

1 **MONIKA Y. LANGARICA** (SBN 308518)(mlangarica@aclusandiego.org)  
2 **JONATHAN MARKOVITZ** (SBN 301767)(jmarkovitz@aclusandiego.org)  
3 **KIMBERLY GRANO** (SBN 328298)(kgrano@aclusandiego.org)  
4 **BARDIS VAKILI** (SBN 247783)(bvakili@aclusandiego.org)  
5 **DAVID LOY** (SBN 229235)(davidloy@aclusandiego.org)  
6 **ACLU FOUNDATION OF SAN DIEGO &**  
7 **IMPERIAL COUNTIES**  
8 P.O. Box 87131  
9 San Diego, CA 92138-7131  
10 Telephone: (619) 398-4493

11 Counsel for Plaintiff-Petitioners

12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 **Adrian RODRIGUEZ ALCANTARA;**  
15 **Yasmani OSORIO REYNA; Maria Flor**  
16 **CALDERON LOPEZ; Mary DOE; on behalf**  
17 **of themselves and all others similarly**  
18 **situated,**

19 Plaintiff-Petitioners,

20 v.

21 **Gregory J. ARCHAMBEAULT, San Diego**  
22 **Field Office Director, Immigration and**  
23 **Customs Enforcement; James DOBSON,**  
24 **Otay Mesa Detention Center Officer in**  
25 **Charge, Immigration and Customs**  
26 **Enforcement; Jesus REYNA, Calexico**  
27 **Assistant Field Office Director, Immigration**  
28 **and Customs Enforcement; Christopher J.**  
**LAROSE, Senior Warden, Otay Mesa**  
**Detention Center; Sixto MARRERO,**  
**Facility Administrator, Imperial Regional**  
**Detention Facility; Matthew T. ALBENCE,**  
**Deputy Director and Senior Official**  
**Performing the Duties of the Director of**  
**Immigration and Customs Enforcement;**  
**Chad WOLF, Acting Secretary of Homeland**  
**Security,**

Defendant-Respondents.

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

**COMPLAINT – CLASS**  
**ACTION AND PETITION**  
**FOR WRIT OF HABEAS**  
**CORPUS**

1 **INTRODUCTION**

2 1. We are in the midst of a global pandemic on a scale not seen for a  
3 century. Hundreds of thousands of people have died in a matter of months. The Otay  
4 Mesa Detention Center is being ravaged by the largest confirmed outbreak of the  
5 Coronavirus Disease 2019 (“COVID-19”) of any immigration detention center in the  
6 United States. Dozens have been infected and hundreds have been potentially  
7 exposed. Without this court’s timely intervention, many more people will get sick,  
8 many will suffer severe symptoms, and some will die.

9 2. This action challenges U.S. Immigration and Customs Enforcement  
10 (“ICE”)’s continued detention of Plaintiff-Petitioners (“Plaintiffs”) and similarly  
11 situated people in the midst of the Coronavirus Disease 2019 pandemic, under  
12 conditions and population levels that make social distancing impossible and place  
13 them at severe risk, in violation of their Fifth Amendment Due Process Rights.

14 3. Plaintiffs are people confined in immigration custody at Otay Mesa  
15 Detention Center (“Otay Mesa”) and Imperial Regional Detention Facility  
16 (“Imperial”). Due to the conditions of their confinement, the population levels of the  
17 facilities where they are detained, and Defendants’ otherwise insufficient response to  
18 the pandemic, they are at extraordinary risk of contracting COVID-19. On behalf of  
19 themselves and two classes of detained persons – one class at Otay Mesa and the  
20 other at Imperial – they seek immediate release from ICE custody due to the urgent  
21 threat to their lives and health posed by COVID-19.

22 4. Otay Mesa is now home to the largest confirmed COVID-19 outbreak  
23 in any federal immigration detention facility in the entire country, with 27  
24 detainees—18 immigration detainees and nine U.S. Marshals Service detainees—and  
25 eight ICE officers confirmed positive as of April 17, 2020, plus more cases among  
26 private prison employees.

27 5. On March 11, 2020, the World Health Organization declared the global  
28 outbreak of COVID-19, the disease caused by a novel coronavirus, a pandemic. Since

1 then, in the span of just over a month, confirmed cases of the disease in the United  
2 States surged from a thousand to 746,625 as of April 20, 2020. At least 39,083 of  
3 those people have died.

4 6. There is no specific treatment, vaccine, or cure for COVID-19, and no  
5 one is immune. The only way to prevent the chance of serious illness or death from  
6 COVID-19 is to practice scrupulous hygiene and social distancing.

7 7. The United States now has the most confirmed COVID-19 cases and  
8 deaths in the world, though numbers may be undercounted because access to testing  
9 remains limited. California alone has reported almost 30,000 cases, a number that  
10 would be much higher if not for early and consistent adoption of social distancing  
11 measures.

12 8. The COVID-19 pandemic has fundamentally changed most aspects of  
13 everyday life, with public and private institutions dramatically altering daily  
14 operations. Public health experts and public officials have reiterated that these  
15 unprecedented shifts in the way we live will likely last for months.

16 9. In contrast, ICE has failed to meaningfully respond to protect the health  
17 and safety of people in its custody.

18 10. Despite ICE's claims that it has taken appropriate protective measures,  
19 outbreaks of COVID-19 at its detention centers have rapidly escalated in the past  
20 several weeks. As noted, Otay Mesa, which holds both ICE detainees and criminal  
21 detainees for the U.S. Marshals Service, now has the most confirmed cases of  
22 COVID-19 among detainees and ICE staff of any ICE facility in the country, with 18  
23 civil immigration detainees and eight ICE officers having tested positive, as well as  
24 nine U.S. Marshals Service inmates, ten private detention center employees of  
25 CoreCivic, and eight medical staffers as of April 17. This almost certainly  
26 undercounts the true number of infections, as ICE has not implemented widespread  
27 testing of all detainees and the Centers for Disease Control and Prevention ("CDC")  
28

1 estimate that as many as 25% of those infected by the novel coronavirus may have  
2 no symptoms. ICE has tested less than 1% of its detainee population for COVID-19.

3 11. Facility staff have failed to take appropriate measures to save lives, even  
4 as the number of cases among detainees and staff at Otay Mesa have surged. Plaintiffs  
5 and putative class members continue to sleep in barracks-style bunks less than six  
6 feet away from each other and are forced to use shared communal dining, bathing,  
7 and recreation areas. When a detainee has tested positive, ICE’s response has been  
8 to keep the dozens of people who were in the same housing unit as that person locked  
9 up together for two weeks, though the two-week clock starts again when, inevitably,  
10 another detainee from the unit tests positive. This strategy virtually ensures that the  
11 virus will spread further within that unit, where detainees are unable to practice social  
12 distancing measures. Thus, even those who managed to avoid contracting COVID-  
13 19 from contact with an initial confirmed case may be closely confined with others  
14 who did but may not yet be symptomatic.

15 12. Plaintiffs and other people detained at Otay Mesa and Imperial recount  
16 an atmosphere of desperation and fear within the detention centers, as many worry  
17 about contracting the virus in detention with no way to protect themselves.

18 13. The CDC and other public health experts unanimously advise that the  
19 only effective means of limiting transmission of COVID-19 is practicing “social  
20 distancing,” with a recommended minimum of six feet between people and reduced  
21 frequency of contact. Although scrupulously maintaining hygiene and frequently  
22 disinfecting surfaces is advisable, social distancing is the single most important  
23 measure to reduce the spread of disease because the virus appears to mainly be  
24 transmitted through the air between people in close contact.

25 14. People in congregate environments—places where people live, eat, and  
26 sleep in close proximity—face increased risk of contracting COVID-19, as already  
27 evidenced by the rapid spread of the virus in cruise ships, nursing homes, and jails.

28

1           15. For people like Plaintiffs who are confined in Otay Mesa and Imperial  
2 under current conditions and population numbers, it is effectively impossible to  
3 engage in the social distancing necessary to mitigate the risk of transmission.

4           16. Public health and government officials worldwide have undertaken  
5 extraordinary measures to combat the spread of COVID-19, most commonly by  
6 ordering people not to congregate in groups. On March 19, 2020, the State of  
7 California issued a “shelter in place” order requiring people to stay at home except  
8 for essential activities and to maintain social distancing to the maximum extent  
9 possible. As of the filing of this complaint, over 300 million people in the United  
10 States are under some instruction to stay home to prevent community spread of the  
11 virus.

12           17. People in prisons, jails, and detention centers cannot engage in the  
13 preventative measures the rest of the country is taking. The higher risk of infection  
14 those in custody face is undeniable. For example, as of February 29, 2020, at the peak  
15 of the outbreak in Wuhan, China—the city where COVID-19 originated—over half  
16 of all new cases were among incarcerated people. On Rikers Island, the rate of  
17 infection among incarcerated people is almost six times the rate of infection in New  
18 York City generally and over 40 times higher than the rate in the United States as a  
19 whole. Seven federal prisoners have died of COVID-19 in FCI Oakdale in Louisiana.  
20 Six prisoners have died of the disease at FSL Elkton, a federal prison near  
21 Youngstown, Ohio. As of April 18, 2020, the number of infected inmates and staff  
22 of the Bureau of Prisons over the course of the past month increased by more than  
23 39,000 percent.

24           18. Recognizing the urgency of present circumstances, judges, prosecutors  
25 and correctional authorities across the country have been ordering releases to protect  
26 individuals and the public health. Such releases not only protect the people with the  
27 greatest vulnerability to serious illness and death due to COVID-19 from  
28

1 transmission, but also contribute to greater risk mitigation for all people in custody,  
2 carceral facility employees, and the surrounding community at large.

