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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DANIEL MOSSO RAMIREZ;
CHRISTOPHER NJINGU

Petitioners-Plaintiffs,

vs.

ROBERT CULLEY, Director of the Salt Lake
City Field Office of U.S. Immigrations and
Customs Enforcement; MATTHEW T.
ALBENCE, Deputy Director and Senior
Official Performing the Duties of the Director
of the U.S. Immigration and Customs
Enforcement; U.S. IMMIGRATIONS AND
CUSTOMS ENFORCEMENT, an entity;
THEDRICK ANDRES, Chief of Police of the
City of Henderson; JOHN/JANE DOE,
Corrections Captain, Henderson Detention
Center,

Respondent-Defendants.

CASE NO.:

DEPT. NO.

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

INTRODUCTION

1
2 1. Petitioners-Plaintiffs (hereinafter Plaintiffs) are men currently in the custody of
3 Immigration and Customs Enforcement ("ICE"), a component of the United States Department of
4 Homeland Security ("DHS"). Plaintiffs have a range of serious medical conditions including
5 hypertension, dyslipidemia, and pre-diabetes. Plaintiffs are people who are particularly vulnerable
6 to severe illness or death if infected by the novel coronavirus. They are being held in civil detention
7 by ICE at the Henderson Detention Center ("HDC") in Henderson, Nevada as they await the
8 adjudication of their immigration cases. By keeping Plaintiffs detained, despite the rapidly
9 spreading COVID-19 virus and their specific vulnerabilities, ICE is showing a deliberate
10 indifference to their safety.

11 2. A global pandemic is occurring. Since November 2019, at least 693,224 individuals
12 worldwide have been diagnosed with COVID-19, a disease resulting from infection by a novel
13 coronavirus.¹ This includes 140,904 people infected in the United States² and this number is
14 expected to continue to grow exponentially over the coming days. The coronavirus is highly
15 contagious and there is no vaccine to prevent its spread.³ There is no known cure for COVID-19.
16 Treatment exists only to manage the symptoms of the disease. Older people and those with pre-
17 existing medical conditions are at higher risk for severe illness with COVID-19. Symptoms of
18 COVID-19 include fever, cough, myalgia, fatigue, and shortness of breath. COVID-19 can cause
19 acute respiratory distress and pneumonia which require intensive care treatment for respiratory
20 support. The immunocompromised are particularly at risk of experiencing these complications.
21 Data gathered from COVID-19 patients in China showed that “[p]atients who reported no
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23 ¹ World Health Organization, Coronavirus Disease 2019 (COVID-19) Situation Report-70,
24 March 30, 2020, https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200330-sitrep-70-covid-19.pdf?sfvrsn=7e0fe3f8_2.

25 ² Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19) Cases in
26 U.S., March 30, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

27 ³ World Health Organization, Responding to Community Spread of COVID-19 Interim
Guidance, March 7, 2020, <https://www.who.int/publications-detail/responding-to-community-spread-of-covid-19>.

1 underlying medical conditions had an overall case fatality of 0.9%, but case fatality was higher for
2 patients with comorbidities: 10.5% for those with cardiovascular disease, 7% for diabetes, and 6%
3 each for chronic respiratory disease, hypertension, and cancer. Case fatality for patients who
4 developed respiratory failure, septic shock, or multiple organ dysfunction was 49%.”⁴

5 3. The only known effective measures to reduce the risk of severe illness and death caused
6 by COVID-19 are social distancing and improved hygiene. People who live, eat, and sleep in
7 close proximity are at an increased risk of contracting COVID-19. People who are confined in
8 prisons, jails, and detention centers will find it virtually impossible to engage in the necessary
9 social distancing and increased hygiene measures required to mitigate the risk of transmission of
10 this disease, even with the increased protective measures in which some facilities have engaged.
11 For this reason, correctional public health experts have recommended that these facilities release
12 from custody those individuals most vulnerable to COVID-19.⁵ Release protects high-risk
13 populations from the risk of severe illness and death and helps to decrease the rate of transmission
14 between the rest of the population, including others in custody and detention center staff. Release
15 of the most vulnerable from custody also reduces the burden on this region’s limited healthcare
16 infrastructure, as it decreases the likelihood that an overwhelming number of people will become
17 seriously ill from COVID-19 at the same time and require hospitalization.

18 4. The COVID-19 pandemic, which places Plaintiffs at a grave health risk while detained,
19 constitutes a material change in circumstances requiring custody redetermination by this Court.
20 The danger posed by Plaintiffs’ detention during the growing outbreak of COVID-19 is “so grave
21 it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk,” and
22 violates Plaintiffs’ constitutional rights to safety in government custody. *Helling v. McKinney*,
23 509 U.S. 25, 36 (1993). Further, Plaintiffs pose no risk of flight nor danger to persons or property.

24 _____
25 ⁴ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19) Clinical
26 Care, March 7, 2020, [https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-
management-patients.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html).

27 ⁵ See Scott A. Allen and Josiah Rich, *Letter to the House Committee on Homeland Security*,
March 19, 2020, accessed at [https://www.documentcloud.org/documents/6816336-032020-
Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238](https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238).

1 For these reasons, Plaintiffs request a temporary restraining order for their immediate release from
2 detention.

3 **JURISDICTION AND VENUE**

4 5. This Court has subject matter jurisdiction over the present action pursuant to 28 U.S.C. §
5 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 28 U.S.C. § 2241 (habeas
6 jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension
7 Clause).

