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11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 13 WESTERN DIVISION

14 JOSE ROBLES RODRIGUEZ;
 15 CHARLESTON EDWARD DACOFF;
 JOSE HERNANDEZ VELASQUEZ;
 16 LUIS LOPEZ SALGADO; PAOLA
 RAYON VITE; MARTIN VARGAS
 17 ARELLANO,

18 Petitioners-Plaintiffs,

19 v.

20 CHAD F. WOLF, Acting Secretary, U.S.
 Department of Homeland Security;
 21 MATTHEW T. ALBENCE, Deputy Director
 and Senior Official Performing the Duties of
 22 the Director, U.S. Immigration and Customs
 Enforcement; DAVID MARIN, Director of
 23 the Los Angeles Field Office, Enforcement
 and Removal Operations, U.S. Immigration
 24 and Customs Enforcement; and JAMES
 25 JANECKA, Warden, Adelanto ICE
 26 Processing Center,
 27 Respondents-Defendants.
 28

Case No. 5:20-cv-00627-TJH-GJS

**DEFENDANTS' MEMORANDUM IN
 OPPOSITION TO PLAINTIFFS'
 APPLICATION FOR A
 TEMPORARY RESTRAINING
 ORDER**

*[Filed Concurrently With the
 Declaration of Gabriel Valdez,
 Declaration of Rosa Quevedo,
 Declaration of Daniel A. Beck, and
 Evidentiary Objections]*

Honorable Terry J. Hatter
 United States District Judge

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY**

3 Plaintiffs are six aliens detained by the U.S. Immigration and Customs
4 Enforcement at a facility in Adelanto, California, pending completion of their removal
5 proceedings. Plaintiffs are being detained because they either pose a serious danger to
6 the public and/or because they pose a flight risk. For example, Plaintiff Vite was
7 convicted of felony child cruelty, Plaintiff Salgado was convicted of cocaine dealing,
8 and Plaintiffs Dacoff and Arellano have a long record of serious crimes.

9 Plaintiffs Complaint alleges that their Fifth Amendment rights are being violated
10 by their detention [Dkt. no. 1]. Demanding immediate release, Plaintiffs have applied for
11 a TRO against the federal defendants [Dkt. no. 11]. Their supporting memorandum (the
12 “TRO Memo”) [Dkt. no. 11-1] argues that the Adelanto facility does not sufficiently
13 protect them against potential exposure to the COVID-19 disease. Citing the Court’s
14 order in Castillo v. Barr, CV 20-00605-TJH (AFMx) (C.D. Cal. Mar. 27, 2020), ECF
15 No. 32 (the “Castillo order”), Plaintiffs argue that they are particularly susceptible to
16 COVID-19, insofar as they have preexisting health conditions.

17 The Court should deny the Plaintiffs’ TRO application.

18 First, Plaintiffs’ Fifth Amendment claim fails because they lack Article III
19 standing. Plaintiffs’ asserted injury—they fear that they are likely to contract COVID-19
20 at Adelanto if they are not immediately released—is speculative. There are no known
21 cases of COVID-19 at Adelanto, and the Plaintiffs submit no evidence showing that they
22 are being exposed to COVID-19. To the contrary, the Adelanto facility is being actively
23 screened for potential COVID-19 cases and exposure. See Declaration of Gabriel Valdez
24 (“Valdez Decl.”). Those results have all been negative to date. Id.

25 Second, Plaintiffs fail to establish a likelihood of prevailing on the merits of their
26 Fifth Amendment claim. They do not show that the precautionary measures taken by the
27 Government at the Adelanto facility to protect against COVID-19 are “objectively
28 unreasonable” to the point that they establish a Constitutional violation. COVID-19 is a

1 dangerous and communicable disease. So are other diseases, such as seasonal flu and
2 tuberculosis. The Government cannot be required to immediately release federal
3 detainees because of speculation that an infectious agent *might* be brought into a facility,
4 the plaintiffs *might* then be exposed to it, and some plaintiffs *might* then catch it. Cases
5 addressing this issue, in the context of injunctive relief, have generally required proof
6 that the infectious agent is actually present at the facility, and the plaintiff is actually
7 exposed to it. See Dawson v. Asher, No. C20-0409 JLR-MAT, 2020 WL 1304557
8 (W.D. Wash. Mar. 19, 2020) (rejecting similar request for release by an immigration
9 detainee where there was no evidence of COVID-19 cases or that defendants’
10 precautionary measures for COVID-19 were inadequate); Opinion and Order, Sacal-
11 Micha v. Longoria, No. 1:20-CV-37 (S.D.T.X. Mar. 27, 2020) (ECF no. 17), attached as
12 Exhibit A to the Declaration of Daniel A. Beck (finding no likelihood of success on
13 substantially the same due process claim based on absence of evidence that detention
14 facility is incapable of protecting the petitioner from COVID-19).

15 Third, Plaintiffs fail to prove that Defendants’ actions to mitigate the COVID-19
16 risk are so unreasonable that it violates the Fifth Amendment. The idea that congregate
17 housing is inherently unacceptable is inconsistent with current CDC guidance, which
18 does not mandate shuttering all facilities with congregate housing—particularly when
19 there are no known COVID-19 cases in the facility at issue. Current CDC guidance for
20 correctional and detention facilities is at [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html)
21 [ncov/community/correction-detention/guidance-correctional-detention.html](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html). See Beck
22 Decl., Exh. B. That CDC guidance does not mandate the elimination of congregate
23 housing because of COVID-19, nor does the CDC guidance in other communal contexts
24 mandate it. The Government does not violate the Plaintiffs’ Constitutional rights by
25 operating the Adelanto facility consistently with the current CDC guidance for managing
26 COVID-19 infection risk in such facilities.

27 In requesting a TRO, Plaintiffs also ignore the compelling Government and public
28 interest in their detention. Plaintiffs are not being detained at Adelanto arbitrarily. They

1 are detained because they are likely to be deported, and have been found to either pose a
2 serious criminal danger to the community and/or are a flight risk. The public, and the
3 Government, has a right to see those important interests protected from being trampled
4 on. “Legitimate, non-punitive government interests include ensuring a detainee’s
5 presence at trial, maintaining jail security, and effective management of a detention
6 facility.” Jones v. Blanas, 393 F.3d 918, 932 (9th Cir. 2004).

7 For the same reasons, Plaintiffs fail to prove they have a “certainly impending”
8 injury in this action seeking mandatory preliminary relief.

9 Accordingly, the TRO Application should be denied.

10 **II. STATUTORY AND REGULATORY BACKGROUND**

11 Congress has enacted a statutory scheme that provides for the civil detention of
12 aliens during removal proceedings. See Prieto-Romero v. Clark, 534 F.3d 1053, 1059
13 (9th Cir. 2008). Where an alien falls within this statutory scheme determines whether his
14 detention is discretionary or mandatory, as well as the kind of review process that may
15 be available to him. Id. at 1057.