3 19. Many of California’s jails and prisons have released people detained in  
4 the criminal justice system to protect those people and the community from COVID-  
5 19. The Judicial Council of California announced emergency rules to lower jail  
6 populations. The California Department of Corrections and Rehabilitation announced  
7 a reduction in the prison population of nearly 7,000 inmates. The San Diego County  
8 Sheriff’s Department released about 1000 people and announced plans to release  
9 about 400 more. Alameda County’s Santa Rita Jail released approximately 500  
10 people. Los Angeles County released about 1,700 people from its jails.

11 20. Law enforcement and jail officials in New Jersey, New York City,  
12 Cleveland, Nashville, Houston, San Antonio, Charlotte, and numerous other  
13 jurisdictions have released civil detainees and, in many cases, people serving  
14 sentences for criminal convictions, in response to the threat COVID-19 poses inside  
15 jails. For example, on March 22 the New Jersey Supreme Court issued a consent  
16 order presumptively ordering the release of every person serving a county jail  
17 sentence by no later than Thursday morning, March 26.<sup>1</sup>

18 21. Courts across the state and country are also ordering the release of  
19 people in civil immigration custody in recognition of the threat posed by COVID-19.  
20 *E.g.*, *Xochihua-Jaimes v. Barr*, No. 18-71460, 2020 WL 1429877 (9th Cir. Mar. 24,  
21 2020); *Bahena Ortuño v. Jennings*, No. 20-cv-02064, 2020 WL 1701724 (N.D. Cal.  
22 Apr. 8, 2020); *Ixchop Perez v. Wolf*, No. 19-cv-05191, 2020 WL 1865303 (N.D. Cal.  
23 Apr. 14, 2020); *Castillo v. Barr*, No. CV2000605TJHAFMX, 2020 WL 1502864  
24 (C.D. Cal. Mar. 27, 2020); *Fraihat v. Wolf*, No. ED-CV2000590-TJH, ECF No. 18  
25 (C.D. Cal. Mar. 30, 2020); *Hernandez v. Wolf*, No. 20-cv-00617, ECF No. 17 (C.D.

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26 <sup>1</sup> Consent Order, *In the Matter of the Request to Commute or Suspend County Jail*  
27 *Sentences*, No. 084230 (N.J. March 22, 2020), [https://www.aclu-](https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf)  
28 [nj.org/files/5415/8496/4744/2020.03.22 - Consent Order Filed Stamped Copy-](https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf)  
[1.pdf](https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf).

1 Cal. Apr. 1, 2020); *Basank v. Decker*, No. 20-cv-02518, 2020 WL 1481503  
2 (S.D.N.Y. Mar. 26, 2020); *Coronel v. Decker*, No. 20-cv-2472, 2020 WL 1487274  
3 (S.D.N.Y. Mar. 27, 2020); *Thakker v. Doll*, No. 20-cv-00480, 2020 WL 1671563  
4 (M.D. Pa. Mar. 31, 2020); *Hope v. Doll*, No. 20-cv-00562, ECF No. 11 (M.D. Pa.  
5 Apr. 7, 2020); *Calderon Jimenez v. Wolf*, No. 18-cv-10225, ECF No. 507 (D. Mass.  
6 Mar. 26, 2020); *Arriaga Reyes v. Decker*, No. 20-cv-3600, ECF No. 27 (D. N.J. Apr.  
7 14, 2020); *Malam v. Adducci*, No. 20-cv-10829, ECF No. 33 (E.D. Mich. Apr. 17,  
8 2020); *Vasquez-Barrera v. Wolf*, No. 20-cv-01241, ECF No. 41 (S.D. Tex. April 17,  
9 2020). These orders recognize that “[t]he risk of contracting COVID-19 in tightly-  
10 confined spaces, especially jails, is now exceedingly obvious” and that “public health  
11 authorities predict [COVID-19] will especially impact immigration detention  
12 centers.” *Basank*, 2020 WL 1481503, at \*6; *Xochihua-Jaimes*, 2020 WL 1429877, at  
13 \*1.

14 22. On, March 18, 2020, two medical experts for the Department of  
15 Homeland Security’s Office of Civil Rights and Civil Liberties (“DHS CRCL”) sent  
16 a letter to Congress, writing “regarding the need to implement immediate social  
17 distancing to reduce the likelihood of exposure to detainees, facility personnel, and  
18 the general public, *it is essential to consider releasing all detainees who do not pose*  
19 *an immediate risk to public safety.*”<sup>2</sup> On multiple occasions since at least February  
20 25, 2020, these experts sounded the alarm with DHS regarding the imminent risks to  
21 the health of immigrant detainees and the public at large presented by COVID-19  
22 unless swift mitigation measures, including decreasing the population of immigration  
23 detention facilities, are taken.

24 23. Instead, ICE’s response to the pandemic has been to engage in business  
25 as usual, conducting uninterrupted enforcement and detention operations. In a

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26 <sup>2</sup> Letter from Scott A. Allen, MD and Josiah Rich, MD, MPH to Congressional  
27 Committee Chairpersons (Mar. 19, 2020), *available at*  
28 <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>.

1 statement demonstrative of the agency’s chilling indifference to the lives of the  
2 people in its facilities, Defendant Albence asserted that ICE would not release  
3 additional detainees to slow the spread of COVID-19 because it would send the  
4 wrong message about ICE enforcement priorities.

5 24. Inside ICE facilities, immigrants say that ICE is not consistently taking  
6 even the less aggressive precautionary measures the agency claims it is taking. To  
7 take one critical example, ICE is continuing to introduce detainees into the general  
8 population at Imperial without quarantining them separately for 14 days.

9 25. This echoes a concern of the two experts for DHS CRCL, who say that  
10 “the track record of ICE facilities implementing [early screening, testing, isolation  
11 and quarantine] protocols historically has been inconsistent.” Moreover, even if ICE  
12 was consistently taking these precautions, the experts have explained that such efforts  
13 “won’t be enough” without rapidly ‘releas[ing] those who do not pose an immediate  
14 danger to public safety.’<sup>3</sup>

15 26. The fact that COVID-19 is already raging through Otay Mesa, despite  
16 ICE’s claimed adherence to its own protocols, demonstrates that ICE is incapable of  
17 complying with its constitutional duty to protect the health and safety of people in its  
18 custody by preventing the introduction and spread of the virus in its detention centers  
19 at their current population levels.

20 27. The danger posed by Plaintiffs’ and the putative classes’ detention  
21 during the COVID-19 pandemic is “so grave that it violates contemporary standards  
22 of decency to expose anyone unwillingly to such a risk” and violates their  
23 constitutional right to safety in government custody even under an Eighth  
24 Amendment standard of deliberate indifference for persons serving criminal  
25 sentences, much less the more stringent standard protecting persons detained under  
26 civil immigration authority. *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

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<sup>3</sup> Allen and Rich, *supra* note 2.



1           28. Defendants cannot justify continuing to subject Plaintiffs and other  
2 detainees to extraordinary risks of illness or death with any legitimate government  
3 objective, particularly in light of the alternatives available to them.

4           29. Even where ICE invokes a “mandatory” detention statute to justify an  
5 individual’s confinement, the agency cannot detain that person if doing so violates  
6 the Constitution.

7           30. ICE’s lackluster response to the pandemic has already caused detainees  
8 and staff in Otay Mesa to test positive for the virus and has put all detainees and staff  
9 at Otay Mesa and Imperial at risk of COVID-19 infection. But the vast majority of  
10 immigration detainees in Otay Mesa and Imperial lack the resources to file individual  
11 lawsuits to protect their safety by seeking their release. Over the past month, even  
12 represented detainees have had difficulty consulting with their lawyers because of  
13 visitation and telephone restrictions, and the closure of law libraries in both facilities  
14 makes it extraordinarily difficult for pro se detainees to prepare their cases. Otay  
15 Mesa detainees in “cohorted” housing units have not even been able to telephonically  
16 attend their immigration court hearings.<sup>4</sup> It is unclear whether pro se detainees in  
17 cohorted units at Otay Mesa will even be able to have bond hearings due to doubts  
18 regarding the continued functioning of the Otay Mesa immigration court and the  
19 inability of detainees to leave their unit. Defendants’ responses to the COVID-19  
20 outbreak are thus hampering access to the courts and the ability of detainees to seek  
21 release through other channels. Moreover, even if they could all sue, piecemeal  
22 individualized litigation is too slow to meet the rapidly evolving emergency at hand,  
23 too disorganized to ensure an orderly process of release, and too resource-intensive  
24 to be sustainable.

25           31. Plaintiffs thus bring this suit as a class action to remedy grave violations  
26 of their and other detainees’ constitutional rights that immediately threaten them with  
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28 <sup>4</sup> ICE uses the term “cohorting” to its practice of requiring all detainees in a housing  
unit that has been exposed to COVID-19 to remain in the unit at all times.

1 illness and death. This court has authority to order the orderly reduction in population  
2 of Otay Mesa and Imperial to levels that allow social distancing, as well as require  
3 other health and safety measures, to remedy to Plaintiffs’ egregious violations of  
4 Plaintiffs’ due process rights. This reduction in population must begin with a subclass  
5 of medically vulnerable people in Otay Mesa.

6 32. Unless this Court intervenes to order the Defendants to dramatically  
7 reduce the population of the Otay Mesa and Imperial detention centers, Plaintiffs and  
8 many other detained individuals will face dramatically increased chances of  
9 contracting COVID-19, becoming seriously ill, and dying.

