handles and failing to clean telephones and tablets between uses. *Id.*

26 Second, even if everyone at the facility were provided personal protective
27 equipment, social distancing is impossible at Adelanto. Absent social distancing,
28

1 every other measure taken is futile because Mr. Garcia spends all day and all night
 2 in communal sleeping quarters, shower facilities, dining and recreation areas. Bell
 3 Dec’1 at 3–4 ¶ 17. Materially similar facts led this Court to recently grant a
 4 temporary restraining order because:

5 Civil detainees must be protected by the Government. Petitioners have
 6 not been protected. They are not kept at least 6 feet apart from others at
 7 all times. They have been put into a situation where they are forced to
 8 touch surfaces touched by other detainees, such as with common sinks,
 9 toilets and showers. Moreover, the Government cannot deny the fact
 that the risk of infection in immigration detention facilities – and jails
 – is particularly high if an asymptomatic guard, or other employee,
 enters a facility. While social visits have been discontinued at Adelanto,
 the rotation of guards and other staff continues.

10 *Bravo Castillo*, 2020 WL 1502864, at *5

11 Finally, the virus moves much more quickly than ICE. ICE’s protocol of
 12 isolating only symptomatic individuals or those who have come into contact with a
 13 known carrier of the infection while ignoring asymptomatic individuals has already
 14 proven ineffective. The Government cannot reduce risk to Mr. Garcia’s life and
 15 health unless it regularly tests for COVID-19 every individual, detainees, and
 16 guards alike, that come within six feet of him—a patently improbable protocol
 17 given the nationwide shortage in testing.

18 **3. Mr. Garcia’s Continued Detention is Unjustifiably Punitive**

19
 20 Apart from exposing him to a substantial risk of harm, Mr. Garcia’s
 21 continued detention is unjustifiably punitive when compared to treatment of his
 22 criminal counterparts. Major jails and prisons throughout the nation have taken
 23 significant steps to reduce their inmate populations by releasing low-level
 24 offenders and persons with medical vulnerabilities.⁹ The Government, however,

25 _____
 26
 27 ⁹ Marissa Wenzke, *1,700 jail inmates in L.A. County released over*
coronavirus concerns, sheriff says, KTLA5 (lasted updated Mar. 24, 2020, 4:06

1 has refused any discussions about medically necessary release for Mr. Garcia,
 2 leaving him detained under conditions more restrictive than those of persons
 3 serving criminal sentences in jails and prisons. The Ninth Circuit has clearly held
 4 that that conditions of confinement for civil detainees are presumptively punitive if
 5 they are equal to or more restrictive than those conditions of criminal confinement.
 6 *Jones*, 393 F.3d at 933–34; *see also King*, 885 F.3d at 557 . Mr. Garcia’s current
 7 conditions of confinement are therefore presumptively punitive and thus
 8 presumptively unconstitutional.

9 Mr. Garcia is held under conditions no different from those in *Bravo*
 10 *Castillo*. This Court has already made clear that Government cannot “ignore a
 11 condition of confinement that is sure or very likely to cause serious illness,” and
 12 “[a] remedy for unsafe conditions need not await a tragic event.” *Bravo Castillo*,
 13 2020 WL 1502864, at *4, *5 (quoting *Helling*, 509 U.S. at 33). Yet Mr. Garcia has
 14 shown that the Government is doing just that—exposing him to a known
 15 substantial risk of harm under the pretext that it has yet to occur. These conditions
 16 of confinement are unconstitutional, and Mr. Garcia is entitled to release.

17 **B. Mr. Garcia Will Undeniably Suffer Irreparable Harm Absent Relief**

18 There can be no doubt that Mr. Garcia will suffer irreparable harm absent
 19 relief. “It is well established that the deprivation of constitutional rights
 20 unquestionably constitutes irreparable injury.” *Bravo Castillo*, 2020 WL 1502864,
 21 at *6 (citing *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017)). Even
 22
 23

24 PM), <https://ktla.com/news/local-news/1700-jail-inmates-in-l-a-county-released-over-coronavirus-concerns-sheriff-says/>; Alene Tchekmedian, Paige St. John, &
 25 Matt Hamilton, *L.A. County Releasing Some Inmates from Jail to Combat Coronavirus*, L.A. Times (Mar. 16, 2020),
 26 <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>; Julia Marsh & Ben Feuerherd, *NYC jail population lowest since World War II after coronavirus release*, New York Post (Mar. 26, 2020, 6:13
 27 PM), <https://nypost.com/2020/03/26/nyc-jail-population-lowest-since-world-war-ii-after-coronavirus-releases/>.
 28

1 under normal conditions, unlawful immigration detention causes irreparable harm.
2 *See Hernandez*, 872 F.3d at 995 (noting that there are many forms of irreparable
3 harm “imposed on anyone who is subject to immigration detention,” including
4 “subpar medical and psychiatric care” and “economic burdens imposed on both
5 detainees and their family members.”) It is equally well-established that threats to
6 a person’s health from government action also qualify as irreparable harm. *See*
7 *M.R. v. Dreyfus*, 663 F.3d 1100, 1111 (9th Cir. 2011); *Ind. Living Ctr. of S. Calif.,*
8 *Inc. v. Shewry*, 543 F.3d 1047, 1050 (9th Cir. 2008) (limiting access to “much-
9 needed pharmaceuticals” causes irreparable harm).