8 6. Venue lies in the United States District Court for the District of Nevada, the judicial district
9 in which Plaintiffs are currently in custody. Venue is proper in the District of Nevada pursuant to
10 28 U.S.C. § 1391, as venue is proper in any district in which substantial part of the events or
11 omissions giving rise to the claim occurred.

12 **PARTIES**

13 7. Petitioner-Plaintiff DANIEL MOSSO RAMIREZ is a citizen of Mexico who has been
14 detained by ICE at HDC since February of 2020. He has been a legal permanent resident of the
15 United States since 1989. He suffers from pre-diabetes, hypertension, and high cholesterol and
16 requires various medications to manage these health conditions. Consequently, he is at high risk
17 for severe illness or death if he contracts COVID-19.

18 8. Petitioner-Plaintiff CHRISTOPHER NJINGU is a 51-year-old citizen of Cameroon who
19 has been detained by ICE at HDC since November 2019. He came to the United States of America
20 seeking asylum as he was a victim of torture in Cameroon. He suffers from hypertension and high
21 cholesterol and requires medication to manage these conditions. Consequently, he is at high risk
22 for severe illness or death if he contracts COVID-19.

23 9. Respondent-Defendant ROBERT CULLEY is the Director of the Salt Lake City Field
24 Office of U.S. Immigration and Customs Enforcement (“ICE”). The Salt Lake City Field Office is
25 responsible for carrying out ICE’s enforcement and removal operations, including detention
26 operations at HDC.

27 10. Respondent-Defendant MATTHEW T. ALBENCE is the Deputy Director and Senior

1 Official Performing the Duties of the Director of ICE. Defendant ALBENCE is responsible for
2 ICE's policies, practices, and procedures, including those relating to the detention of immigrants.
3 Defendant ALBENCE is a legal custodian of Plaintiffs. He is sued in his official capacity.

4 11. Respondent-Defendant ICE is a federal law enforcement agency within the Department of
5 Homeland Security ("DHS"). ICE is responsible for the criminal and civil enforcement of
6 immigration laws, including the detention and removal of immigrants. Enforcement and Removal
7 Operations ("ERO"), a division of ICE, manages and oversees the immigration detention system.
8 Defendant ICE is a legal custodian of Plaintiffs.

9 12. Respondent-Defendant THEDRICK ANDRES is the Chief of Police at the City of
10 Henderson, which oversees the Henderson Detention Center where Plaintiffs are detained.
11 Defendant ANDRES is a legal custodian of Plaintiffs. He is sued in his official capacity.

12 13. Respondent-Defendant JOHN/JANE DOE is the Corrections Captain of the Henderson
13 Detention Center, where Plaintiffs are detained. Defendant DOE is a legal custodian of Plaintiffs.
14 He/she is sued in his/her official capacity.

15 **FACTUAL BACKGROUND**

16 **I. COVID-19 Poses Grave Risk of Harm, Including Serious Illness or Death, to Older**
17 **Adults and Those with Certain Medical Conditions.**

18 14. COVID-19 is a disease caused by a novel coronavirus. There is currently no cure for
19 COVID-19. There is no vaccine to prevent its spread. It is highly contagious and spreads through
20 person-to-person contact via respiratory secretions emitted through the nose or mouth of an
21 infected person. An infected person can infect another person directly if he exhales, coughs, or
22 sneezes in close proximity to a non-infected person. An infected person can also spread respiratory
23 secretions on to surfaces, where the virus can live and infect others who touch those surfaces.⁶

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25
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27 ⁶ World Health Organization, Q&A on coronaviruses (COVID-19), March 9, 2020,
<https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

1 Without proper cleaning, the virus can live for several hours to days in aerosols and on surfaces.⁷

2 15. While anyone can be infected by the novel coronavirus, certain populations are at a higher
3 risk of serious illness as a result of contracting COVID-19. Based on available data, the Centers
4 for Disease Control and Prevention (CDC) have identified seven groups of people who are at an
5 increased risk for severe illness: (1) people aged 65 years and older; (2) people who live in a
6 nursing home or long-term care facility; (3) people with chronic lung disease or moderate to severe
7 asthma; (4) people who have heart disease with complications; (5) people who are
8 immunocompromised⁸; (6) people of any age with severe obesity or certain underlying medical
9 conditions such as diabetes, renal failure, or liver disease; and (7) people who are pregnant.⁹

10 16. A study of 1590 COVID-19 patients in China found that, even after adjusting for age and
11 smoking status, patients with comorbidities of chronic obstructive pulmonary disease, diabetes,
12 hypertension, and malignancy were 1.79 times more likely to be admitted to an intensive care unit
13 (ICU), require invasive ventilation, or die. If the patient had two comorbidities, this number
14 increased to 2.59.¹⁰

15 17. Individuals who contract COVID-19 require close monitoring by medical professionals to
16 prevent mild symptoms from progressing to lower respiratory tract disease. Individuals who
17 contract COVID-19 and have severe illness require care that is available only in an in-patient
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19 ⁷ National Institutes of Health, *New coronavirus stable for hours on surfaces*, March 17, 2020,
20 [https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces#.XnkprsuWla8.email)
21 [surfaces#.XnkprsuWla8.email](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces#.XnkprsuWla8.email).

22 ⁸ The CDC reports that “many conditions can cause a person to be immunocompromised,
23 including cancer treatment, bone marrow or organ transplantation, immune deficiencies, poorly
24 controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening
25 medications.” *See infra* n.6.