10 **PARTIES**

11 33. Plaintiff Adrian RODRIGUEZ ALCANTARA (“Mr. Rodriguez  
12 Alcantara”) is a 31-year-old asylum seeker from Cuba who is currently detained at  
13 Otay Mesa along with his partner, Plaintiff Osorio Reyna. Mr. Rodriguez Alcantara  
14 passed his Credible Fear Interview in February 2020. He now awaits a merits hearing  
15 on his asylum claim, which has been delayed by a month due to the COVID-19  
16 outbreak’s impact on the Otay Mesa immigration court. Mr. Rodriguez Alcantara’s  
17 housing unit at Otay Mesa contains over 100 detainees, making it impossible for him  
18 to keep a six-foot distance from others, and lacks adequate hygiene and protective  
19 equipment. Mr. Rodriguez Alcantara has HIV. His condition puts him at heightened  
20 risk for severe illness and death due to COVID-19. He seeks to represent a class of  
21 detainees at Otay Mesa and a subclass of all other similarly situated medically  
22 vulnerable civil immigration detainees at Otay Mesa who are at high risk of severe  
23 illness and death due to COVID-19. Mr. Rodriguez Alcantara plans to quarantine in  
24 San Diego for 14 days before going to Florida to stay with his partner’s lawful  
25 permanent resident cousin, unless he is able to obtain a coronavirus test that would  
26 clear him to travel sooner. Once in Florida, he plans to further self-quarantine and  
27 practice social distancing.

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1           34. Plaintiff Yasmani OSORIO REYNA (“Mr. Osorio Reyna”), Mr.  
2 Rodriguez Alcantara’s partner, is a 32-year-old asylum seeker from Cuba who is  
3 currently detained at Otay Mesa. Mr. Osorio Reyna is awaiting the results of his  
4 Credible Fear Interview. Mr. Osorio Reyna’s housing unit at Otay Mesa contains  
5 over 100 detainees, making it impossible for him to keep a six-foot distance from  
6 others, and lacks adequate hygiene and protective equipment. He seeks to represent  
7 a class of all other similarly situated civil immigration detainees at Otay Mesa. Mr.  
8 Osorio Reyna plans to quarantine in San Diego for 14 days before going to Florida  
9 to stay with his lawful permanent resident cousin, unless he is able to obtain a  
10 coronavirus test that would clear him to travel sooner. Once in Florida, he plans to  
11 further self-quarantine and practice social distancing.

12           35. Plaintiff Maria Flor CALDERON LOPEZ (“Ms. Calderon Lopez”) is a  
13 35-year-old asylum seeker from Honduras who passed her Credible Fear Interview  
14 earlier this year. Ms. Calderon Lopez has been detained at Imperial for almost four  
15 months, although her partner with whom she arrived to the United States was released  
16 from custody. Ms. Calderon Lopez’s housing unit contains about 50 detainees,  
17 making it impossible for her to keep a six-foot distance from others, and lacks  
18 adequate hygiene and protective equipment. Ms. Calderon Lopez has moderate-  
19 severe intermittent asthma. Her condition puts her at heightened risk for severe illness  
20 and death due to COVID-19. She seeks to represent a class of detainees at Imperial  
21 and a subclass of all other similarly situated medically vulnerable civil immigration  
22 detainees at Imperial who are at high risk of severe illness and death due to COVID-  
23 19. Ms. Calderon Lopez plans to quarantine in San Diego for 14 days before going  
24 to Texas, where she will live with her partner and his sister, a lawful permanent  
25 resident, unless she is able to obtain a coronavirus test that would clear her to travel  
26 sooner. Once in Texas, she plans to further self-quarantine and practice social  
27 distancing.

1           36. Plaintiff Mary DOE<sup>5</sup> (“Ms. Doe”) is a 19 year-old asylum seeker and is  
2 currently detained at Imperial. Ms. Doe was previously placed in the Migrant  
3 Protection Protocols program, but an immigration judge terminated her removal  
4 proceedings in January 2020. She subsequently entered ICE custody at Imperial on  
5 January 16, 2020. She has no pending immigration court hearings and has not been  
6 in front of an immigration judge since she arrived at Imperial. Ms. Doe’s housing  
7 unit contains about 50 detainees, making it impossible for her to keep a six-foot  
8 distance from others, and lacks adequate hygiene and protective equipment. She  
9 seeks to represent a class of all other similarly situated civil immigration detainees at  
10 Imperial. If released, Ms. Doe’s brother, a lawful permanent resident, would drive  
11 her directly from the detention center to his home in California, where she could self-  
12 quarantine for 14 days and practice social distancing.

13           37. Defendant Gregory J. ARCHAMBEAULT is the San Diego Field  
14 Office Director for ICE Enforcement and Removal Operations (“ERO”), a federal  
15 law enforcement agency within the U.S. Department of Homeland Security (“DHS”).  
16 The San Diego Field Office is responsible for, among other things, carrying out ICE’s  
17 immigration detention operations at Otay Mesa Detention Center and Imperial  
18 Regional Detention Facility. Defendant Archambeault is a legal custodian of  
19 Plaintiffs and all class members. He is sued in his official capacity.

20           38. Defendant James DOBSON is the Otay Mesa Detention Center Officer  
21 in Charge for ICE ERO. He is responsible for immigration detention operations at  
22 Otay Mesa Detention Center. Defendant Dobson is a legal custodian of Plaintiffs and  
23 members of the class detained at Otay Mesa. He is sued in his official capacity.  
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26 <sup>5</sup> Plaintiff Mary Doe seeks to proceed under pseudonym because she would face  
27 severe retaliatory harm from her persecutors in her home country, where she may  
28 have to return. *See Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058,  
1068 (9th Cir. 2000). Counsel for Plaintiffs will file a motion to proceed under  
pseudonym and observe all related requirements.



1 Sovereign immunity against actions for relief other than money damages is waived  
2 pursuant to 5 U.S.C. § 702.

3 45. This Court may grant relief under 28 U.S.C. §§ 2241, 2243 (habeas  
4 corpus), 2201–02 (declaratory relief), 1651 (All Writs Act), 5 U.S.C. § 702  
5 (judgment against U.S. officers), Federal Rule of Civil Procedure 65 (injunctive  
6 relief), Federal Rule of Civil Procedure 23 (class action), as well as the Fifth  
7 Amendment to the U.S. Constitution.

8 46. Venue is proper in the Southern District of California pursuant to 28  
9 U.S.C. § 1391(e) and the habeas statute because Plaintiffs and the class are detained  
10 in this district, a defendant resides in this district, and a substantial part of the events  
11 or omissions giving rise to Plaintiffs’ claims occurred in this district.

## 12 **FACTS**

### 13 **I. COVID-19 Poses Grave Risks of Serious Illness or Death.**

14 47. The outbreak of COVID-19, a disease caused by a novel coronavirus,  
15 has reached pandemic status. Because COVID-19 is easily transmitted and may not  
16 cause symptoms in all individuals, and because testing remains limited, the  
17 confirmed case count and death toll of COVID-19—already at over two million and  
18 150,000 worldwide, respectively—likely underestimates the true prevalence of the  
19 disease.

20 48. The need for care, including intensive care, and the likelihood of death,  
21 is much higher from COVID-19 infection than from influenza. Though earlier  
22 estimates suggested the virus was 10 times deadlier than the flu, the most recent data  
23 places the fatality rate of people infected with COVID-19 in the United States as high  
24 as 5 percent—50 times higher than that of seasonal influenza. For people in the  
25 highest risk populations, the fatality rate of COVID-19 infection is significantly  
26 higher.

27 49. All human beings share a risk of contracting, and upon contraction,  
28 transmitting the virus that causes COVID-19. Any adult who contracts the virus may

1 experience life-threatening symptoms. According to the CDC, about 25% of patients  
2 who were hospitalized with COVID-19 were under the age of 49.

3 50. People age 45 and over face a high risk of serious illness from COVID-  
4 19, while those over the age of 55 face a high risk of serious illness or death from  
5 COVID-19. Certain underlying medical conditions increase the risk of serious illness  
6 or death from COVID-19 for people of any age, including lung disease, heart disease,  
7 hypertension, asthma, chronic liver or kidney disease, diabetes, epilepsy,  
8 compromised immune systems (such as from cancer, HIV, or an autoimmune  
9 disease), blood disorders (including sickle cell disease), metabolic disorders, stroke,  
10 developmental delay. People who are pregnant or post-partum, with a body mass  
11 index greater than 40, or who have a history of smoking are also at increased risk of  
12 developing severe cases of COVID-19.

13 51. New information regarding COVID-19 risk factors emerges daily. Other  
14 categories of individuals may have conditions that predispose them to complications  
15 from COVID-19, but are not yet identified by the medical literature. Some evidence  
16 suggests that exposure to larger viral loads—such as occurs with close, in-person  
17 interaction in enclosed spaces at short distances—may lead to more serious infection.

18 52. COVID-19 can have devastating health effects, including severe  
19 damage to lung tissue, respiratory failure, heart failure, kidney failure, and death.  
20 People who do not die from COVID-19 but experience prolonged serious illness  
21 should expect prolonged recovery, loss of digits, neurologic damage, and the loss of  
22 respiratory capacity.

23 53. Most people in high risk categories who contract the virus will need  
24 advanced support. Such supportive care requires highly specialized equipment that  
25 is in limited supply, such as ventilators, and an entire team of care providers,  
26 including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care  
27 physicians. This level of support can quickly exceed local health care resources.

28

1           54.    These complications can manifest at an alarming pace. Although the  
2 incubation period of the virus can be long, some patients’ conditions can seriously  
3 deteriorate in five days or less. Individuals can be presymptomatic, yet still  
4 contagious, for a period of time before their symptoms rapidly escalate.

5           55.    People can also spread COVID-19 but be asymptomatic. The CDC  
6 estimates that as many as 25 percent of people infected with COVID-19 do not show  
7 symptoms.

8           56.    Even in cases of COVID-19 referred to as “mild to moderate,” the  
9 symptoms of the disease can be serious. Individuals with persistent fever, body aches,  
10 and extreme fatigue have been advised not to go to the hospital until absolutely  
11 necessary because their cases are not considered severe enough. People with mild to  
12 moderate cases can still develop pneumonia and require supplemental oxygen.