16 The Supreme Court has recognized “detention during deportation proceedings as a
17 constitutionally valid aspect of the deportation process.” Demore v. Kim, 538 U.S. 510,
18 523 (2003). The statutory authority of the Attorney General to detain an alien during
19 removal proceedings, prior to a final order of removal, is found in 8 U.S.C. § 1226. See
20 Jennings, 138 S. Ct. at 837 (“Section 1226 generally governs the process of arresting and
21 detaining [deportable aliens present in the United States] pending their removal.”).

22 Under section 1226(a), the government may detain an alien “pending a decision
23 on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a).
24 Generally, for aliens detained pursuant to section 1226(a), the Attorney General has the
25 discretion to either (1) detain the alien without bond or (2) release the alien on bond of at
26 least \$1,500 or on conditional parole. 8 U.S.C. § 1226(a).

27 A different provision, however, applies to certain aliens with a criminal history
28 (“criminal aliens”). Section 1226(c) mandates the detention of such aliens until there is a

1 final order of removal (*i.e.*, the conclusion of any petition for review in a circuit court of
2 appeals). See Jennings, 138 S. Ct. at 846 ([T]ogether with § 1226(a), § 1226(c) makes
3 clear that detention of aliens within its scope *must* continue “pending a decision on
4 whether the alien is to be removed from the United States.”). As relevant here, 8 U.S.C.
5 § 1226(c)(1)(B) provides that detention is mandatory for aliens who are removable “by
6 reason of having committed any offense covered in . . . [8 U.S.C. § 1227(a)(2)(A)(iii)] . .
7 . . .” The Supreme Court has recognized that the mandatory detention of criminal aliens
8 “necessarily serves the purpose of preventing [them] from fleeing prior to or during their
9 removal proceedings, thus increasing the chance that, if ordered removed, the aliens will
10 be successfully removed.” Demore, 538 U.S. at 527-28. Release of an alien detained
11 pursuant to section 1226(c) is authorized “only if” release is “necessary” for witness-
12 protection purposes and “the alien satisfies the Attorney General that [he] will not pose a
13 danger to the safety of other persons or of property and is likely to appear for any
14 scheduled proceeding.” 8 U.S.C. § 1226(c)(2). See also Jennings, 138 S. Ct. at 847
15 (recognizing that section 1226(c)(2) “expressly and unequivocally imposes an
16 affirmative *prohibition* on releasing . . . aliens [detained pursuant to section 1226(c)]
17 under any other conditions.”).

18 **III. FACTUAL AND PROCEDURAL BACKGROUND**

19 Relevant background for each of the Plaintiffs is submitted in the Declaration of
20 Rosa Quevedo (“Quevedo Decl.”), filed concurrently herewith.

21 **A. Plaintiffs And Their Criminal And Procedural History**

22 1. Plaintiff Jose Robles Rodriguez

23 Plaintiff Jose Robles Rodriguez is a 37-year-old native and citizen of Guatemala
24 who entered the United States at an unknown place, on an unknown date, and was not
25 thereafter admitted or paroled. (Quevedo Decl., ¶ 5). On October 23, 2019, Rodriguez
26 was arrested for driving under the influence in violation of CPC §§ 23152(a) and
27 23152(b). (*Id.*) On or about December 6, 2019, ICE took Rodriguez into custody. ICE
28 detained him under section 236(a) of the INA, finding he is a public danger. (*Id.*)

1 2. Plaintiff Charleston Edward Dacoff

2 Plaintiff Dacoff is a 54-year-old male native and citizen of Belize who entered
3 into the United States at an unknown place, on an unknown date. (Quevedo Decl., ¶ 6).
4 On or about March 13, 2017, Dacoff entered ICE custody after he was released from the
5 Los Angeles County Jail. (*Id.*) ERO issued a Notice to Appear charging him with
6 inadmissibility under section 212(a)(6)(A)(i) of INA. Dacoff's criminal history includes
7 convictions for, among other violations: 1986 conviction for carrying a loaded firearm in
8 a public place under CPC § 12031(A); 1993 conviction for tampering with a vehicle
9 under CVC § 10852; 1998 conviction for driving on a suspended license under section
10 14601.1(A) of the CVC; 2003 conviction for driving under the influence under CVC §
11 23152(B); 2011 conviction for possession of controlled substance under CHSC §
12 11350(a); May 2016 conviction for driving under the influence under section 23152(B)
13 of the CVC; October 2016 conviction for driving under the influence under CVC §
14 23152(B) and driving on a suspended license under CVC § 14601.2(A); 2017 conviction
15 for driving under the influence under CVC §23152(B). (*Id.*) On or about October 27,
16 2017, an immigration judge denied Dacoff's request for relief of removal, and ordered
17 Dacoff removed. (*Id.*) On or about September 17, 2018, Dacoff filed a petition for a writ
18 of habeas corpus in the Central District of California, case no. 18-01904. (*Id.*) On or
19 about June 29, 2019, Dacoff's habeas petition was denied. (*Id.*) Dacoff filed a Ninth
20 Circuit appeal, case no. 19-55897, which is still pending. (*Id.*) On or about September
21 23, 2019, the immigration judge again ordered him removed. (*Id.*) Dacoff filed an appeal
22 with the Board, which remains pending. (*Id.*) During his custody, Dacoff had several
23 bond hearings. (*Id.*) The Immigration Judge denied his bond requests because Dacoff
24 was a danger to society and there was no jurisdiction. (*Id.*)

25 3. Plaintiff Jose Hernandez Velaszquez

26 Plaintiff Velaszquez is a 19-year-old native and citizen of Guatemala who entered
27 the United States without inspection in at or near Calexico, CA on or about October 27,
28 2017. (Quevedo Decl., ¶ 7). On or about November 16, 2017, Hernandez was placed in

1 removal proceedings and transferred to an ICE detention facility in Adelanto, CA. (*Id.*)
2 On or about January 9, 2018, an immigration judge ordered Hernandez removed to
3 Guatemala. (*Id.*) Hernandez appealed, but the Board affirmed the immigration judge's
4 decision. (*Id.*) Subsequently, DHS designated Hernandez an unaccompanied minor. (*Id.*)
5 On or about December 11, 2018, DHS filed a motion to reopen proceedings and remand
6 the record to the immigration judge, which the Board granted. (*Id.*) On or about June 5,
7 2019, after a full hearing on the merits, an immigration judge denied Hernandez's
8 applications for relief and ordered him removed to Guatemala. (*Id.*) Hernandez appealed
9 that decision, but the Board affirmed the immigration judge's decision. (*Id.*) Hernandez
10 appealed the Board's decision by filing a Petition for Review with the U.S. Court of
11 Appeals. (*Id.*) That PFR remains pending. (*Id.*) On or about October 1, 2019, Hernandez
12 filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 in the Central District
13 of California, case no. 19-1887. (*Id.*) The Court denied Hernandez's request for
14 immediate release and dismissed Hernandez's habeas petition. (*Id.*) During his time in
15 custody, Hernandez had three (3) separate bond hearings. (*Id.*) Every time, an
16 immigration judge found him to be a significant flight risk. (*Id.*)