26 ⁹ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) People
27 Who are at Higher Risk*, March 22, 2020, [https://www.cdc.gov/coronavirus/2019-ncov/specific-](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html)
28 [groups/people-at-higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html). Note that the CDC has indicated that “people who are
29 pregnant should be monitored since they are known to be at risk with severe viral illness,
30 however, to date data on COVID-19 has not shown increase risk.” *Id.*

31 ¹⁰ Wei-jie Guan et al., *Comorbidity and its impact on 1,590 patients with COVID-19 in China: A
32 Nationwide Analysis*, medRxiv (Feb. 27, 2020), at 5,
33 <https://www.medrxiv.org/content/10.1101/2020.02.25.20027664v1.full.pdf>.

1 hospital setting, including supplemental oxygen, positive pressure ventilation, and, in extreme
2 cases, extracorporeal mechanical oxygenation (ECMO).¹¹

3 **II. People Detained at the Henderson Detention Center Face an Elevated Risk of**
4 **COVID-19 Transmission**

5 18. The HDC is located in Clark County, Nevada, the largest population center in Nevada. As
6 of March 30, 2020, there are 753 confirmed cases of COVID-19 in Clark County. 115 individuals
7 with COVID-19 have been hospitalized and 15 of those individuals have died.¹² The COVID-19
8 outbreak in Nevada has resulted in unprecedented measures to facilitate and enforce social
9 distancing. Governor Steve Sisolak has declared a state of emergency and ordered all non-essential
10 businesses closed.¹³ He has asked individuals to remain at home to slow the spread of the novel
11 coronavirus and imposed a ban on gathering in groups larger than ten in public and private places.¹⁴
12 The state has also closed all K-12 schools and universities, and most state and local government
13 agencies are performing only necessary operations.¹⁵ The Las Vegas Justice Court issued an
14 administrative order that, among other things, declares that any person arrested on a criminal
15 offense subject to an own-recognition release will be given a return court date in sixty days.¹⁶

17 ¹¹ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19) Clinical
18 Care, March 20, 2020, [https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-
management-patients.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html).

19 ¹² Southern Nevada Health District, COVID-19 Report – Clark County, NV, March 30, 2020,
20 <https://www.southernnevadahealthdistrict.org/coronavirus#cases>.

21 ¹³ Nevada Governor Steve Sisolak, *Governor Sisolak Declares State of Emergency in Response*
22 *to COVID-19*, March 13, 2020, accessed at
23 [http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Declares_State_of_Emergency_in_Respo
nse_to_COVID-19/](http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Declares_State_of_Emergency_in_Response_to_COVID-19/).

24 ¹⁴ Jordan Hicks and Jennifer Quintana, *Gov. Sisolak signs emergency order to limit gatherings,*
25 *enforcing social distance*, NBC NEWS 4, March 24, 2020, [https://mynews4.com/news/local/gov-
sisolak-discusses-how-state-of-nevada-plans-to-mitigate-impacts-of-the-coronavirus](https://mynews4.com/news/local/gov-sisolak-discusses-how-state-of-nevada-plans-to-mitigate-impacts-of-the-coronavirus).

26 ¹⁵ Riley Snyder, Megan Messerly, Michelle Rindels, and Jackie Valley, *Sisolak orders all non-*
27 *essential businesses to close, warns of criminal penalties for noncompliance*, THE NEVADA
INDEPENDENT, March 20, 2020, [https://thenevadaindependent.com/article/sisolak-orders-all-non-
essential-businesses-to-close-warns-of-criminal-penalties-for-noncompliance](https://thenevadaindependent.com/article/sisolak-orders-all-non-essential-businesses-to-close-warns-of-criminal-penalties-for-noncompliance).

¹⁶ In the Administrative Matter Regarding Temporary Procedures in Criminal, Civil, and Traffic
Cases, Amended Administrative Order # 20-03, Justice Court, Las Vegas Township, Clark
County Nevada.

1 The order also subjects to release any person arrested on traffic offenses or warrants and recalls all
2 active misdemeanor bench warrants.¹⁷ These steps are all taken with the express purpose of
3 limiting the existence of large groups of people, including in jails and courtrooms.

4 19. Individuals housed at HDC have already been exposed to COVID-19. HDC officials
5 confirmed on March 28, 2020 that 13 individuals held in ICE detention at HDC have been isolated
6 in individual cells in a separate unit at HDC. These individuals were all exposed to COVID-19
7 after they were transported to HDC by an ICE agent who later began showing symptoms of
8 COVID-19.¹⁸

9 20. The conditions of immigration detention facilities pose a heightened public health risk for
10 the spread of COVID-19. Individuals in immigration detention are not able to practice the proper
11 social distancing and hygiene required to prevent the transmission of this disease. People live in
12 close quarters and are unable to maintain the recommended distance of six feet from others. People
13 share and touch objects used by others. Toilets, sinks, and showers are shared, without disinfection
14 between each use. Food preparation and service is communal with little opportunity for surface
15 disinfection. Staff arrive and leave on a shift basis, with limited ability to adequately screen staff
16 for new, asymptomatic infection.¹⁹

17 21. Detention facilities “were constructed to maximize public safety, not to minimize the
18 transmission of disease or to efficiently deliver health care. The probability of transmission of
19 potentially pathogenic organisms is increased by crowding, delays in medical evaluation and
20 treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control
21 expertise...”²⁰ Detention facilities lack sufficient resources and offer their detainees little or no
22

23 ¹⁷ *Id.*

24 ¹⁸ Katelyn Newberg, *ACLU seeks more steps to curb virus spread in Nevada prisons*, LAS VEGAS
25 REVIEW-JOURNAL, March 29, 2020, [https://www.reviewjournal.com/local/local-las-vegas/aclu-
26 seeks-more-steps-to-curb-virus-spread-in-nevada-prisons-1993964/](https://www.reviewjournal.com/local/local-las-vegas/aclu-seeks-more-steps-to-curb-virus-spread-in-nevada-prisons-1993964/).