13           57.    There is no vaccine against COVID-19, nor is there any known  
14 medication to prevent or treat infection. The only known effective measures to reduce  
15 the risk for vulnerable people from injury or death from COVID-19 are to prevent  
16 them from being infected in the first place, and to limit spread via social distancing  
17 measures.

18           58.    Social distancing, or remaining physically separated from known or  
19 potentially infected individuals, is the most important mitigation strategy to prevent  
20 transmission. Although the CDC has recommended people stay at least six feet apart,  
21 new data suggests that transmission may occur across distances as large as thirteen  
22 feet.

23           59.    Vigilant sanitation and hygiene, including repeatedly and thoroughly  
24 washing hands with soap and water, are also important measures for protecting  
25 vulnerable people from COVID-19. But because most documented transmission  
26 appears to occur through respiratory droplets carried through the air when a person  
27 coughs, sneezes, or even projects their voice, sanitation measures alone, without  
28 social distancing, are insufficient to prevent the spread of the virus.



1           60. In recent weeks, the number of reported cases of infection in many parts  
2 of the country have shown a frightening increase, and more cases are confirmed daily.  
3 The death toll has similarly skyrocketed, up to over 39,000 at the time of this  
4 Complaint from just over one hundred last month.

5 **II. People Confined in ICE Detention Centers Face Greater Risk of COVID-  
19 Transmission.**

6           61. The current outbreak underway at Otay Mesa is proof that detention  
7 centers are tinderboxes for rapid widespread infection within and beyond the  
8 facilities. At Otay Mesa, one employee was confirmed to have tested positive on  
9 March 31, 2020. As of April 17, just over two weeks later, the number of confirmed  
10 positive cases inside had exploded to at least 45 confirmed cases; 27 detainees across  
11 at least nine housing units, eight ICE officers, ten CoreCivic staff members, and eight  
12 medical staffers<sup>6</sup> have been confirmed to have contracted the virus.

13           62. After COVID-19 was detected in the facility, immigration judges were  
14 evacuated from the Otay Mesa immigration court, located inside the detention center.  
15 The immigration court was then closed for all proceedings. It is not clear when the  
16 court will reopen.

17           63. Across ICE facilities more generally, ICE has confirmed 124 cases of  
18 COVID-19 among its detainees and 30 cases among detention center ICE officers as  
19 of April 17, statistics which do not include cases among private detention center staff  
20 or presumed cases in individuals who have not been tested.<sup>7</sup> Defendant Albence  
21 confirmed that testing has only been done for less than once percent of detainees in  
22 ICE detention centers nationwide.<sup>8</sup> ICE is not disclosing how many facility workers  
23  
24

25 <sup>6</sup> It is not clear whether any of the medical staffers are included in the count of ICE  
employees who have contracted the virus.

26 <sup>7</sup> *ICE Guidance on COVID-19*, U.S. Immigration and Customs Enforcement,  
<https://www.ice.gov/covid19> (last accessed Apr. 19, 2020).

27 <sup>8</sup> Press Release, House Committee on Oversight and Reform, DHS Officials Refuse  
28 to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of  
Coronavirus (Apr. 17, 2020), <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>

1 employed by private detention center operators, such as CoreCivic or Management  
2 & Training Corporation, or other contract staff have tested positive for the virus.

3 64. In institutional settings such as immigration detention centers, people  
4 are at grave risk of contracting COVID-19, putting all detainees —and especially  
5 those with underlying health conditions and in high-risk age groups —at risk of  
6 serious illness or death.

7 65. The coronavirus is significantly more likely to spread in detention  
8 facilities. In the community at large, researchers estimate that one person with  
9 COVID-19 will infect about two and a half people without social distancing, and  
10 about one person with strong social distancing and quarantining. By contrast, in  
11 confined settings like prisons and cruise ships, one person with COVID-19 will infect  
12 an estimated 11 people, who in turn will infect up to 11 other people each.

13 66. Because of how detention centers necessarily operate, it is almost  
14 inevitable that even more facilities will experience an outbreak of COVID-19 beyond  
15 those that already have, and that those with existing outbreaks will be unable to  
16 effectively contain the spread.

17 67. In order for detention centers to operate, numerous staff, contractors,  
18 and vendors also must circulate through the facilities daily. The movement of these  
19 individuals into and out of detention centers creates a potential chain of transmission  
20 between the community at large and the detained population. An outbreak in a facility  
21 can easily lead to reintroduction of the virus outside, as workers come and go for  
22 each shift. Continued operation of detention centers under conditions and population  
23 levels that increase the risk of spread thus amplifies, rather than reduces, the risk of  
24 transmission to the surrounding community.

25 68. The social distancing measures recommended by public health  
26 authorities cannot be implemented in carceral settings, where detained people must  
27 share close quarters at almost all times. And given the number of people sharing the  
28

1 same space, keeping surfaces in detention centers adequately sanitized to prevent  
2 transmission of COVID-19 is not realistic.

3 69. Immigration detention facilities have a high risk of infectious spread  
4 because of crowding, the proportion of vulnerable people detained, and often scant  
5 medical care resources. Immigration detention facilities generally lack adequate  
6 medical infrastructure to address the spread of infectious disease and treatment of  
7 people most vulnerable to illness in detention.

8 70. Because COVID-19 is easily spread between people in close proximity,  
9 any outbreak is nearly impossible for detention centers to control once the COVID-  
10 19 virus is introduced.

11 **III. ICE's Protocols Are Insufficient on Their Face to Prevent Widespread**  
12 **Transmission of COVID-19 in Custody, and Defendants Fail to Adhere to**  
13 **Even Those Deficient Guidelines at Otay Mesa and Imperial**

14 71. ICE detainees are at significant risk of contracting COVID-19 even if  
15 ICE were to fully abide by its own COVID-19 protocols, because they fall woefully  
16 short of what public health experts say is necessary to protect individuals in detention  
17 settings.

18 72. For example, ICE guidance to date only requires compliance with many  
19 of its measures to the extent "practicable" or "whenever possible," rather than  
20 mandatory directives. This malleability in the guidance allows facilities to claim  
21 compliance with guidance without actually implementing crucial changes. In fact, as  
22 explained below, Otay Mesa and Imperial have failed to adopt many of the anemic  
23 measures listed in the guidance.

24 73. Glaringly, the guidance does not mandate social distancing, but merely  
25 recommends it. It also does not address how social distancing can be achieved in  
26 dense housing units, where detainees must share sleeping quarters, communal spaces,  
27 and bathrooms and are surrounded by dozens of others day and night.

28 74. The ICE guidance fails to account for presymptomatic or  
asymptomatic transmission, which especially impacts high-risk detainees. It does not

1 establish special protections for high-risk detainees until they are already  
2 symptomatic, by which point it is too late to meaningfully mitigate the risk of serious  
3 illness and death or the risk of transmission to others.

4 75. The screening measures noted in the ICE guidance—temperature  
5 checks and verbal screening—are insufficient to detect cases of COVID-19 before  
6 they enter detention facilities. Many infected with COVID-19 are capable of  
7 spreading the disease even when they are presymptomatic or asymptomatic. Because  
8 COVID-19 appears to be so widespread, ICE would need to quarantine and monitor  
9 *every* person arriving at the detention center for 14 days or perform daily COVID-19  
10 tests, which it has not demonstrated a willingness or ability to do. Even if ICE cohorts  
11 groups of incoming detainees before introducing them to the general population, this  
12 practice would facilitate transmission between new arrivals, which increases risk of  
13 spread throughout the facility, to other detainees, to staff, and, as a result, to the  
14 surrounding community.

15 76. ICE’s abject failure to protect those it confines from COVID-19 is best  
16 illustrated by what has already occurred at Otay Mesa. For weeks, detainees have  
17 sounded the alarm about the impossibility of practicing social distancing, facility  
18 staff’s refusal to provide personal protective equipment, adequate cleaning supplies  
19 and hygiene products, and the presence of fellow detainees with symptoms.

20 77. Detainees, including those in housing units where individuals had tested  
21 positive, were not provided protective facemasks masks until as late as April 10,  
22 2020, weeks after multiple COVID-19 cases had already been confirmed in the  
23 detention center.

24 78. When masks were finally offered, Defendants initially conditioned their  
25 distribution on detainees signing liability waivers.

26 79. Dozens of detainees and staff are now infected.

27 80. At the time of filing this Complaint, detainees at Otay Mesa still face  
28 enormous risk of contracting COVID-19 as a result of Defendants’ continued failure

1 to adequately respond to the crisis, including by failing to reduce the facility's  
2 population to allow social distancing. Some housing units still contain about 90 to  
3 100 people who must sleep in cells containing up to eight detainees each, in which  
4 bunk beds are no more than four or five feet away from one another, making adequate  
5 distancing impossible. With so many people housed in close quarters, it is impossible  
6 for detainees to maintain their distance in their cells or common areas. When a  
7 detainee has been removed to medical isolation because of COVID-19, their  
8 cellmates are required to continue sleeping in the same room, despite the likelihood  
9 of surface contamination.

10 81. In Otay Mesa segregation cells, where people can be sent for their  
11 protection or for discipline, two people are usually confined per cell, and it is  
12 impossible to remain six feet apart.

13 82. Conditions in Imperial also make it nearly impossible for detainees to  
14 practice social distancing. Detained individuals usually sleep in open dormitory style  
15 units containing 60 bunks, with partially walled-off cubicle-type cells each  
16 containing two bunk beds about three feet apart from each other. Even during this  
17 crisis, some pods contain about 50 people, and detainees continue to sleep four to a  
18 cell. Detainees house in different units come into frequent contact with one another  
19 as facility staff shuffle living spaces around, purportedly due to painting in some  
20 units. On information and belief, rather than work toward reducing the population,  
21 Imperial continues to receive new detainees.