17 4. Plaintiff Luis Lopez Salgado

18 Plaintiff Salgado is a 40-year old native and citizen of Mexico. (Quevedo Decl.,
19 ¶ 8). On June 13, 1990, Salgado adjusted his status to a lawful permanent resident. (*Id.*)
20 On September 4, 2002, Salgado was convicted of possession of a drill with the intent to
21 vandalize in violation of Cal. Penal Code § 594.2(a). (*Id.*) On May 17, 2005, Salgado
22 was convicted of transport for sale of a controlled substance in violation of Cal. Health
23 and Safety Code § 11352 (CHSC). (*Id.*) On February 2, 2015, Salgado was convicted of
24 possession of cocaine base for sale in violation of CHSC § 11351.5. (*Id.*) On or about
25 January 20, 2018, Salgado was arrested for possession of cocaine base for sale in
26 violation of CHSC § 11351.5. (*Id.*) On or about August 23, 2018, Salgado was taken into
27 ICE custody and placed in removal proceedings, charging him with removability under
28 section 273(a)(2)(B)(i) (offense relating to a controlled substance) and 237(a)(2)(A)(iii)

1 of the Immigration and Nationality Act (INA). (*Id.*)

2 On September 6, 2018, Salgado had a bond hearing before an immigration judge.
3 (*Id.*) The immigration judge denied Salgado's request for a bond based on the fact he
4 had been convicted of CHSC § 11351.5, which is both an aggravated felony and
5 controlled substance offense. (*Id.*) Under INA section 236(c), Salgado is a mandatory
6 detainee. (*Id.*) On October 2, 2019, Salgado had a *Rodriguez* bond hearing. The
7 immigration judge denied Salgado bond based on his flight risk and danger. (*Id.*) On
8 October 29, 2019, the Immigration denied Salgado's requests for relief and ordered him
9 removed from the United States. (*Id.*) On December 9, 2019, Salgado appealed the
10 immigration judge's removal order to the Board of Immigration Appeals. (*Id.*)

11 5. Plaintiff Paolo Rayon Vite

12 Plaintiff Vite is a 35 year old female native and citizen of Mexico. (Quevedo
13 Decl., ¶ 9). Vite was admitted to the United States as a lawful permanent resident on
14 October 10, 1998. (*Id.*) On March 27, 2018 Vite was convicted of felony child cruelty:
15 possible injury or death under Cal. Penal Code § 273a(A) with special enhancement
16 under Cal. Penal Code § 12022.95. (*Id.*) She was sentenced to four years imprisonment.
17 (*Id.*) On or about November 27, 2019 she was released into ICE custody and placed into
18 removal proceedings charging her with being removable under INA 237(a)(2)(E)(1).
19 (*Id.*) ICE detained her under section 236(a) of the INA, finding her to be a danger to the
20 community. (*Id.*) On December 11, 2019 an immigration judge denied petitioner's bond
21 request, finding that she is a danger to the community. (*Id.*) Vite appealed to the Board
22 of Immigration Appeals, which remains pending.

23 6. Plaintiff Martin Vargas Arellano

24 Plaintiff Arellano is a 54-year-old male, native and citizen of Mexico who entered
25 the United States at an unknown place, on an unknown date, and was not thereafter
26 admitted or paroled. (Quevedo Decl., ¶ 10). On May 10, 2013, he was convicted of
27 violating the conditions of his parole pursuant to CPC § 3455(a). (*Id.*) Arellano was
28 released into ICE custody on May 15, 2013 and placed into removal proceedings.

1 Arellano's criminal history includes convictions for possession of methamphetamine
2 CHSC §11377(a)), possession of cocaine (CHSC § 11350(a)), petty theft with prior
3 (CPC §666), infliction of corporal injury to a spouse/cohabitant (CPC §273.5), and lewd
4 or lascivious acts with a minor under 14 years of age (CPC §288(a)). (*Id.*) On April 17,
5 2014 Arellano was granted bond and released from Adelanto. (*Id.*) Arellano's
6 applications for relief were then denied by an immigration judge and he was ordered
7 removed on August 12, 2014. (*Id.*) Arellano appealed, and his matter was remanded
8 back to the immigration judge on or about October 10, 2018. (*Id.*) On or about October
9 1, 2018 Arellano convicted of felony failing to register as a sex offender, in violation of
10 CPC 290(B) and sentenced to one year and four months imprisonment. (*Id.*) He was
11 again taken into ICE custody on March 28, 2019. (*Id.*) On November 5, 2019 Arellano's
12 applications for relief were denied by an immigration judge and he was ordered removed
13 to Mexico. (*Id.*) Arellano has again appealed the immigration judge's decision, and his
14 appeal is currently pending. (*Id.*)

15 **IV. THE ICE PROCESSING CENTER AT ADELANTO**

16 The conditions of detention at Adelanto are governed by the ICE Performance-
17 Based National Detention Standards 2011 ("PBNDS"). (Valdez Decl. ¶ 3.) The PBNDS
18 reflects ICE's ongoing effort to tailor the conditions of civil immigration detention to its
19 unique purpose while maintaining a safe and secure detention environment for detainees
20 and staff. *See* U.S. Immigration and Customs Enforcement, *Performance-Based*
21 *Detention Standards 2011* (rev. Dec. 2016), available at
22 <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

23 Adelanto has a detainee population that is within its approved capacity. (*Id.* ¶ 14.)
24 It is currently operating at 32% under its approved capacity. (*Id.*) All detainees have
25 daily access to sick call in a clinical setting, onsite mental health and dental services, and
26 an infirmary equipped with negative pressure rooms onsite. (*Id.* ¶ 12.) Medical staff visit
27 detainee housing units multiple times per day to distribute medication and conduct
28 welfare checks as warranted. (*Id.* ¶ 16.) Adelanto has procedures to monitor the overall

1 health of detainees in the general population. (*Id.* ¶ 10.) Additional temperature checks
2 of detainees will occur where medical circumstances trigger such checks. (*Id.*) Adelanto
3 can admit patients to the local hospital for higher level of care when needed. (*Id.* ¶ 12.)

4 **A. Preventative Measures Taken at Adelanto in Response to COVID-19**

5 In consideration of the recognition that COVID-19 is a global pandemic, as well
6 as the safety of detainees and facility staff, in-person social visitation and facility tours at
7 Adelanto were suspended as of March 13, 2020 to mitigate the potential transmission of
8 COVID-19. (*Id.* ¶ 17.) Currently, all visitors who wish to enter Adelanto beyond the
9 lobby must submit to a temperature check and complete a questionnaire to determine
10 COVID-19 risk. (*Id.* ¶ 22.) Staff entering on duty each day also submit to temperature
11 checks and complete questionnaires to determine COVID-19 risk prior to assuming their
12 posts and positions within the facility. (*Id.* ¶ 23.)