27 ¹⁹ See Catherine E. Shoichet, *Doctors warn of ‘tinderbox scenario’ if coronavirus spreads in ICE
detention*, CNN HEALTH, March 20, 2020, [https://www.cnn.com/2020/03/20/health/doctors-ice-
detention-coronavirus/index.html](https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html).

²⁰ Joseph A. Bick, *Infection Control in Jails and Prisons*, HEALTHCARE EPIDEMIOLOGY, October
2015, accessed at <https://academic.oup.com/cid/article/45/8/1047/344842>.

1 genuine access to medical care.²¹ A report by the DHS Office of Inspector General (“OIG”) itself
2 found “problems that undermine the protection of detainees’ rights, their humane treatment, and
3 the provision of a safe and healthy environment.”²² Experts say that facilities run out of county
4 jails “have far worse medical care than ICE run facilities and are subject to less oversight.”²³

5 **III. People Most Vulnerable to COVID-19 Should Be Released from ICE Detention**

6 22. Because risk mitigation is the only known strategy that can protect vulnerable groups from
7 COVID-19, public health experts with experience in immigration detention and correctional
8 settings have recommended the release of vulnerable detainees from custody.²⁴ In a letter to
9 Congress, Dr. Scott A. Allen and Dr. Josiah Rich, medical doctors for DHS, explained that there
10 is an “imminent risk to the health and safety of immigrant detainees, as well as to the public at
11 large, that is a direct consequence of detaining populations in congregate settings.”²⁵ These
12 physicians urge that, “[m]inimally, DHS should consider releasing all detainees in high risk
13 medical groups such as older people and those with chronic diseases.” Releasing the most
14 vulnerable individuals will allow them to engage in proper social distancing and hygiene and, if
15 necessary, seek medical attention.

16 23. Releasing the most vulnerable individuals will also benefit the community at large. If a
17 large number of people in detention at HDC contract COVID-19, many will inevitably require in-

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19 ²¹ In 2019, immigration advocates filed a class action lawsuit against the Trump Administration,
20 claiming “official policies and lack of oversight related to the border and immigration crisis have
21 led to major lapses in medical and mental health care in nearly 160 detention facilities across the
22 country.” Renuka Rayasam, *Trump administration sued over poor medical care in immigration*
23 *centers*, POLITICO, August 19, 2019, [https://www.politico.com/story/2019/08/19/trump-](https://www.politico.com/story/2019/08/19/trump-administration-sued-medical-care-immigration-centers-1467605)
24 [administration-sued-medical-care-immigration-centers-1467605](https://www.politico.com/story/2019/08/19/trump-administration-sued-medical-care-immigration-centers-1467605).

25 ²² Off. of Inspector Gen., Off. of Homeland Sec., *OIG-18-32: Concerns About ICE Detainee*
26 *Treatment and Care at Detention Facilities*, at 7 (Dec. 11, 2017),
27 <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

²³ *Id.*

²⁴ Catherine E. Shoichet, *Doctors warn of ‘tinderbox scenario’ if coronavirus spreads in ICE*
detention, CNN HEALTH, March 20, 2020, [https://www.cnn.com/2020/03/20/health/doctors-ice-](https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html)
detention-coronavirus/index.html.

²⁵ Scott A. Allen and Josiah Rich, *Letter to the House Committee on Homeland Security*, March
19, 2020, accessed at [https://www.documentcloud.org/documents/6816336-032020-Letter-From-](https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238)
Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238.

1 patient, emergency medical attention. “As local hospital systems become overwhelmed by the
2 patient flow from detention center outbreaks, precious health resources will be less available for
3 people in the community. To be more explicit, a detention center with a rapid outbreak could result
4 in multiple detainees – five, ten or more – being sent to the local community hospital where they
5 may be only six or eight ventilators over a very short period. As they fill up and overwhelm the
6 ventilator resources, those ventilators are unavailable when the infection inevitably is carried by
7 staff to the community and are also unavailable for all the usual critical illnesses (heart attacks,
8 trauma, etc.).”²⁶ However, if vulnerable detainees are released, “the tinderbox scenario of a large
9 cohort of people getting sick all at once is less likely to occur, and the peak volume of patients
10 hitting the community hospital would level out. In the first scenario many people from the
11 detention center *and the community* die unnecessarily for want of a ventilator. In the latter, survival
12 is maximized as the local mass outbreak scenario is averted.”²⁷

13 24. Just days ago, this Court determined that COVID-19 is a serious threat to the health and
14 safety of our state’s incarcerated populations. In a ruling granting an emergency motion to
15 temporarily modify a criminal defendant’s conditions of probation (to prevent the defendant’s
16 upcoming confinement in the Washoe County Detention Center), this Court aptly noted that
17 “[c]onditions of pretrial confinement create the ideal environment for the transmission of
18 contagious disease.” *United States v. Barkman*, 2020 U.S. Dist. Lexis 45628* at *3. Allowing the
19 defendant to avoid detention, this Court went on to conclude that, “[w]ith confirmed cases that
20 indicate community spread, the time is now to take action to protect vulnerable populations and
21 the community at large.” *Id.* at *2.