22 83. In both detention centers, food preparation and service is communal,  
23 with little opportunity for surface disinfection. Though food service now takes place  
24 within housing units at Otay Mesa in the wake of the COVID-19 outbreak, officers  
25 still require detainees to line up closely behind one another to receive their meals and  
26 permit them to eat at communal tables, where there is not space to maintain a six-  
27 foot distance. As recently as April 17, detainees from different units continued to  
28 work together in close quarters in the kitchen with no more protection than the

1 standard paper masks and gloves they have always been provided when preparing  
2 food. At Imperial, the entire housing unit lines up to receive their meals, and they  
3 must sit close together to eat their food at full tables.

4 84. Outside of housing units, detainees are often clustered together in  
5 hallways, where they are made to wait in line as staff move them between different  
6 areas in the facility.

7 85. Detainees who work for about \$1 per day often must do so outside of  
8 their housing units and without proper protective gear, exposing them to other people  
9 directly or through surfaces they have touched.

10 86. Staff arrive and leave on a shift basis, and there is limited ability to  
11 adequately screen staff, contractors, and visitors for new, asymptomatic infection.

12 87. Announcements about COVID-19 are only given in English. Detainees  
13 must translate for each other into Spanish. Detainees who do not speak English or  
14 Spanish do not receive consistent translation of these announcements and must rely  
15 on other detainees who are bilingual in English and the second language to translate,  
16 which is not always possible. The announcements lack meaningful information and  
17 have included advice to observe social distancing without instruction on how to do so in  
18 a facility where that is physically impossible at current population levels. To learn  
19 crucial information about the virus, detainees must gather in close proximity around  
20 televisions in the common area of their housing unit.

21 88. People detained at the Otay Mesa and Imperial endure inadequate  
22 hygiene and sanitation which raises the risk of infection and an outbreak.

23 89. Toilets, sinks, and showers are shared among dozens of detainees,  
24 without disinfection between each use. Detainees are not consistently given gloves,  
25 even when they are required to clean the unit with used rags. Some detainees report  
26 that they are not given soap or cleaning solution, only water, with which they are  
27 supposed to clean. Facility staff do not clean shared objects in common areas like  
28 toilets or telephones.

1           90. Neither facility provides sufficient access to soap. At Otay Mesa,  
2 detainees have resorted to buying soap from the commissary because facility staff  
3 are inconsistent about refilling soap, sometimes not doing so for multiple days.  
4 Whether a detainee can easily receive a small bar of replacement soap once they run  
5 out is largely contingent on which guard is on duty. Detainees who do not have  
6 money in their commissary accounts, or who are forced to choose between necessities  
7 like food and hygiene items, go without soap when none is available in the  
8 bathrooms, putting themselves and others at risk.

9           91. Detainees at Imperial have had access to liquid soap as of April 13, but  
10 it frequently runs out and is not refilled promptly, sometimes not for an entire day.  
11 Detainees must pay for bar soap with their commissary funds and do not have access  
12 to hand sanitizer.

13           92. At Otay Mesa, although facility staff have purportedly stopped requiring  
14 detainees to sign forms before they could receive masks, detainees still do not have  
15 access to sufficient personal protective equipment. Detainees in one unit were given  
16 one disposable surgical-style mask each on April 10, and as of April 18, had not been  
17 provided replacement masks. Plaintiff Rodriguez Alcantara's mask is dirty from  
18 constant use and its ties have broken off.

19           93. Imperial detainees received a single-use mask on April 9 or 10, but were  
20 told they would only receive new ones every five days. As of April 18, Plaintiff  
21 Calderon Lopez had not received a replacement mask. Detainees at Imperial have not  
22 generally been given other personal protective equipment, such as gloves or eye  
23 protection. Not all facility staff wear masks, even when coming into close contact  
24 with one another and detainees.

25           94. Detainees at Imperial reported that as recently as April 13, new people  
26 were brought into the facility and placed in the general population unit after only 7  
27 days of quarantine. Because symptoms can take as long as 14 days to manifest, this  
28

1 practice will not prevent new arrivals from introducing COVID-19 to the existing  
2 population.

3 95. Otay Mesa detainees must share the same space with one another during  
4 their video visitation with attorneys, and the handsets used to make video calls are  
5 not cleaned between each use. Telephones at both facilities are shared, often  
6 positioned close to one another, and not sanitized between each use.

7 96. At Imperial, detainees are grouped together as they await their non-  
8 contact legal visits or asylum interviews. The rooms used for these interactions lack  
9 hand sanitizer.

10 97. Currently, nine housing units at Otay Mesa are “cohorted,” or locked  
11 down, due to confirmed cases of COVID-19 connected to the units. This means that  
12 detainees are not allowed to leave their units. But the hundred-plus detainees within  
13 the units—some of whom were likely exposed to the virus through the detainee who  
14 tested positive—are still in frequent close contact. They must congregate during  
15 mealtime, share bathrooms, and sleep within feet of one another. This practice  
16 facilitates transmission of the disease to many individuals in the unit, as non-infected  
17 detainees are forced to live alongside others who may have the virus but have not yet  
18 been confirmed, including asymptomatic carriers. Within “cohorted” units, COVID-  
19 19 appears to be spreading even between cellmates who try their best to social  
20 distance and clean their space. Defendants have trapped the detainees inside together  
21 without the ability to protect themselves.

22 98. Complaints from both Otay Mesa and Imperial reflect widespread  
23 inadequacies in the provision of medical care to people in custody, even when there  
24 is no ongoing public health emergency. As recently as 2019, mumps spread  
25 throughout Otay Mesa, making it the epicenter of the disease’s resurgence in San  
26 Diego county. Prior to the pandemic, people detained at Otay Mesa have submitted  
27 complaints alleging extreme neglect by medical staff, including one case where a  
28 detained person was given a potentially harmful, “antiquated” HIV treatment.



1           99. People detained at Imperial have been deprived of necessary  
2 medication and refused treatment for serious health complaints.

3           100. In both facilities, detainees with limited English ability or low literacy  
4 struggle with the process of placing requests for medical attention. Even when  
5 detainees are able to submit a request, they often experience significant delays in  
6 obtaining treatment.

7           101. People exhibiting known symptoms of COVID-19, including fever, dry  
8 cough, headaches, or shortness of breath, have to wait for medical attention, and may  
9 have to submit multiple requests before they are seen. Until they are seen by the  
10 medical unit, those who report COVID-19 symptoms are not always isolated or given  
11 protective equipment that could help prevent inadvertent transmission to others. One  
12 detainee at Otay Mesa was returned to the cell he shares with seven others after  
13 finally seeing a nurse for his symptoms. He was not transferred to the medical unit  
14 until several more days of a worsening fever. At Imperial, a detainee had a fever for  
15 a week before she was removed from her housing unit. One detainee was told to take  
16 a packet of salt after reporting symptoms to facility staff.

17           102. One COVID-19-positive detainee at Otay Mesa had difficulty getting  
18 appropriate care, even after being placed in isolation. Though he has a fever,  
19 shortness of breath, and can barely stand up, his requests for blankets and medicine  
20 have been either ignored or met with the instruction to fill out a request form, which  
21 he would have to obtain from a different officer. Last week, he and the other detainee  
22 in the isolation room were told they must clean the room every 30 minutes, but they  
23 are too sick to clean. Facility staff have not made arrangements to have someone else  
24 clean the room, and the detainee reports there is vomit and phlegm everywhere.  
25 Flagging down a nurse or other staff requires them to stand and go to the door of the  
26 isolation room. At one point, the detainee's symptoms became so serious that the  
27 other detainee in the isolation room banged on the door to request medical assistance,  
28

1 but was unable to catch anyone's attention for several hours. The detainee was then  
2 taken to the hospital but returned to Otay Mesa the same day.

3 103. The most recent ICE COVID-19 response protocols do not provide  
4 guidance for how facilities should plan their surging capacity needs as more detainees  
5 require care and fewer staff are available due to potential COVID-19 infection. They  
6 do not outline what qualifications or training medical staff must have to respond to  
7 COVID-19 cases. Several medical staff members at Otay Mesa have now been  
8 confirmed to have contracted COVID-19.

9 104. Otay Mesa and Imperial lack the medical infrastructure needed to handle  
10 an outbreak of COVID-19. As recently as 2017, Otay Mesa had only two full-time  
11 staff physicians for the entire population of over a thousand ICE and U.S. Marshals  
12 Service detainees. The medical units, each of which only have a few rooms, will be  
13 incapable of handling the number of people who need to be isolated and treated.  
14 Especially as the number of infections rise, ICE will not be able to follow even its  
15 own insufficient protocols for isolating confirmed and suspected cases, let alone  
16 CDC guidance.

17 105. The ICE guidance also does not specifically identify when testing is  
18 required. Though it references testing in accordance with CDC guidelines, the CDC  
19 guidelines prioritize testing high risk individuals. But testing is not widely available  
20 at Otay Mesa or Imperial, even for medically vulnerable individuals and those at the  
21 highest risk of exposure to COVID-19.

22 106. At Otay Mesa, three out of six detainees in a single cell were transferred  
23 to the medical department for severe COVID-19 symptoms, but the remaining three  
24 detainees were not provided COVID-19 tests. Detainees have been removed from  
25 housing units for COVID-19 symptoms and returned days later. Fellow detainees do  
26 not know whether they have been tested. Neither Plaintiff Rodriguez Alcantara nor  
27 Plaintiff Calderon Lopez, both high risk according to CDC guidelines, have been  
28 tested.