13 Detainees have 24-hour access to tablet devices which have video and audio
14 capabilities to allow for virtual social visitation with family and friends and attorney-
15 client communications. (*Id.* ¶ 20.) In addition, in-person legal visitation remains
16 permitted at Adelanto, although in-person, non-contact legal visitation (e.g.,
17 communication through a plexiglass barrier) is offered first and is strongly encouraged
18 to limit risks of exposure to detainees. (*Id.* ¶ 21.) If an attorney would like an in-person
19 contact visit, detainees are required to wear surgical masks, which are provided by
20 facility staff. (*Id.* ¶ 21.)

21 Adelanto has provided information and education to detainees through in-person
22 town halls on the best practices to prevent the spread of contagious diseases. (*Id.*
23 ¶ 15(e).) In addition, daily video presentations in both English and Spanish are broadcast
24 on housing unit televisions regarding handwashing practices. (*Id.* ¶ 16.) In addition,
25 educational posters with illustrations of good hygiene practices have been placed
26 throughout the facility, including detainee living areas. (*Id.* ¶ 15(e).)

27 As of March 30, 2020, there are no confirmed cases of COVID-19 at Adelanto.
28 (*Id.* ¶ 13(a).) *See also* ICE's COVID-19 website, <https://www.ice.gov/covid19> (last

1 accessed Mar. 29, 2020). ICE epidemiologists have been tracking the outbreak of
2 COVID-19, regularly updating infection prevention and control protocols, and issuing
3 guidance to field staff on screening and management of potential exposure among
4 detainees. (*Id.* ¶ 6.) ICE and IHSC are following guidance issued by the Centers for
5 Disease Control to safeguard those in its custody and care. (*Id.* ¶ 7.)

6 At Adelanto, each detainee is screened for disabilities upon admission. (*Id.* ¶ 8.)
7 Identified disabilities are further evaluated and addressed as medically appropriate. (*Id.*)
8 In addition, during intake medical screenings, each detainee is assessed for fever and
9 respiratory illness. (*Id.* ¶ 9.) Detainees are asked to confirm if they have had close
10 contact with a person with a laboratory-confirmed case of COVID-19 in the past 14
11 days, and whether they have traveled from or through area(s) with sustained community
12 transmission in the past two weeks. (*Id.*) A detainee's responses to these queries, as well
13 as the results of these assessments, will dictate whether a detainee will be monitored or
14 isolated. (*Id.* ¶ 10.)

15 Detainees who present symptoms compatible with COVID-19 are placed in
16 isolation where they will be tested for the virus. (*Id.*) If a positive test result is returned, a
17 detainee will remain in isolation and will receive treatment. (*Id.*) If a detainee's health
18 condition deteriorates, the detainee will be referred to a local hospital. (*Id.*)

19 In addition, Adelanto has increased the frequency of its sanitation procedures and
20 provides sanitation supplies to detainees. (*Id.* ¶ 15.) Specifically, all common areas in
21 Adelanto, including detainee housing areas, law libraries, dining halls, medical areas,
22 intake areas, door handles, desk and counter surfaces in high traffic areas, lobby seating
23 areas, restrooms, and courtrooms, are disinfected multiple times per day. (*Id.* ¶ 15(a).)
24 Additional cleaning products have been added to detainee housing areas for use by
25 detainees. (*Id.* ¶ 15(b).) Alcohol-based disinfectant dispensers have been added in lobby
26 areas for use by facility staff and members of the public. (*Id.* ¶ 15(c).) Internal facility
27 areas have been equipped with disinfectant wipes. (*Id.* ¶ 15(d).)
28

1 **B. Specific Instances of ICE Actions Mitigating Potential Cases of**
2 **COVID-19 Exposure at Adelanto**

3 There were two detainees suspected to be cases of COVID-19 at Adelanto. The
4 two detainees were tested for COVID-19, and their test results were negative. (*Id.*
5 ¶ 13(b).) The two detainees were cleared and returned to the general population. (*Id.*)

6 On March 25, 2020, one detainee arrived at Adelanto with an unverifiable travel
7 history. (*Id.* ¶ 13(c).) Although the detainee was asymptomatic and afebrile, the detainee
8 is being monitored in medical observation for 14 days for the development of signs and
9 symptoms related to COVID-19 per CDC guidance. (*Id.*)

10 On March 26, 2020, two detainees arrived at Adelanto. One detainee had recent
11 travel through a geographic region experiencing widespread ongoing transmission of
12 COVID-19. (*Id.* ¶ 13(d).) On March 19, 2020, the detainee had tested negative for
13 COVID-19. (*Id.*) Both detainees are being monitored for 14 days for the development of
14 signs and symptoms related to COVID-19 per CDC guidance. (*Id.*)

15 On March 27, 2020, two detainees were transported to a local hospital for medical
16 care unrelated to COVID-19. (*Id.* ¶ 13(e).) The hospital tested both detainees for
17 COVID-19 pursuant to local protocol. (*Id.*) One detainee remains admitted to the
18 hospital for treatment unrelated to COVID-19. The other detainee was returned to
19 Adelanto and is being monitored in medical observation pending receipt of his COVID-
20 19 test results. (*Id.*)

21 **V. LEGAL STANDARD FOR A TEMPORARY RESTRAINING ORDER**
22 **THAT ALTERS THE STATUS QUO WITH MANDATORY RELIEF**

23 The standard for issuing a TRO is substantially identical to the standard for
24 issuing a preliminary injunction. See Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.,
25 240 F.3d 832, 839 n.7 (9th Cir. 2001). A TRO is “an extraordinary remedy that may
26 only be awarded upon a clear showing that the plaintiff is entitled to such relief.” Winter
27 v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). For a TRO to issue the moving
28 party must demonstrate (1) that he is likely to succeed on the merits, (2) that he is likely

1 to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of
2 equities tips in his favor, and (4) that an injunction is in the public interest. See id. at 20.
3 “In exercising their sound discretion, courts of equity should pay particular regard for
4 the public consequences in employing the extraordinary remedy of injunction.” Id. at 24
5 (citation and internal quotation marks omitted).

6 An injunction is “unavailable absent a showing of irreparable injury, a
7 requirement that cannot be met where there is no showing of any real or immediate
8 threat that the plaintiff will be wronged [] – a ‘likelihood of substantial and immediate
9 irreparable injury.’” Los Angeles v. Lyons, 461 U.S. 95, 111 (1983). A district court
10 should enter a preliminary injunction only “upon a clear showing that the [movant] is
11 entitled to such relief.” Winter, 555 U.S. at 22.