22 **IV. COVID-19 Has Already Infected Individuals in the Immigration Detention System**

23 25. ICE has issued guidance which it claims will be sufficient to safeguard its employees and
24 detainees.²⁸ Notably, the guidance that is publicly available is silent on how the agency will protect

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26 ²⁶ *Id.* at 4.

27 ²⁷ *Id.*

28 U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19*, March 24, 2020,
<https://www.ice.gov/covid19>.

1 individuals at high-risk of severe illness as a result of COVID-19. And, despite the efforts outlined
2 in the guidance²⁹, as of March 30, 2020, five ICE facility employees and four individuals in ICE
3 custody have already tested positive for COVID-19.³⁰ The employees work at four different
4 facilities in New Jersey, Texas, and Colorado.³¹ The individuals are detained at three different
5 facilities in New Jersey.³² Importantly, these numbers do not include ICE agents who do not work
6 at detention facilities – such as the agent that caused the exposure at HDC – that may have COVID-
7 19 and are in contact with ICE detainees regularly.

8 **V. Plaintiffs Are Vulnerable to Serious Illness or Death if Infected by COVID-19 and**
9 **Should Be Released from Custody.**

10 26. Plaintiffs in this case are people who are particularly vulnerable to serious illness or death
11 if infected by COVID-19 who are currently detained at HDC as they await the adjudication of their
12 civil immigration cases.

13 27. DANIEL MOSSO RAMIREZ is a 45-year-old citizen of Mexico. Mr. Ramirez has been
14 a lawful permanent resident of the United States since June 30, 1989. In November 2019, Mr.
15 Ramirez was returning to the United States from Panama when ICE confiscated his Permanent
16 Resident Card. After checking in with ICE for three months, ICE arrested him at his final check-
17 in on February 23, 2020. ICE charged him with inadmissibility due to a prior conviction for
18 possession of a controlled substance. The conviction occurred 18 years ago in 2002.

19 28. Mr. Ramirez suffers from pre-diabetes, hypertension, and high cholesterol and is
20 prescribed lisinopril and atorvastatin.

21
22 ²⁹ ICE’s COVID-19 guidance indicates that “ICE epidemiologists have been tracking the
23 outbreak, regularly updating infection prevention and control protocols, and issuing guidance to
24 ICE Health Service Corps (IHSC) staff for the screening and management of potential exposure
25 among detainees. ICE continues to incorporate CDC’s COVID-19 guidance, which is built upon
26 the already established infectious disease monitoring and management protocols currently in use
27 by the agency. In addition, ICE is actively working with state and local health partners to
determine if any detainee requires additional testing or monitoring to combat the spread of the
virus.” *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

1 29. Prior to his detention, Mr. Ramirez was scheduled to have surgery on his neck for a prior
2 workplace injury. He was doing monthly physical therapy.

3 30. Mr. Ramirez is critically vulnerable to COVID-19 because of his health problems.

4 31. CHRISTOPHER NJINGU is a 51-year-old citizen of Cameroon. Mr. Njingu arrived in
5 the U.S. on November 2, 2019. Mr. Njingu came to the U.S. seeking asylum after being tortured
6 during the 2018 civil war in Cameroon. He was detained upon arrival at the U.S. border where he
7 presented himself as an asylum seeker. He has been held at HDC since November 2019.

8 32. Mr. Njingu has no known criminal history in the United States or in his home country of
9 Cameroon.

10 33. As a result of the torture he endured, Mr. Njingu suffered injuries that left him with chronic
11 migraines and facial asymmetry.

12 34. Mr. Njingu suffers from hypertension and high cholesterol.

13 35. Mr. Njingu is critically vulnerable to COVID-19 because of his health problems.

14 LEGAL STANDARD

15 36. On a motion for a temporary restraining order, the plaintiff “must establish that he is likely
16 to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary
17 relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.”
18 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int’l Sales Co. v. John D.*
19 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
20 temporary restraining order standards are “substantially identical”). A temporary restraining order
21 may issue where “serious questions going to the merits [are] raised and the balance of hardships
22 tips sharply in [plaintiff’s] favor.” *All for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th
23 Cir. 2011) (citation omitted). To succeed under the “serious question” test, plaintiffs must show
24 that they are likely to suffer irreparable injury and that an injunction is in the public’s interest. *Id.*
25 at 1132.

26 ARGUMENT

27 **I. Plaintiffs Are Likely to Succeed on the Merits.**

1 **a. Plaintiffs’ Continued Detention Violates Their Constitutional Right to**
2 **Reasonable Safety in Custody**

3 **i. The Constitution is Violated by an Unreasonable Risk of Harm from**
4 **Contagious Disease**

5 37. Plaintiffs repeat and allege the allegations contained in all preceding paragraphs as though
6 fully set forth herein.

7 38. Whenever the government detains or incarcerates someone, it has an affirmative duty to
8 provide conditions of reasonable health and safety. As the Supreme Court has explained, “when
9 the State takes a person into its custody and holds them there against his will, the Constitution
10 imposes upon it a corresponding duty to assume some responsibility for his safety and general
11 well-being.” *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989).
12 As a result, the government must provide those in custody with “food, clothing, shelter, medical
13 care, and reasonable safety.” *Id.* at 200.