1 **IV. Release of Detainees, Prioritizing Those Most Vulnerable to Severe Harm**  
2 **as a Result of COVID-19, Will Reduce the Risk of Infection to Detainees**  
3 **and the Public.**

4 107. Risk mitigation is the only known strategy that can protect detainees  
5 from COVID-19, and ICE has demonstrated that it is both unwilling and unable to  
6 implement meaningful risk mitigation measures. Accordingly, the requirements of  
7 public health as applied to immigration detention make it necessary that detention  
8 centers immediately reduce their populations, beginning with the release of detainees  
9 most vulnerable to severe cases of COVID-19.

10 108. Social distancing and proper hygiene are infeasible in institutionalized  
11 settings such as immigration detention centers. Yet they are crucial measures for  
12 protecting vulnerable people from COVID-19.

13 109. Reducing the overall number of people in detention centers is necessary  
14 in order for facilities to implement social distancing for those still detained and lessen  
15 the burden of protecting the health of detainees and staff.

16 110. Prioritizing the release of individuals at high risk of severe disease is a  
17 crucial risk mitigation strategy. At minimum, high-risk people must be released from  
18 detention given the lack of a viable vaccine or effective treatment. Other detainees  
19 should also be considered for release to allow the detention centers to reduce their  
20 populations to a level that will allow for social distancing.

21 111. An outbreak would lead to large numbers of ill detainees and detention  
22 center staff, putting further strain on the community's health system. Courts agree  
23 that release of high-risk detainees is "absolutely in the public's best interest."

24 *Castillo*, 2020 WL 1502864, at \*6.

25 112. Releasing individuals at highest risk who can then self-isolate provides  
26 a significantly better likelihood of preventing infection, disease spread and death,  
27 both in the facility and in the community at large. For their personal health, the health  
28 of detention staff members, and their families and the surrounding community, it is

1 unequivocally beneficial to release detainees to the community where they can  
2 practice social distancing as the rest of the population is doing.

3 113. Detention centers are integral components of the public health systems  
4 in the communities in which they are located. If many contract COVID-19 in such a  
5 facility they will require hospitalization in the community, threatening to overwhelm  
6 the community's resources. This problem is particularly acute in Calexico,  
7 California, where Imperial is located, and the area of South San Diego along the U.S.-  
8 Mexico border where Otay Mesa is located. Even in ordinary times, parts of both  
9 communities have been designated as medically underserved by the federal  
10 government. In the event of an outbreak of COVID-19 in either Otay Mesa or  
11 Imperial, the surrounding communities would likely be unable to provide adequate  
12 medical treatment to infected persons. Transmission of COVID-19 may skyrocket in  
13 the local community and among local healthcare workers if an outbreak occurred in  
14 a nearby detention center.

15 114. Furthermore, a surge of hospitalizations from Otay Mesa or Imperial  
16 due to Defendants' failure to reduce their detention populations will divert local  
17 medical resources in San Diego and Imperial counties at a time when those  
18 communities are doing everything they can to "flatten the curve" to avoid such  
19 pressures on those systems. Overwhelming local public health systems will prevent  
20 the facilities from providing treatment to all who require it, including those in local  
21 communities whose infection did not originate inside the detention centers,  
22 increasing the likelihood that individuals with serious cases will die.

23 115. Defendants have not provided the public with timely, transparent, or up-  
24 to-date information regarding the COVID-19 outbreak in Otay Mesa.

25 **V. Defendants' Practices, Including their Failure to Reduce the Populations**  
26 **at Otay Mesa and Imperial, Place Plaintiffs and the Class Members they**  
27 **Seek to Represent at Unacceptably High Risk of Contracting COVID-19.**  
28

1           116. Plaintiffs and all other civil immigration detainees at Otay Mesa and  
2 Imperial are at an unacceptably high risk of contracting the potentially lethal COVID-  
3 19 virus.

4           117. Plaintiff Rodriguez Alcantara and Plaintiff Calderon Lopez, as  
5 medically vulnerable individuals, are at particular risk of serious disease or death if  
6 they contract the virus.

7           118. Plaintiff Rodriguez Alcantara has HIV. The HIV medication he receives  
8 at Otay Mesa causes him to feel weak, nauseous, and tired. Mr. Rodriguez Alcantara  
9 does not know if his HIV has been appropriately controlled while in detention,  
10 because medical staff at Otay Mesa have failed to provide him with information about  
11 his CD4 (T-cell) count or viral load. He is currently in a locked down “cohorted” unit  
12 at Otay Mesa with over a hundred other individuals, placing him at high risk of  
13 coming into contact with someone infected. Physicians and public health experts  
14 consider patients with HIV to be at high risk of contracting COVID-19 and  
15 developing severe illness. Because of the inconsistencies in HIV healthcare at ICE  
16 detention facilities, Mr. Rodriguez Alcantara is at increased risk of infection and  
17 severe disease from COVID-19.

18           119. Plaintiff Calderon Lopez has bronchial asthma, a condition she  
19 developed during pregnancy when amniotic fluid leaked into her lungs. She required  
20 immunizations, treatments, and throat sprays for years after her pregnancy, and now  
21 controls her asthma with an inhaler. Ms. Calderon Lopez’s asthma flares up when  
22 she is sick, causing her to feel as if she cannot breathe. She has struggled to obtain  
23 treatment while in detention. A woman who had a fever for seven days was recently  
24 removed from Ms. Calderon Lopez’s housing unit, but the unit continues to operate  
25 without social distancing or sufficient hygiene measures. Based on Ms. Calderon  
26 Lopez’s description of symptoms, her asthma appears to be moderate-severe. Ms.  
27 Calderon Lopez’s asthma places her at risk for severe disease or death, were she to  
28 develop COVID-19.

1           120. On information and belief, dozens or more other detainees at both Otay  
2 Mesa and Imperial have risk factors that make them medically vulnerable to severe  
3 disease and death if they contract COVID-19. These include detainees age 45 and  
4 over and/or with high-risk medical conditions.

5           121. Plaintiff Osorio Reyna is confined at Otay Mesa in a housing unit known  
6 as J pod, alongside approximately 100 individuals, where they eat, sleep, and spend  
7 much of their time in close quarters. J pod is currently cohorted. Mr. Osorio Reyna  
8 lives in a cell with seven other detainees and he cannot keep six feet apart from them.  
9 Detainees in his unit went without soap for the majority of the day last Friday, April  
10 17, and then were eventually given only five bars to share amongst 100 people. As  
11 of April 18, Mr. Osorio Reyna had been using the same disposable face mask for  
12 over a week.

13           122. Plaintiff Doe is confined at Imperial in pod F, a housing unit with about  
14 46 detainees. She shares a cell with three other people and is in constant contact with  
15 others in her unit. Her conditions of confinement render it impossible for her to stay  
16 six feet apart from other people. She does not have consistent access to soap or hand  
17 sanitizer. Ms. Doe enters other parts of the detention center to work, cleaning rooms  
18 in the medical unit, exposing her to areas frequented by people from all over the  
19 detention center.

20           123. The conditions at Otay Mesa and Imperial place all detainees in danger  
21 of COVID-19 infection.

22           124. Otay Mesa and Imperial each currently confine hundreds of civil  
23 immigration detainees. All are subject to the same conditions at Otay Mesa and  
24 Imperial as their respective class representatives. Because it is impossible for  
25 detainees to socially distance and maintain adequate hygiene, all class members are  
26 at high risk of contracting COVID-19. Without reducing the number of detainees in  
27 Otay Mesa and Imperial to a level that allows for social distancing and strict  
28

1 adherence to guidance from public health experts, even more detainees will become  
2 infected with COVID-19.

3 **VI. ICE Has the Authority to Release Detained People in Its Custody.**

4  
5 125. It is well within ICE’s authority to protect the safety and well-being of  
6 individuals in its custody by releasing people to remedy the conditions of  
7 confinement in Otay Mesa and Imperial that put Plaintiffs and others detained there  
8 at an unreasonably high risk of contracting COVID-19.

9 126. ICE has routinely exercised its discretion to release particularly  
10 vulnerable detainees, including individuals with serious medical conditions from  
11 detention under its humanitarian parole authority.

12 127. ICE’s discretion applies regardless of the statutory basis for an  
13 individual’s detention.

14 128. ICE has a range of highly effective tools at its disposal to ensure that  
15 people report for hearings and appointments, including the Intensive Supervision  
16 Appearance Program (“ISAP”). ISAP uses electronic ankle monitors, biometric voice  
17 recognition software, home visits, employer verification, and in-person reporting to  
18 supervise participants.

19 **LEGAL FRAMEWORK**

20 **I. Plaintiffs’ Continued Detention Violates Their Constitutional Rights.**

21 129. Defendants’ continued detention of Plaintiffs and members of the  
22 proposed classes under current conditions and population levels puts them at a high  
23 risk of exposure to a highly contagious disease resulting in serious illness, severe  
24 harm, or death, in violation of their due process rights under the Fifth Amendment.

25 130. Immigration detainees, with or without prior criminal convictions, are  
26 civil detainees whose constitutional protections while in custody derive from the  
27 Fifth Amendment due process clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

28

1           131. Civil detainees, including immigration detainees in Otay Mesa and  
2 Imperial, are entitled to greater rights than people in pretrial criminal custody or  
3 people serving criminal sentences. *Jones v. Blanas*, 393 F.3d 918, 933–34 (9th Cir.  
4 2004), *cert. denied*, 546 U.S. 820 (2005); *see also King v. Cty. of Los Angeles*, 885  
5 F.3d 548, 557 (9th Cir. 2018) (finding presumption of punitive, and thus  
6 unconstitutional, treatment where conditions of confinement for civil detainees are  
7 similar to those faced by pre-trial criminal detainees). The constitutional protections  
8 to which civil immigration detainees are entitled are more comprehensive than those  
9 afforded to imprisoned people.