12 The purpose of a TRO is to preserve the status quo before a preliminary injunction
13 hearing may be held. Here, Plaintiffs do not seek to preserve the status quo until this
14 Court may decide a preliminary injunction, but rather to essentially decide the dispute at
15 its inception via an *ex parte* TRO that mandates their immediate release. Such relief is
16 especially disfavored. See Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 438–
17 39 (1974) (noting that TROs “should be restricted to serving their underlying purpose of
18 preserving the status quo and preventing irreparable harm just so long as is necessary to
19 hold a hearing, and no longer”); Reno Air Racing Ass’n., Inc. v. McCord, 452 F.3d
20 1126, 1131 (9th Cir. 2006) (noting that “courts have recognized very few circumstances
21 justifying the issuance of an *ex parte* TRO”); Anderson v. United States, 612 F.2d 1112,
22 1114 (1979) (“[m]andatory preliminary relief, which goes well beyond simply
23 maintaining the status quo *pendente lite*, is particularly disfavored, and should not be
24 issued unless the facts and law clearly favor the moving party”).

25 **VI. ARGUMENT**

26 **A. Plaintiffs Lack Standing**

27 Plaintiffs lack Article III standing to maintain this lawsuit. There are no COVID-
28 19 cases known to exist in the Adelanto facility, and the Plaintiffs submit no admissible

1 evidence establishing otherwise. Plaintiffs’ TRO is premised on the speculative idea that
2 (a) the Adelanto facility is inherently inferior for infection control purposes, relative to
3 sheltering at a home; and (b) Plaintiffs therefore now face an unreasonably high risk of
4 COVID-19 infection. That speculation does not prove a “certainly impending” injury of
5 the type required to establish standing in this action for injunctive relief. Indeed, the
6 same arguments would apply to existing widespread infections like seasonal flu, which
7 are also deadly and contagious, even if statistically less deadly than COVID-19.

8 Article III of the Constitution requires “those who seek to invoke the power of
9 federal courts [to] allege an actual case or controversy.” O’Shea v. Littleton, 414 U.S.
10 488, 493 (1974). “Plaintiffs in the federal courts must allege some threatened or actual
11 injury resulting from the putatively illegal action before a federal court may assume
12 jurisdiction.” Id. (citation and internal quotation marks omitted). “Abstract injury is not
13 enough. It must be alleged that the plaintiff has sustained or is immediately in danger of
14 sustaining some direct injury as the result of the challenged . . . official conduct.” Id. at
15 494 (citation and internal quotation marks omitted) (emphasis added).

16 “Standing to sue is a doctrine rooted in the traditional understanding of a case or
17 controversy. The doctrine developed in the case law to ensure that federal courts do not
18 exceed their authority as it has been traditionally understood.” Spokeo, Inc. v. Robins,
19 136 S. Ct. 1540, 1547 (2016). The “irreducible constitutional minimum of standing”
20 contains three requirements. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).
21 First, a plaintiff “must have suffered an ‘injury in fact’—an invasion of a legally
22 protected interest that is (a) concrete and particularized, and (b) actual or imminent, not
23 conjectural or hypothetical.” Id. (citations and internal quotation marks omitted).
24 Second, a plaintiff must show “a causal connection between the injury and the conduct
25 complaint of.” Id. The alleged injury must be “fairly . . . trace[able] to the challenged
26 action of the defendant, and not . . . th[e] result [of] the independent action of some third
27 party not before the court.” Id. (citations and internal quotation marks omitted)
28 (alterations in original). Third, a plaintiff must show that it is “likely, as opposed to

1 merely speculative, that the injury will be redressed by a favorable decision.” Id. at 561
2 (citation and internal quotation marks omitted).

3 Injury in fact is a “constitutional requirement” and is the “[f]irst and foremost” of
4 standing’s three elements. Id. at 1547-48 (quoting Steel Co. v. Citizens for Better
5 Environment, 523 U. S. 83, 103 (1998)). To be “particularized” the injury “must affect
6 the plaintiff in a personal and individual way.” Lujan, 504 U.S. at 560 n.1.

7 “Particularization is necessary to establish injury in fact, but it is not sufficient. An
8 injury in fact must also be ‘concrete.’” Spokeo, Inc., 136 S. Ct. at 1548. A “concrete”
9 injury must be “‘de facto’; that is, it must actually exist[,]” that is, it must be “real,” and
10 not “abstract.” Id. While “the risk of real harm” may, in some circumstances, be
11 sufficiently concrete, “imminence . . . cannot be stretched beyond its purpose, which is
12 to ensure that the alleged injury is not too speculative for Article III purposes – that the
13 injury is ‘certainly impending,’” Lujan, 504 U.S. at 568.

14 Importantly, where—as here—the relief sought is prospective relief only, a
15 plaintiff must demonstrate a risk of future injury that is both “real” and “immediate” and
16 neither “conjectural” nor “hypothetical.” City of Los Angeles v. Lyons, 461 U.S. 95,
17 102-03 (1983). Thus, a plaintiff seeking forward-looking relief bears the burden of
18 proving the existence of a future “‘threatened injury [that is] certainly impending.’”
19 Clapper v. Amnesty Int’l USA, 568 U.S. 398, 401 (2013) (quoting Whitmore v.
20 Arkansas, 495 U.S. 149, 158 (1990)).

21 Authority finding a Constitutional violation based on exposure to disease-causing
22 agents has thus generally involved an actual health-damaging exposure that has been
23 shown to exist in the facility, and which is “sure or very likely” to cause injury, as
24 opposed to a plaintiff’s speculation about future exposure to an agent that *has not been*
25 *proven to exist in the facility at issue.* Cf. Helling v. McKinney, 509 U.S. 25, 32 (1993)
26 (remanding for consideration of whether prisoner might potentially prove an Eighth
27 Amendment violation because of his ongoing exposure to actual tobacco smoke from his
28 cellmate); see also Dawson v. Asher, No. C20-0409JLR-MAT, 2020 WL 1304557

1 (W.D. Wash. Mar. 19, 2020) (denying TRO and explaining that “Plaintiffs’ cited
2 authority addresses the exposure of inmates or detainees to existing conditions within the
3 facility at issue ... [h]ere there is no evidence that anyone at NWDC has COVID-19, and
4 Plaintiffs do not address the measures Defendants are taking to prevent such a spread
5 from occurring.”). ICE has taken significant precautionary steps to protect the health and
6 well-being of detainees at Adelanto and prevent an outbreak of COVID-19. See
7 generally Valdez Decl. This case is like Dawson; it is not like Helling.