14 39. Conditions that pose an unreasonable risk of future harm violate the Eighth Amendment’s
15 prohibition against cruel and unusual punishment, even if that harm has not yet come to pass. The
16 Eighth Amendment requires that “inmates be furnished with the basic human needs, one of which
17 is ‘reasonable safety.’” *Helling v. McKinney*, 509 U.S. at 33 (quoting *DeShaney*, 489 U.S. at 200).
18 Accordingly, “[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe,
19 life-threatening condition in their prison on the ground that nothing yet had happened to them.” *Id.*

20 40. The Supreme Court has explicitly recognized that the risk of contracting a communicable
21 disease may constitute such an “unsafe, life-threatening condition” that threatens “reasonable
22 safety.” *Helling*, 509 U.S. 25 at 36.

23 **ii. Plaintiffs, as Civil Detainees, Are Entitled to Conditions Superior to**
24 **Those of Criminal Detainees and Need Not Show Deliberate Indifference**
25 **to Establish a Constitutional Violation**

26 41. The above-mentioned principles also apply in the context of immigration detention.
27 Immigrant detainees, even those with prior criminal convictions, are *civil detainees* held pursuant

1 to civil immigration laws. *Zadydas v. Davis*, 533 U.S. 678, 690 (2001).

2 42. Because detained immigrants are civil detainees, their constitutional protections while in
3 custody are derived from the Fifth Amendment, which provides protections even greater than the
4 Eighth Amendment. The Eighth Amendment, which applies to persons convicted of criminal
5 offenses, allows punishment as long as it is not cruel and unusual. But the Fifth Amendment's due
6 process protections do not allow punishment at all. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979)
7 ("Due process requires that a pretrial detainee not be punished.").

8 43. The Ninth Circuit has applied this principle to make clear that civil detainees, like Plaintiffs
9 here, are entitled to conditions of confinement that are superior to those of convicted prisoners and
10 to those of criminal pretrial detainees. *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), *cert.*
11 *denied*, 546 U.S. 820 (2005); *see also King v. Cnty. Of Los Angeles*, 885 F.3d 548, 557 (9th Cir.
12 2018) (finding presumption of punitive and, thus, unconstitutional treatment where conditions of
13 confinement for civil detainees are similar to those faced by pre-trial criminal detainees).

14 44. Moreover, because civil detention is governed by the Fifth Amendment rather than the
15 Eighth Amendment, the "deliberate indifference" standard required to establish a constitutional
16 violation in the latter context does not apply to civil detainees like Plaintiffs. *Jones*, 393 F.3d at
17 934. Instead, a condition of confinement for a civil immigration detainee violates the Constitution
18 "if it imposes some harm to the detainee that significantly exceeds or is independent of the inherent
19 discomforts of confinement and is not reasonably related to a legitimate governmental objective
20 or is excessive in relation to the legitimate governmental objective." *Unknown Parties v. Johnson*,
21 No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at 12 *5 (D. Ariz. Nov. 18, 2016), *aff'd sub*
22 *nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017).

23 **iii. The Threat of COVID-19 Imposes a Condition of Confinement that is**
24 **Excessive and Presumptively Punitive in Violation of the Fifth Amendment**

25 45. Conditions of confinement violate the Constitution when they deprive people in civil
26 custody of a basic human need, including safety, and the risk of deprivation cannot be justified by
27 a legitimate government interest or is excessive despite a legitimate government interest.

1 46. Plaintiffs are deprived of this safety because the conditions at HDC create a significant risk
2 of their contracting COVID-19 and their underlying health conditions create a significant risk of
3 their developing severe illness or death.

4 47. The Fifth Amendment of the Constitution also guarantees that civil detainees, including all
5 immigrant detainees, may not be subjected to punishment. The federal government violates this
6 substantive due process right when it subjects civil detainees to cruel treatment and conditions of
7 confinement that amount to punishment. The federal government violates this right when it fails
8 to ensure those detainees' safety and health.

9 48. People in civil detention must not be subject to punitive conditions. *See Jones*, 393 F.3d at
10 931. Conditions are presumptively punitive when they are "intended to punish" or when they are
11 "employed to achieve objectives that could be accomplished in so many alternative and less harsh
12 methods." *Id.* at 934, quoting *Hallstrom v. City of Garden City*, 991 F.2d at 1484 (citation and
13 internal quotation marks omitted). If Plaintiffs can establish *either* of these presumptions, "the
14 burden shifts to the defendant to show (1) 'legitimate, non-punitive interests justifying the
15 conditions of [the detainee's confinement]' and (2) 'that the restrictions imposed...[are] not
16 excessive in relation to these interests.'" *King*, 885 F.3d at 557, quoting *Jones*, 393 F.3d at 935.

17 49. Both the presumptions of punitive conditions are established here. First, the Trump
18 Administration has frequently made clear that immigration detention generally is intended to
19 punish those migrants who enter the United States without documentation. On August 23, 2019,
20 Kenneth T. Cuccinelli, Senior Official Performing the Duties of the Deputy Secretary for DHS,
21 while announcing a policy change which would allow DHS to detain migrant families
22 indefinitely³³, said of detention: "This is a deterrent... now [ICE] can and will to the extent we're
23 able to do so, hold them until those hearings happen."³⁴ That deterrence is an express goal of

24 _____
25 ³³ Geneva Sands, *Trump administration to allow longer detention of migrant families*, CNN
26 POLITICS, August 22, 2019, [https://www.cnn.com/2019/08/21/politics/immigration-family-](https://www.cnn.com/2019/08/21/politics/immigration-family-detention-flores/index.html)
27 [detention-flores/index.html](https://www.cnn.com/2019/08/21/politics/immigration-family-detention-flores/index.html).