10 The time to act is now, before Mr. Garcia becomes Adelanto’s first COVID-
11 casualty. An average, non-complicated COVID-19 case can require hospitalization
12 and a significant fraction end in death. If infected, Mr. Garcia faces acute risk of a
13 severe case necessitating intensive treatment because of his asthma, hypertension,
14 prediabetes, and significant mental health issues. Under these conditions, it is no
15 hyperbole to say that there is a significant possibility Mr. Garcia faces irreversible
16 harm absent action from this Court. Mr. Garcia’s continued detention at Adelanto
17 during the COVID-19 pandemic “unquestionably constitutes irreparable injury.”

18 **C. The Balance of Equities Tilts Sharply in Mr. Garcia’s Favor**

19 Even a passing glance at the third factor favors Mr. Garcia’s release. Like the
20 several petitioners that this Court recently released from Adelanto, Mr. Garcia “faces
21 irreparable harm to [his] constitutional rights and health.” *Bravo Castillo*, 2020 WL
22 1502864, at *6. “Faced with... preventable human suffering,” a court should “have
23 little difficulty concluding that the balance of hardship tips decidedly in [movants’]
24 favor.” *Hernandez*, 872 F. 3d at 996. “Indeed, there is no harm to the Government
25 when a court prevents the Government from engaging in unlawful practices.” *Bravo*
26 *Castillo*, 2020 WL 1502864 at *6 (citing *Rodriguez v. Robbins*, 715 F.3d 1127, 1145
27 (9th Cir. 2013)); *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS
28

1 cannot reasonably assert that it is harmed in any legally cognizable sense by being
2 enjoined from constitutional violations.”). Accordingly, “[t]he balance of the
3 equities tip sharply in favor of the Petitioner[.]” *Bravo Castillo*, 2020 WL 1502864
4 at *6.

5 **D. Release of Mr. Garcia is in the Public Interest**

6 Finally, it is in both the Government’s and the broader public’s interest to
7 release detainees at heightened risk of COVID-19 infection. As this Court stated
8 in *Bravo Castillo*:

9
10 The emergency injunctive relief sought, here, is absolutely in the
11 public’s best interest. The public has a critical interest in preventing the
12 further spread of the coronavirus. An outbreak at Adelanto would,
13 further, endanger all of us – Adelanto detainees, Adelanto employees,
14 residents of San Bernardino County, residents of the State of California,
15 and our nation as a whole.

16 *Bravo Castillo*, 2020 WL 1502864 at *6. An outbreak at Adelanto would
17 endanger the detainees, employees, residents of San Bernardino County and the
18 State of California, and our nation as a whole. Fewer detainees in immigration
19 detention will make the eventual outbreaks easier to contain. The relief sought
20 here in fact advances the Government, and the public’s, interest in maintaining a
21 safe and healthy environment in its detention center.

22 **V. THIS COURT SHOULD NOT REQUIRE SECURITY**

23 Although Federal Rule of Civil Procedure 65(c) can require a security for a
24 temporary restraining order, a district court “has discretion as to the amount of
25 security required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.
26 2003). No security is appropriate where, as here, there is no quantifiable harm to
27 the restrained party and where the order is in the public interest. *Save Our*
28 *Sonoran, Inc v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005); *Johnson v.*
Couturier, 572 F.3d 1067, 1086 (9th Cir. 2009). Indeed, district courts routinely
exercise their discretion to not require security in cases brought by indigent or

1 incarcerated people. *Taylor-Failor v. County of Hawaii*, 90 F. Supp. 3d 1095,
2 1102–03 (D. Haw. 2015) (requiring no security because plaintiffs were “of limited
3 financial means”); *Innovation Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1165 (D.
4 Ore. 2018) (dispensing security requirement for temporary restraining order
5 involving immigration detainees); *Ochoa v. Campbell*, 266 F. Supp. 3d 1137 (E.D.
6 Wash. 2017) (not requiring security for temporary restraining order seeking release
7 from custody).

8 Due to his prolonged detention, Mr. Garcia is indigent. He therefore
9 respectfully requests that this Court exercise its discretion and not require him to
10 post security.

11 **VI. CONCLUSION**

12 For the foregoing reasons, Mr. Garcia respectfully—but urgently—requests
13 that this Court order his immediate release from punitive detention at Adelanto and
14 any other relief this Court deems just and equitable.

15
16 Dated: 4/15/2020

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