8 Further, Plaintiffs’ desired relief—immediate release from detention—will not
9 ameliorate their claimed risk of serious illness or death resulting from COVID-19, nor
10 can any court order prevent Plaintiffs from being exposed to the risk of infection by
11 COVID-19 within whatever local California community they might transit into. Notably,
12 Plaintiffs do not explain how their release from Adelanto, a facility without a single
13 confirmed case of COVID-19, into the broader Californian community (or other states),
14 where the actual community spread is occurring, will reduce their risk of injury or death.
15 As of March 29th, California had reported 5,763 confirmed positive cases of COVID-
16 19.¹ There is, unfortunately, no assurance that wherever Plaintiffs intend to go, or
17 whatever they intend to do, would be free of COVID-19 risk.²

18 Moreover, Plaintiffs’ TRO application provides no explanation or evidence about
19 what they will do and where they will go if released. They do not submit any evidence
20 establishing whether they would comply with public health orders to shelter in place and
21 practice social distancing to protect were they released from detention. Nor do they
22 establish the superiority of such conditions. Plaintiffs’ claim of future injury based on
23 their continued detention at Adelanto is hypothetical, and Plaintiffs are not entitled to
24 immediate release from detention based on a conjectural injury that is not impending.

25
26
27 ¹ www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx

28 ² In addition, by reason of their detention, Plaintiffs have daily access to medical care at no cost at Adelanto. They may not have immediate access to care in the community if they are released, given the current strain on medical resources.

1 **B. Plaintiffs Fails to Establish a Likelihood of Success on the Merits on**
2 **Their Fifth Amendment Due Process Claim**

3 Like the Sacal-Micha petitioner (Beck Decl., Exh. A), Plaintiffs have not
4 demonstrated a likelihood of success on the merits of their Fifth Amendment due
5 process claim. For cases asserting that the conditions of confinement are so unsafe as to
6 violate the Constitution, a plaintiff must show that the precautions taken to prevent harm
7 are “objectively unreasonable,” not just that there is a potential risk. See Kingsley v.
8 Hendrickson, 135 S. Ct. 2466, 2473 (2015); see also Carroll v. DeTella, 255 F.3d 470,
9 472 (7th Cir. 2001) (“Many Americans live under conditions of exposure to various
10 contaminants. The [Constitution] does not require prisons to provide prisoners with more
11 salubrious air, healthier food, or cleaner water than are enjoyed by substantial numbers
12 of free Americans.”). The institution is not charged with guaranteeing no injury and no
13 risk to detainees; instead, the state is charged with taking reasonable steps to protect
14 those in custody. Cf. Steading v. Thompson, 941 F.2d 498, 499 (7th Cir. 1991) (“neither
15 negligence nor strict liability is the appropriate inquiry in prison-conditions cases.”).

16 Plaintiffs allege that they face irreparable harm based on their fear that they might
17 contract COVID-19 due to their detention at Adelanto. But Plaintiffs have not presented
18 any evidence that COVID-19 has actually spread to Adelanto. To the contrary, there are
19 no confirmed cases of COVID-19 at Adelanto as of March 31, 2020. See Valdez
20 Declaration. Indeed, while numerous COVID-19 cases have, unfortunately, been
21 confirmed amongst the general American public, no such cases have been reported or
22 are known at the Adelanto facility. This is not a case where a specific detention facility
23 is proven to currently have a significantly *higher* level of actual exposure to a dangerous
24 infectious agent—unlike what the general public faces. And although the Court’s
25 Castillo order (at p. 3) noted that a detainee and officer at the Bergin County Jail in New
26 Jersey have tested positive, that is an entirely different facility. ICE takes hundreds of
27 thousands of people into custody each year.

28 As the parties seeking the issuance of mandatory affirmative relief, Plaintiffs bear

1 the burden to submit evidence sufficient to prove that Defendants’ action to protect
2 detainees at Adelanto from infection are “objectively unreasonable.” Importantly, that is
3 not a bare negligence standard, much less a strict liability standard. As the Ninth Circuit
4 has explained in the parallel context of pre-trial detainees, “the pre-trial detainee ‘must
5 prove more than negligence but less than subjective intent—something akin to reckless
6 disregard.’” Smith v. Washington, 781 Fed. Appx. 595, 598 (9th Cir. 2019) (quoting
7 Castro v. County of Los Angeles, 833 F.3d. 1060, 1071 (9th Cir. 2016) (en banc)). Castro
8 held that the conditions under which a constitutional violation may be established by a
9 pre-trial detainee are as follows:

- 10 1) The defendant made an intentional decision with respect to the
11 conditions under which the plaintiff was confined;
- 12 (2) Those conditions put the plaintiff at substantial risk of suffering
13 serious harm;
- 14 (3) The defendant did not take reasonable available measures to abate
15 that risk, even though a reasonable officer in the circumstances would
16 have appreciated the high degree of risk involved—making the
consequences of the defendant’s conduct obvious; and
- (4) By not taking such measures, the defendant caused the plaintiff’s
injuries.

17 Castro, 833 F.3d at 1071. These distinct elements cannot be compressed into a simplified
18 test of “could safety possibly be increased in some ideal respect.” Moreover, while civil
19 detainees generally retain greater liberty protections than individuals detained under
20 criminal process, and are not being punished by their confinement, see Jones v. Blanas,
21 393 F.3d at 932, the Ninth Circuit also clearly held in this context that “[l]egitimate,
22 non-punitive government interests include ensuring a detainee’s presence at trial,
23 maintaining jail security, and effective management of a detention facility.” Id. In
24 assessing whether there is a Constitutional violation because of putative reckless
25 disregard of a substantial health risk, when the Government’s purpose is facially
26 legitimate and non-punitive (such as here), there must be a *balancing* of the
27 Government’s legitimate interest, considering the steps that it has taken to decrease the
28 risk at issue.

1 The district court in Dawson v. Asher, No. C20-0409JLR-MAT, 2020 WL
2 1304557 (W.D. Wash. Mar. 19, 2020) thus correctly determined that the *potential*
3 exposure of ICE detainees to COVID-19 did not satisfy their burden as plaintiffs to show
4 that the conditions of their confinement “amount to punishment of the detainee.”
5 Dawson, at *3 (quoting Bell v. Wolfish, 441 U.S. 520, 535 (1979)).

6 Plaintiffs open their brief’s argument section by quoting part of this Court’s
7 Castillo order stating that “[t]he Due Process Clause of the Fifth Amendment prohibits
8 the Government from exposing an individual to a danger which he would not have
9 otherwise faced. *See Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006)
10 citing *DeShaney v. Winnebago County Dep’t of Soc. Serv.*, 489 U.S. 189, 197, 201
11 (1989).” Castillo, at 6. The cited cases do not purport to conflict with or overrule the
12 standard that Castro outlines, however. Rather they affirm that when the Government
13 takes actions that expose an individual to danger, it creates an exception to the “general
14 rule, [that] members of the public have no constitutional right to sue [public] employees
15 who fail to protect them against harm inflicted by third parties.” DeShaney, at 1133. As
16 DeShaney, explained, such a plaintiff must still then separately prove a violation of the
17 duty. Taking action that exposes an individual to some type of danger does not *per se*
18 prove a constitutional violation. Id.; *see also Kennedy*, 439 F.3d at 1062 (“These cases
19 clearly establish that state actors may be held liable ‘where they affirmatively place an
20 individual in danger,’ ... *by acting with ‘deliberate indifference to [a] known or obvious*
21 *danger in subjecting the plaintiff to it.’*”) (internal citation omitted) (italic emphasis
22 added). Such cases address when a duty is established—they do not eliminate the
23 standard required for proving breach of such duty.