³⁴ Veronica Stracqualursi, *Trump immigration official says new rule detaining families indefinitely is a 'deterrent'*, CNN POLITICS, August 23, 2019, <https://www.cnn.com/2019/08/23/politics/ken-cuccinelli-flores-settlement-cnntv/index.html>.

1 detention makes clear that detention is, to DHS, a form of punishment. Importantly, a report of
2 conditions in detention published by the DHS OIG indicated that “[Customs and Border Patrol
3 agents] recognize they have a humanitarian issue with detaining single adults for so long, but
4 believe if they do not have a consequence delivery system, either prosecution or ICE detention,
5 the flow [of migrants into the U.S.] will increase.”³⁵ There CBP itself described detention as “a
6 consequence delivery system.”

7 50. Even if this Court is not convinced that detention alone is presumptively punitive, detention
8 during a global pandemic, where the likelihood is extremely high of falling ill due to one’s
9 incarceration, is punitive. In its recent decision in *United States v. Barkman*, this Court noted that
10 “incarcerated individuals ‘are at special risk of infection, given their living situations,’ and ‘may
11 also be less able to participate in proactive measures to keep themselves safe;’ because ‘infection
12 control is challenging in these settings.’” *Barkman*, 2020 U.S. Dist. Lexis 45628* at *3. This Court
13 also noted that “Secretary of State Mike Pompeo has called for Iran to release Americans detained
14 there because of the ‘deeply troubling’ [r]eports that COVID-19 has spread to Iranian prisons,’
15 noting that ‘[t]heir detention amid increasingly deteriorating conditions defies basic human
16 decency.’” *Id.* at *4. The Secretary’s assessment is correct. All signs indicate that it will not be
17 long before conditions at HDC deteriorate, and it would defy basic human decency to require
18 Plaintiffs to remain in harms’ way.

19 51. Second, the restrictions placed on Plaintiffs are “employed to achieve objectives that could
20 be accomplished in so many alternative and less harsh methods.” *Jones*, 393 F.3d at 934.
21 Immigration detention for all is not a legal or factual necessity. ICE has discretion to release
22 detainees, especially those who are medically vulnerable. ICE can release these detainees to their
23 families or other support systems now and still require them to appear at a future proceeding to
24 adjudicate their immigration cases. Allowing Plaintiffs to go home, practice the social distancing
25

26 ³⁵ Office of Inspector General, Special Reviews and Evaluations, *FY 2019 CBP Spot Inspections*,
27 U.S. Department of Homeland Security, May 15, 2019, accessed at
<https://www.documentcloud.org/documents/6178541-FinalDocumentsRedacted.html>.

1 and hygiene exercises required to stay safe, and then return for any future proceedings would be
2 significantly “less harsh” than requiring Plaintiffs to risk their lives and remain in detention. This
3 is particularly true where ICE has shown, as described above, that it is incapable of protecting its
4 staff and detainees and particularly unprepared to mitigate the potentially devastating effects of
5 this crisis on elderly and medically vulnerable individuals.

6 52. As public health experts in correctional medical care and infectious disease agree, people
7 vulnerable to COVID-19 who are held in immigration detention “are at grave risk of severe illness
8 and death.” Accordingly, Defendants are subjecting Plaintiffs to detention conditions that amount
9 to punishment and that fail to ensure their safety and health.

10 53. For these reasons, Defendants’ ongoing detention of Plaintiffs violates the Due Process
11 Clause.

12 **b. ICE has the Authority to Release Detained People in Its Custody.**

13 54. It is well within ICE’s authority to comply with these constitutional requirements by
14 releasing people who are vulnerable to severe illness or death if they contract COVID-19. For
15 example, the regulations governing ICE’s release authority state that serious medical conditions
16 are a reason to parole an individual, as “continued detention would not be appropriate” in such
17 cases. 8 C.F.R. § 212.5(b)(1).

18 55. ICE not only has the authority to exercise discretion to release individuals from custody
19 but has routinely exercised this discretion to release particularly vulnerable detainees like
20 Plaintiffs. This exercise of discretion comes from a long line of agency directives explicitly
21 instructing officers to exercise favorable discretion in cases involving severe medical concerns and
22 other humanitarian equities militating against detention.

23 56. ICE’s discretion applies regardless of the statutory basis for a noncitizen’s detention.

24 57. When conditions of confinement in an immigration detention facility lead to uniformly
25 unsafe conditions that rise to the level of a constitutional violation, the only available remedy is to
26 reduce levels of detention unless and until conditions can be brought in line with constitutional
27 standards. For example, in a recent case challenging conditions of confinement in ICE detention

1 facilities along the Arizona border, Judge David C. Bury ordered that the Constitution prohibited
2 Border Patrol from continuing to detain any person to whom it could not provide a bed, shower,
3 nutritious food, and a screening by a medical professional within 48 hours of booking. *Unknown*
4 *Parties v. Nielsen*, CV-15-00250-TUC0DCB, 2020 WL 813774 *1 (D. Az. Feb. 19, 2020).

5 **c. This Court has Authority to Order Plaintiffs' Release to Vindicate Their Fifth**
6 **Amendment Rights, and Such Relief is Appropriate Here.**

7 58. While the circumstances of this case are somewhat novel and constantly evolving, the
8 Court's authority to order Plaintiffs' release to ensure their constitutional rights are protected is
9 not. "Federal courts possess whatever powers are necessary to remedy constitutional violations
10 because they are charged with protecting these rights." *Stone v. City & Cnty. of San Francisco*,
11 968 F.2d 850, 861 (9th Cir. 1992). As a result, "[w]hen necessary to ensure compliance with a
12 constitutional mandate, courts may enter orders placing limits on a prison's population." *Brown v.*
13 *Plata*, 563 U.S. 493, 511 (2011).