10           132. “When the State takes a person into its custody and holds him there  
11 against his will, the Constitution imposes upon it a corresponding duty to assume  
12 some responsibility for his safety and general well-being.” *DeShaney v. Winnebago*  
13 *Cty. Dept. of Soc. Servs.*, 489 U.S. 189, 199–200 (1989). As a result, the government  
14 must provide those in its custody with “food, clothing, shelter, medical care, and  
15 reasonable safety.” *Id.* at 200.

16           133. Conditions that pose an unreasonable risk of future harm violate the  
17 Eighth Amendment’s prohibition against cruel and unusual punishment, a standard  
18 less strict than the due process standard protecting civil immigration detainees, even  
19 if that harm has not yet come to pass and may not ultimately affect all detainees.  
20 *Parsons v. Ryan*, 754 F.3d 657, 678 (9th Cir. 2014) (“Although a presently existing  
21 risk may ultimately result in different future harm for different inmates—ranging  
22 from no harm at all to death—every inmate suffers exactly the same constitutional  
23 injury when he is exposed to a single statewide [corrections] policy or practice that  
24 creates a substantial risk of serious harm.”).

25           134. The Eighth Amendment requires that “inmates be furnished with the  
26 basic human needs, one of which is ‘reasonable safety.’” *Helling v. McKinney*, 509  
27 U.S. 25, 33 (1993) (quoting *DeShaney*, 489 U.S. at 200).

28



1           135. The Supreme Court has explicitly recognized that the risk of contracting  
2 a communicable disease may constitute such an “unsafe, life-threatening condition”  
3 that threatens “reasonable safety.” *Id.*

4           136. While the Eighth Amendment prohibits punishment that is “cruel and  
5 unusual,” the Due Process Clause of the Fifth Amendment prohibits *any punishment*  
6 *at all.* *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979); *see also Vazquez v. Cty. of*  
7 *Kern*, 949 F.3d 1153, 1163–64 (9th Cir. 2020). Conditions that would violate the  
8 Eighth Amendment rights of an individual serving a criminal sentence are more than  
9 enough to violate the Fifth Amendment due process rights of a civil detainee. Unlike  
10 an Eighth Amendment claim, there is no requirement for civil detainees to prove  
11 “deliberate indifference” of government officials in order to establish a due process  
12 violation.

13           137. Conditions of confinement for civil detainees violate the Fifth  
14 Amendment when they do not “bear some reasonable relation to the purpose for  
15 which the individual is committed.” *Jones*, 393 F.3d at 931. This standard is met  
16 when the conditions create an unreasonable risk to detainees’ safety and health.

17           138. The conditions of Plaintiffs’ and class members’ confinement under the  
18 current circumstances and as described in this Complaint violate their due process  
19 rights.

20           139. Defendants cannot justify the continued confinement of Plaintiffs and  
21 members of the class under current conditions given the extraordinary risks to their  
22 health.

23           140. In addition, Defendants have even less justification for the continued  
24 detention of anyone at Otay Mesa whose immigration court cases have been put on  
25 hold in light of the court closure. *Cf. Zadvydas*, 533 U.S. at 690 (“[W]here detention’s  
26 goal is no longer practically attainable, detention no longer bears a reasonable  
27 relation to the purpose for which the individual was committed.”) (internal quotation  
28 marks, alterations, and citation omitted).

1           141. General deterrence is not a valid justification for civil immigration  
2 detention. *See R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188-89 (D.D.C. 2015)  
3 (rejecting argument that “one particular individual may be civilly detained for the  
4 sake of sending a message of deterrence” to other individuals “who may be  
5 considering immigration”); *cf. Kansas v. Crane*, 534 U.S. 407, 412 (2002) (civil  
6 detention may not “become a ‘mechanism for retribution or *general deterrence*’—  
7 functions properly those of criminal law, not civil commitment”). Just as ICE could  
8 not summarily execute immigrants to deter immigration, ICE cannot place them in  
9 detention centers where an incurable, potentially lethal virus is running rampant just  
10 to send a message about its enforcement priorities.

11           142. As this public health crisis escalates, courts throughout the country have  
12 already recognized that continued confinement, particularly of vulnerable  
13 populations, in the face of COVID-19 violates due process. *See e.g., Castillo*, 2020  
14 WL 1502864, at \*5 (“Under the Due Process Clause, a civil detainee cannot be  
15 subject to the current conditions of confinement at Adelanto.”); *Basank*, 2020 WL  
16 1481503 at \*5 (“Confining vulnerable individuals such as Petitioners without  
17 enforcement of appropriate social distancing and without specific measures to protect  
18 their delicate health ‘pose[s] an unreasonable risk of serious damage to [their] future  
19 health,’ and demonstrates deliberate indifference.”) (quoting *Phelps v. Kapnolas*, 308  
20 F.3d 180, 185 (2d Cir. 2002)); *Thakker*, 2020 WL 1671563 at \*8 (“Physical detention  
21 itself will place a burden on community healthcare systems and will needlessly  
22 endanger Petitioners, prison employees, and the greater community. We cannot see  
23 the rational basis of such a risk.”); *United States v. Martin*, No. CR PWG-19-140-13,  
24 2020 WL 1274857, at \*2 (D. Md. Mar. 17, 2020) (“[T]he Due Process Clauses of the  
25 Fifth or Fourteenth Amendments, for federal and state pretrial detainees,  
26 respectively, may well be implicated if defendants awaiting trial can demonstrate that  
27 they are being subjected to conditions of confinement that would subject them to  
28 exposure to serious (potentially fatal, if the detainee is elderly and with underlying

1 medical complications) illness.”); *Malam*, No. 20-cv-10829, ECF No. 33, at 25 (“To  
2 order Petitioner’s continued civil detention would be to play Russian roulette with  
3 her rights and with her life.”).

4 **II. This Court Has the Authority to Order Release of Medically Vulnerable**  
5 **Detainees, a Reduction in the Detainee Population, and Compliance with**  
6 **Prevailing Public Health Standards, and Such Relief is Appropriate Here.**

7 143. The release of a sufficient number of Otay Mesa and Imperial detainees  
8 to permit social distancing and hygiene measures for those who remain in detention  
9 is the only means to ensure compliance with the Constitution’s prohibition against  
10 punitive or unreasonable civil detention.

11 144. The Court’s authority to order Plaintiffs’ release to ensure their  
12 constitutional rights are protected is well-established. “Federal courts possess  
13 whatever powers are necessary to remedy constitutional violations because they are  
14 charged with protecting these rights.” *Stone v. City & Cty. of San Francisco*, 968  
15 F.2d 850, 861 (9th Cir. 1992). As a result, “[w]hen necessary to ensure compliance  
16 with a constitutional mandate, courts may enter orders placing limits on a prison’s  
17 population.” *Brown v. Plata*, 563 U.S. 493, 511 (2011).

18 145. Courts have regularly exercised this authority to remedy constitutional  
19 violations caused by overcrowding. *Duran v. Elrod*, 713 F.2d 292, 297–98 (7th Cir.  
20 1983), *cert. denied*, 465 U.S. 1108 (1984) (concluding that court did not exceed its  
21 authority in directing release of low-bond pretrial detainees as necessary to reach a  
22 population cap); *Mobile Cty. Jail Inmates v. Purvis*, 581 F. Supp. 222, 224–25 (S.D.  
23 Ala. 1984) (finding district court properly exercised remedial powers to order a  
24 prison’s population reduced to alleviate unconstitutional conditions, and noting other  
25 cases); *Inmates of the Allegheny Cty. Jail v. Wecht*, 565 F. Supp. 1278, 1297 (W.D.  
26 Pa. 1983) (order to reduce overcrowding “is within our power to correct the  
27 constitutional violations”).

28 146. When conditions of confinement in an immigration detention facility  
lead to uniformly unsafe conditions that rise to the level of a constitutional violation,

1 the only available remedy is to reduce levels of detention unless and until conditions  
2 can be brought in line with constitutional standards. For example, in a recent case  
3 challenging conditions of confinement in Border Patrol detention facilities along the  
4 Arizona border, a District Court ordered that the Constitution prohibited Border  
5 Patrol from continuing to detain any person to whom it did not provide a bed, shower,  
6 nutritious food, and a screening by a medical professional within 48 hours of book-  
7 in. *Unknown Parties v. Nielsen*, CV-15-00250-TUC-DCB, 2020 WL 813774, at \*1  
8 (D. Az. Feb. 19, 2020).

9 147. The same principle applies here. As the constitutional principles and  
10 public health requirements mandate, releasing detainees from Otay Mesa and  
11 Imperial is the only viable remedy to ensure their safety from the threat to their health  
12 that COVID-19 poses.

13 148. Additionally, social distancing and sanitation measures compliant with  
14 public health requirements must be fully implemented to protect any individuals that  
15 remain in detention. In the face of this great threat, these measures are Plaintiffs' and  
16 class members' only defense against COVID-19. Defendants' actions make such  
17 protective measures exceedingly difficult, if not impossible, in the environment of an  
18 immigration detention center, where detainees share toilets, sinks, and showers, eat  
19 in communal spaces, and are in close contact with the many other detainees and  
20 officers around them.

21 149. Defendants are subjecting Plaintiffs to unreasonable harm from  
22 continued detention. Release is the only effective remedy.

### 23 **CLASS ALLEGATIONS**

24 150. Plaintiffs bring this action pursuant to Rule 23(b)(2) of the Federal Rules  
25 of Civil Procedures on behalf of themselves and a class of similarly situated  
26 individuals.

27  
28

1           151. Plaintiffs seek to represent two classes of civil immigration detainees,  
2 one for those incarcerated at Otay Mesa (“Otay Mesa Class”) and another for those  
3 incarcerated at Imperial (“Imperial Class”).

4           152. The proposed Otay Mesa Class is defined as “All civil immigration  
5 detainees incarcerated at the Otay Mesa Detention Center.” Plaintiff Rodriguez  
6 Alcantara and Plaintiff Osorio Reyna seek to represent this class.