24 In that regard, Plaintiffs rely heavily on the Court’s decision in its Castillo order,
25 which they describe as follows: “After carefully surveying the conditions at Adelanto,
26 this Court held that “[u]nder the Due Process Clause, a civil detainee cannot be subject
27 to the current conditions of confinement at [the facility]. *Id.* at 10.” TRO Memo, at p. 10.
28 There are multiple problems with this, however. First, the Castillo order granted an

1 application for a TRO, not a preliminary injunction; a careful survey of the conditions at
2 Adelanto was not possible in that limited procedural context. The Government had less
3 than a day to draft and submit papers opposing the TRO application. But more
4 importantly here, the Court's explanation for the finding of a likelihood of success on
5 the merits in Castillo was as follows:

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

15 Castillo order, at p. 10. Plaintiffs in this case similarly assert that it is inherently
16 unreasonable for them to be detained in a setting that does not permit at least 6 feet of
17 social distancing at all time, which is tantamount to improper punishment.

18 Plaintiffs do not submit *evidence*, however, sufficient to establish this putative
19 principle. The current CDC guidelines provide standards of care and guidance for
20 congregate facilities, but they do not require shuttering them and releasing all
21 individuals. CDC has issued guidance on proper COVID-19 containment for
22 correctional and detention facilities. See [https://www.cdc.gov/coronavirus/2019-
23 ncov/community/correction-detention/guidance-correctional-detention.html](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html); see also
24 Beck Decl., Exh. B (printout of CDC webpage). CDC has also issued guidance in
25 various other communal contexts. See [www.cdc.gov/coronavirus/2019-
26 ncov/community/index.html](http://www.cdc.gov/coronavirus/2019-ncov/community/index.html). That CDC guidance does not mandate a *per se* shuttering
27 of all congregate facilities, particularly when there are no infections known in the
28 facility. Social distancing is a desirable strategy for reducing infection risk, but such
distancing can be pursued by a variety of strategies short of establishing and maintaining
complete individual isolation. For example, as the CDC detention facility guidance

1 states, “Social distancing strategies can be applied on an individual level (e.g., avoiding
2 physical contact), a group level (e.g., canceling group activities where individuals will
3 be in close contact), and an operational level (e.g., rearranging chairs in the dining hall
4 to increase distance between them).” Beck Decl., Exh. B. The Government does not
5 violate the Constitution by following current CDC guidance and taking steps to
6 minimize COVID-19 risk.

7 As the Sacal court thus found in denying the detainee’s request for release based
8 on his claimed risk of COVID-19, “Sacal presents no evidence that [the facility’s]
9 measures are insufficient or deviate materially from CDC’s guidelines for institutions
10 that detain individuals. *See Interim Guidance on Management of Coronavirus Disease*
11 *2019 (Covid-19) in Correctional and Detention Facilities*, Centers for Disease Control
12 and Prevention, [https://www.cdc.gov/coronavirus/2019-ncov/community/correction-](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html)
13 [detention/guidance-correctional-detention.html](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html) (last updated March 23, 2020).” See
14 Sacal order, at p. 9 (Beck Decl., Exh. A). The same is true here.

15 Furthermore, while Adelanto detainee housing has a congregate component due to
16 its physical structure, the various other conditions of confinement that Plaintiffs
17 complain about are not inherent in the facility, such that they could not possibly be
18 redressed by injunctive relief short of ordering the immediate release of detainees.

19 Plaintiffs have not met their very heavy burden to prove, with admissible
20 evidence, that the Defendants have acted with reckless disregard for their safety, such
21 that they now face a “certainly impending” injury—infection by COVID-19—as a result.
22 As discussed above and in the Valdez Declaration, precautionary measures have been
23 put in place at Adelanto. Such measures include including limiting in-person contact
24 with members of the community to legal visitation where an attorney believes a contact
25 visit is necessary; screening and quarantining new detainees, even if asymptomatic and
26 afebrile, for 14 days for medical observation and monitoring; increasing the frequency of
27 sanitation of high touch and communal areas within the facility; making additional
28 cleaning products available to detainees in housing areas; and educating detainees and

1 staff about proper hygiene practices. See Valdez Decl. Because Plaintiffs are not likely
2 to succeed on the merits of their due process claim, the Court must deny the TRO.

3 **C. Plaintiffs Fail to Establish That They Will Suffer Irreparable Harm**
4 **Absent The Issuance Of A TRO**

5 Plaintiffs also fail to establish that they will suffer irreparable injury absent a
6 TRO. The Supreme Court’s “frequently reiterated standard requires plaintiffs seeking
7 preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an
8 injunction.” Winter, 555 U.S. at 22 (emphasis in original). “Issuing a preliminary
9 injunction based only on a possibility of irreparable harm is inconsistent with our
10 characterization of injunctive relief as an extraordinary remedy that may only be
11 awarded upon a clear showing that the plaintiff is entitled to such relief.” Id. Conclusory
12 or speculative allegations are not enough to establish a likelihood of irreparable harm.
13 Herb Reed Enters., LLC v. Florida Entm’t Mgmt., Inc., 736 F.3d 1239, 1250 (9th Cir.
14 2013); see also Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir.
15 1988) (“Speculative injury does not constitute irreparable injury sufficient to warrant
16 granting a preliminary injunction.”); Am. Passage Media Corp. v. Cass Commc’ns, Inc.,
17 750 F.2d 1470, 1473 (9th Cir. 1985) (finding irreparable harm not established by
18 statements that “are conclusory and without sufficient support in facts”). Moreover, the
19 threat of injury must be “immediate.” See Caribbean Marine Servs. Co., 844 F.2d at 674.

20 Here, Plaintiffs argues that they faces irreparable harm due to medical “risk
21 factors” consisting of conditions such as diabetes, asthma, and high blood pressure. See
22 TRO Memo at p. 8. This argument fails to establish that Plaintiffs will suffer irreparable
23 harm in the absence of a TRO. See Herb Reed, 736 F.3d at 1250. Plaintiffs’ claim of
24 future injury is hypothetical, and Plaintiffs are not entitled to immediate release from
25 custody (custody that is mandatory by statute due to his status as a criminal alien
26 convicted of an aggravated felony), based on a conjectural injury he has not suffered and
27 may never suffer. See Clapper v. Amnesty Int’l USA, 568 U.S. 398, 416 (2013) (finding
28 standing based on fear, even one that is reasonable, “improperly waters down the

1 fundamental requirements of Article III.”). Plaintiffs have not alleged or presented
2 evidence that COVID-19 has actually spread to Adelanto, or that the safeguards and
3 precautions in place at Adelanto to prevent the spread of COVID-19 are inadequate.
4 There are currently no confirmed cases of COVID 19 at Adelanto, and Adelanto has
5 testing and isolation protocols in place to identify and isolate any such case should they
6 occur. See Valdez Decl. ¶¶ 10-13.