14 59. Courts have regularly exercised this authority to remedy constitutional violations caused
15 by overcrowding. *Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983), *cert. denied*, 465 U.S.
16 1108 (1984) (concluding that court did not exceed its authority in directing release of low-bond
17 pretrial detainees as necessary to reach a population cap).

18 60. The same principle applies here. As the constitutional principles and public health experts
19 make clear, releasing Plaintiffs is the only viable remedy to ensure their safety from the threat that
20 COVID-19 infection poses. Social distancing and hygiene measures are Plaintiffs' only defense
21 against the disease. These protective measures are impossible to achieve in the environment of an
22 immigration detention center, where Plaintiffs share toilets, sinks, and showers, eat in communal
23 spaces, and are constantly in close contact with other detainees and detention center staff. These
24 conditions are prime for a devastating and deadly infectious spread and, as a result, Plaintiffs face
25 unreasonable and unconstitutional harm from continued detention.

1 **II. The Remaining Factors Weigh Heavily in Favor of Granting a Temporary**
2 **Restraining Order**

3 **a. Plaintiffs Are Likely to Suffer Irreparable Harm Absent the Temporary**
4 **Restraining Order**

5 61. The Ninth Circuit has made clear that “the deprivation of constitutional rights
6 ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
7 2012) (internal quotation marks omitted). Moreover, as at least one judge in this district has
8 recognized, the dangerous and unsafe conditions of detention that Plaintiffs face also constitute
9 irreparable harm supporting injunctive relief. *Padilla v. U.S. Immigration & Customs*
10 *Enforcement*, 387 F. Supp. 3d 1219, 1231 (W.D. Wash. 2019) (recognizing that “substandard
11 physical conditions, [and] low standards of medical care” in immigration detention constitute
12 irreparable harm justifying injunctive relief). The Ninth Circuit also has recognized that irreparable
13 harm exists where government actions threaten to worsen an individual’s health. See *M.R. v.*
14 *Dreyfus*, 663 F.3d 1100, 1111 (9th Cir. 2011), as amended by 697 F.3d 706 (9th Cir 2012); see
15 also, e.g., *Indep. Living Cent. of S. California, Inc. v. Shewry*, 543 F.3d 1047, 1050 (9th Cir. 2008)
16 (recognizing that Medi-Cal beneficiaries would suffer irreparable harm where new policy would
17 limit beneficiaries’ access to “much-needed pharmaceuticals”).

18 62. There is, as described above, an immediate threat to Plaintiffs’ health as there is reason to
19 believe that individuals at HDC, both detainees and staff members, have already been exposed to
20 COVID-19. The threat is not theoretical. It is not something that may occur in the future. It is
21 occurring now.

22 63. Each of these reasons support immediate relief here.

23 **b. The Public Interest and Balance of Equities Weigh Heavily in Plaintiffs’ Favor**

24 64. Both the balance of equities and the public interest heavily favor the Plaintiffs. “[I]t is
25 always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*,
26 695 F.3d at 1002 (quotation omitted).

27 65. Furthermore, Plaintiffs will suffer irreparable harm without immediate relief, including

1 unreasonable risk of long-lasting medical harm or death if infected by COVID-19. *See supra* Secs.
2 I.-II. Whatever interest that the government asserts in their continued detention cannot be
3 outweighed by such irreparable harm. “Faced with . . . preventable human suffering, [the Ninth
4 Circuit] ha[s] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs’
5 favor.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713
6 F.2d 1432, 1437 (9th Cir. 1983)). Moreover, it is in both the Defendants’ and the broader public
7 interest to release detainees with particular medical vulnerabilities. The release of people most
8 vulnerable to COVID-19 reduces the overall health risk for detainees and facility staff alike at
9 HDC. ICE has an interest in preventing any potential spread of COVID-19 in its detention facility.
10 Immigration detention facilities face greater risk of infectious spread because of crowding, the
11 high percentage of detained people vulnerable to serious illness in the event of COVID-19
12 transmission, and limited availability of medical care.

13 66. Moreover, it is in both the Defendants’ and the broader public interest to release detainees
14 with medical vulnerabilities. The release of people most vulnerable to COVID-19 reduces the
15 overall health risk for detainees and facility staff. It also reduces the risk of a swell of detainees
16 simultaneously requiring in-patient, critical medical care and taxing the local health system.

17 **III. The Court Should Not Require Plaintiffs to Provide Security Prior to Issuing a** 18 **Temporary Restraining Order**

19 67. Federal Rule of Civil Procedure 65(c) provides that “The court may issue a preliminary
20 injunction or a temporary restraining order only if the movant gives security in an amount that the
21 court considers proper to pay the costs and damages sustained by any party found to have been
22 wrongfully enjoined or restrained.” However, “Rule 65(c) invests the district court with discretion
23 as to the amount of security required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.
24 2003) (internal quotation marks and citation omitted). District courts routinely exercise this
25 discretion to require no security in cases brought by indigent and/or incarcerated people. See, e.g.,
26 *Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes–*
27 *Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This

1 Court should do the same here.

2 **CONCLUSION**

3 For the foregoing reasons, Plaintiffs' motion for a temporary restraining order should be granted.

4
5 RESPECTFULLY SUBMITTED this 31st of March, 2020.

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