7           153. The proposed Imperial Class is defined as “All civil immigration  
8 detainees incarcerated at the Imperial Regional Detention Facility.” Plaintiff  
9 Calderon Lopez and Plaintiff Doe seek to represent this class.

10           154. Within each class, Plaintiffs also seek to represent a subclass of persons  
11 at each detention center who, by reason of age or medical condition, are particularly  
12 vulnerable to serious illness or death if they were to contract COVID-19 (“Otay Mesa  
13 Medically Vulnerable Subclass” and “Imperial Medically Vulnerable Subclass”).

14           155. The proposed Otay Mesa Medically Vulnerable Subclass is defined as  
15 “All civil immigration detainees incarcerated at the Otay Mesa Detention Center who  
16 are age 45 years or older or who have medical conditions that place them at  
17 heightened risk of severe illness or death from COVID-19”<sup>9</sup> Plaintiff Rodriguez  
18 Alcantara seeks to represent this subclass.

19           156. The proposed Imperial Medically Vulnerable Subclass is defined as “All  
20 civil immigration detainees incarcerated at the Imperial Regional Detention Facility  
21 who are age 45 years or older or who have medical conditions that place them at  
22 heightened risk of severe illness or death from COVID-19”<sup>10</sup> Plaintiff Calderon  
23 Lopez seeks to represent this subclass.

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26 <sup>9</sup> Qualifying medical conditions for class membership will fall within standards set  
27 by the CDC. *See, e.g., People Who Are at Higher Risk for Severe Illness*, Centers  
28 for Disease Control and Prevention, [https://www.cdc.gov/coronavirus/2019-  
ncov/specific-groups/people-at-higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html)

<sup>10</sup> *Id.*

1           157. The proposed classes and subclasses satisfy the requirements of Federal  
2 Rule of Civil Procedure 23(a)(1) because they are so numerous that joinder of all  
3 members is impracticable. There are currently several hundred detainees at each Otay  
4 Mesa and Imperial. Based on the prevalence of CDC-identified risk factors in the  
5 U.S. adult population overall, well over 40 of the hundreds of detainees at each  
6 facility likely are medically vulnerable or over age 45.

7           158. Joinder is also impracticable because class members are detained,  
8 largely unrepresented, and highly unlikely to find representation, particularly given  
9 reduced legal visitation at both Otay Mesa and Imperial, limiting their ability to bring  
10 individual litigation. Most do not speak English and many lack sufficient resources,  
11 financial or otherwise, to bring their own cases.

12           159. The proposed classes meet the commonality requirements of Federal  
13 Rule of Civil Procedure 23(a)(2). Whether Defendants' practices and the conditions  
14 to which they subject class members at Otay Mesa and Imperial, including  
15 maintaining populations so high that social distancing is impossible, comply with the  
16 Fifth Amendment presents questions of fact and law common to the entire class at  
17 each facility. The proposed subclasses also present common questions of fact and  
18 law related to whether conditions at each detention center comply with the Fifth  
19 Amendment in light of the subclass members' heightened risk of developing severe  
20 cases of COVID-19.

21           160. The proposed classes meet the typicality requirements of Federal Rule  
22 of Civil Procedure 23(a)(3) because Plaintiffs' claims are typical of the claims of the  
23 class at each detention center. Plaintiffs Rodriguez Alcantara and Osorio Reyna are  
24 currently detained at Otay Mesa and are exposed to the same conditions of detention  
25 and population numbers also experienced by all others detained there. Plaintiffs  
26 Calderon Lopez and Doe are currently detained at Imperial and are exposed to the  
27 same conditions of detention and population numbers also experienced by all others  
28 detained there. Plaintiff Rodriguez Alcantara is detained at Otay Mesa and, because

1 of his HIV, is medically vulnerable to severe illness or death due to COVID-19. He  
2 has a place to go upon release where he can self-quarantine and practice social  
3 distancing. His claim is thus typical of the Otay Mesa Medically Vulnerable  
4 Subclass. Plaintiff Calderon Lopez is detained at Imperial and, because of her  
5 moderate-severe intermittent asthma, is medically vulnerable to severe illness or  
6 death due to COVID-19. She has a place to go upon release where she can self-  
7 quarantine and practice social distancing. Her claim is thus typical of the Imperial  
8 Medically Vulnerable Subclass.

9 161. The proposed classes meet the adequacy requirements of Federal Rule  
10 of Civil Procedure 23(a)(4). Named Plaintiffs have the requisite personal interest in  
11 the outcome of this action and have no interests adverse to the interests of the  
12 proposed classes or subclasses. Additionally, the proposed classes are represented by  
13 pro bono counsel from the ACLU Foundation of San Diego & Imperial Counties.  
14 Plaintiffs' counsel have extensive experience litigating class action lawsuits and  
15 other complex cases in federal court, including civil rights lawsuits on behalf of  
16 detained immigrants.

17 162. Although ascertainability is not a requirement for class certification, the  
18 class members are readily ascertainable through Defendants' records. The members  
19 of each subclass are ascertainable through Defendants' records and their own  
20 documentation of underlying health conditions. Defendants conduct health  
21 screenings at intake whenever a detainee enters one of their facilities. These records  
22 will contain necessary medical information that can be compared against CDC  
23 standards to determine whether a detainee is medically vulnerable. Furthermore, their  
24 own internal guidance requires them to identify detainees in their custody who have  
25 medical conditions that place them at heightened risk from COVID-19. Therefore,  
26 Defendants' own files contain all the information necessary to ascertain class  
27 membership.

28

1           163. Finally, the proposed classes satisfy Federal Rule of Civil Procedure  
2 23(b)(2). Defendants have acted on grounds generally applicable to the class by  
3 detaining class members in conditions that place them at high risk of contracting  
4 COVID-19, including by maintaining population levels too high for social distancing  
5 to be possible. Defendants can only remedy the injury to the class by reducing the  
6 population of each detention centers as a whole. Thus, classwide injunctive,  
7 declaratory, and habeas relief is appropriate.

8           164. In the alternative, the requirements of Rule 23(b)(1) are satisfied  
9 because litigating separate actions would create a risk of inconsistent or varying  
10 adjudications with respect to individual class members that would establish  
11 incompatible standards of conduct for the party opposing the proposed classes.

### CLAIM FOR RELIEF

#### **I. Violation of Fifth Amendment Right to Substantive Due Process (Unlawful Punishment; Freedom from Cruel Treatment and Conditions of Confinement; Denial of Reasonable Safety: All classes and subclasses)**

12           165. Plaintiffs repeat and reallege all the allegations above and incorporate  
13 them by reference here.  
14

15           166. The Fifth Amendment of the U.S. Constitution guarantees that civil  
16 detainees, including all immigrant detainees, may not be subjected to punishment.  
17 The federal government violates this substantive due process right when it subjects  
18 civil detainees to conditions of confinement that amount to punishment or create an  
19 unreasonable risk to detainees' safety and health.  
20

21           167. For no legitimate reason or justification, Defendants are subjecting  
22 Plaintiffs to punishment or unreasonable heightened risk of contracting COVID-19,  
23 for which there is no vaccine, reliable treatment, or cure. Defendants' practices,  
24 including but not limited to maintaining population levels too high for social  
25 distancing to be possible, subject Plaintiffs and members of the putative classes to an  
26 unreasonable risk of serious harm, including severe illness and death, in violation of  
27 their due process rights.  
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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff-Petitioners respectfully request that the Court:

- a. Certify this Petition as a Class Action and appoint named Plaintiffs as class and subclass representatives and the undersigned counsel as class counsel;
- b. Issue a writ of habeas corpus and order the immediate release of the Medically Vulnerable Subclasses—including on an emergency expedited basis for the Otay Mesa Medically Vulnerable Subclass—and the orderly release, with appropriate precautionary public health and safety measures, of a sufficient number of class members to reduce the population of Otay Mesa and Imperial to levels in each facility that permit adequate social distancing, maintenance of hygiene, and provision of medical care, on the ground that continued detention of class members under current conditions violates the Due Process Clause of the Fifth Amendment;
- c. In the alternative, issue injunctive relief or a temporary restraining order ordering Defendants, their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with any of the foregoing persons to immediately release the Medically Vulnerable Subclasses—including on an emergency expedited basis for the Otay Mesa Medically Vulnerable Subclass—and the orderly release, with appropriate precautionary public health and safety measures, of a sufficient number of class members to reduce the populations of Otay Mesa and Imperial to levels in each facility that permit adequate social distancing, maintenance of hygiene, and provision of medical care, on

1 the grounds that continued detention of class members under current  
2 conditions violates the Due Process Clause of the Fifth Amendment;

- 3 d. Issue an order requiring Defendants to provide to Plaintiffs and the  
4 Court, at intervals the Court deems proper, information regarding the  
5 ongoing COVID-19 outbreak in Otay Mesa;
- 6 e. Issue a judgment declaring that the conditions under which Defendants  
7 have confined Plaintiffs and Otay Mesa and Imperial Class members  
8 place class members at substantial risk of serious illness and death, in  
9 violation of the Due Process Clause of the Fifth Amendment;
- 10 f. Grant Plaintiffs their reasonable attorneys' fees and expenses pursuant  
11 to the Equal Access to Justice Act, 28 U.S.C. § 2412, and other  
12 applicable law; and
- 13 g. Grant such other relief as this Court deems just and proper.

14  
15 Respectfully submitted,

16  
17 DATED: April 21, 2020

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ACLU FOUNDATION OF SAN  
DIEGO & IMPERIAL COUNTIES

**s/ Monika Y. Langarica**  
MONIKA Y. LANGARICA  
KIMBERLY GRANO  
JONATHAN MARKOVITZ  
BARDIS VAKILI  
Attorneys for Plaintiff-Petitioners