7 The decisions by other district courts considering similar requests demonstrate the
8 fact-specific nature of the required analysis. See United States of America v. Barry Allen
9 Gabelman, No. 2:20-CR-19 JCM (NJK), 2020 WL 1430378, at *1 (D. Nev. Mar. 23,
10 2020) (denying motion to reconsider: “The court acknowledges that the spread of
11 COVID-19 may be acutely possible in the penological context, but the court cannot
12 release every detainee at risk of catching COVID-19 because the court would be
13 obligated to release every detainee.”); Dawson v. Asher, No. C20-0409JLR-MAT, 2020
14 WL 1304557, at *3 (W.D. Wash. Mar. 19, 2020) (denying request for temporary
15 restraining order: “Plaintiffs do not show that ‘irreparable injury is likely in the absence
16 of an injunction.’ [] The ‘possibility’ of harm is insufficient to warrant the extraordinary
17 relief of a TRO.”). In Dawson, immigration detainees made a similar request for
18 emergency release on the basis of their heightened susceptibility to COVID-19. The
19 Court rejected their request, explaining: “There is no evidence of an outbreak at the
20 detention center or that Defendants’ precautionary measures are inadequate to contain
21 such an outbreak or properly provide medical care should it occur.” Id. at *3. That
22 rationale equally applies here.

23 By contrast, those cases granting release have generally involved actual cases of
24 COVID-19 being actually present in the facility. See Vasif “Vincent” Basank, et al., v.
25 Thomas Decker, et al., No. 20 Civ. 2518 (S.D.N.Y. Mar. 26, 2020), ECF No. 11
26 (ordering release of ten immigration detainees held in a county jail with confirmed cases
27 of COVID-19); Calderon Jimenez v. Wolf, No. 18 Civ. 10225 (D. Mass. Mar. 26, 2020),
28 ECF No. 507 (ordering release of a detained immigrant held in a county jail with a

1 confirmed case of COVID-19).

2 Because Plaintiffs' claim of irreparable injury is highly speculative and is not
3 supported by admissible evidence, they have failed to make the requisite clear showing
4 of irreparable harm needed to warrant TRO relief. See Winter, 555 U.S. at 22; Am.
5 Passage Media Corp., 750 F.2d at 1473.

6 **D. The Balance of Equities and Public Interest Support Denying a TRO,**
7 **Insofar As Plaintiffs Are Detained Because They Either Pose A Serious**
8 **Danger To The Community And/Or Are A Flight Risk**

9 It is well-settled that the public has a significant interest in the enforcement of
10 United States immigration laws. See United States v. Martinez-Fuerte, 428 U.S. 543,
11 556-58 (1976); Blackie's House of Beef, Inc. v. Castillo, 659 F.2d 1211, 1221 (D.C. Cir.
12 1981) ("The Supreme Court has recognized that the public interest in enforcement of the
13 immigration laws is significant."); Nken v. Holder, 556 U.S. 418, 435 (2009) ("The
14 continued presence of an alien lawfully deemed removable undermines the streamlined
15 removal proceedings IIRIRA established, and permit[s] and prolong[s] a continuing
16 violation of United States law." (internal marks omitted)).

17 As the Supreme Court has recognized, "detention during deportation proceedings
18 as a constitutionally valid aspect of the deportation process." Demore, 538 U.S. 523.
19 Specifically, Defendants have an interest in protecting the public from the danger
20 presented by the Plaintiffs, which the Immigration Judges are authorized to determine.
21 See Rodriguez v. Robbins, 804 F.3d 1060, 1090 (9th Cir. 2015) (affirming that
22 "Immigration Judges, a specialized and experienced group within the Department of
23 Justice, are already entrusted to make these determinations, and need not release any
24 individual they find presents a danger to the community or a flight risk after hearing and
25 weighing the evidence."), reversed on other grounds by Jennings v. Rodriguez, 138 S.
26 Ct. 830 (2018). Based on the extensiveness and seriousness of Plaintiffs' criminal
27 history, here the public interest weighs heavily against their release. Furthermore, some
28 of the Plaintiffs are aliens that Congress has determined should be *mandatorily* detained.

1 Cf. Castillo order (ordering release of two detainees detained on a discretionary basis).
2 In light of the speculative nature of Plaintiffs’ concerns regarding the Defendants’ ability
3 to protect them from contracting COVID-19, the public interest would be damaged by
4 their release, and the equities do not tip in the Plaintiffs’ favor.

5 The Court’s Castillo order also stated the public interest would be served because
6 a COVID-19 outbreak at Adelanto “would, further, endanger all of us – Adelanto
7 detainees, Adelanto employees, residents of San Bernardino County, residents of the
8 State of California, and our nation as a whole.” Castillo Order, at p. 11. Unfortunately,
9 however, confirmed COVID-19 cases in the United States exceed 160,000.³ Confirmed
10 COVID-19 cases in California exceed 6,000. By contrast, there are no cases known in
11 the Adelanto facility. Per the evidence, this facility is not the *actual* infection problem
12 that now threatens the American public.

13 **E. Plaintiffs’ TRO Application Papers Do Not Establish How Reasonable**
14 **Conditions Of Release Could Be Imposed Upon Each Of Them,**
15 **Consistent With Their Criminal Records.**

16 Plaintiffs’ proposed order granting their TRO application [Dkt. no. 11-4] requests
17 that they be immediately released, although “Defendants may establish reasonable
18 conditions of release, including telephonic check-ins and electronic monitoring, pending
19 further proceedings in this case.” But Plaintiffs do not break down how such reasonable
20 conditions would actually be determined, applied, and executed for each of them,
21 relative to their specific case background. For example, Plaintiffs’ application and its
22 supporting papers fail to provide information sufficient to establish that they will go to a
23 specific identifiable location that is suitable from (1) an infection control perspective; (2)
24 a flight monitoring perspective; and (3) most importantly, from the perspective of
25 protecting the American public against the danger that most of the Plaintiffs have
26 already been found to present.

27 _____
28 ³ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>
(last checked on March 31, 2020).

1 This defect is particularly serious for the plaintiffs with serious criminal records
2 like Plaintiff Vite, who was convicted of felony child cruelty, and was found to pose a
3 serious danger to the community. Plaintiffs Dacoff, Arrellano, and Salgado have a long
4 history of serious criminal offenses. Speculation about future harm to the Plaintiffs does
5 not outweigh the concrete, proven threat of criminal harm by the Plaintiffs. This is
6 another factor weighing heavily against granting the blanket TRO that they request.

7 **VII. CONCLUSION**

8 For all the foregoing reasons, Defendants respectfully request that the Court deny
9 Plaintiffs' TRO application.

10
11 Dated: March 31, 2020

Respectfully submitted,

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