

No. 20-55436

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

KELVIN HERNANDEZ ROMAN *et al.*,

Plaintiffs-Appellees,

v.

CHAD F. WOLF *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
For the Central District of California
Case No. 5:20 Civ. 768
The Honorable Terry J. Hatter

**BRIEF OF NATIONAL IMMIGRANT JUSTICE CENTER
AND HUMAN RIGHTS WATCH AS *AMICI CURIAE*
IN SUPPORT OF APPELLEES' ANSWERING BRIEF**

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Dated: June 26, 2020

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INTEREST AND IDENTITY OF *AMICI CURIAE*¹

Human Rights Watch (“HRW”) is a nonprofit, independent research and advocacy organization registered and headquartered in New York whose mission is to investigate and expose human rights violations, and advocate for enforcement of those rights with governments and international organizations and in the court of public opinion. HRW’s work includes advocacy for the rights of migrants, refugees, and asylum seekers at or within the U.S. border, including with respect to abusive conditions faced by adults and children in immigration detention.

The National Immigrant Justice Center (“NIJC”), a program of the Heartland Alliance for Human Needs and Human Rights, is a Chicago-based, not-for-profit organization that provides legal representation to low-income immigrants, refugees, and asylum seekers across the country. Together with over 1,500 pro bono attorneys, NIJC represents thousands of individuals annually, including individuals in immigration custody. Through FOIA litigation and initiatives like its Transparency and Human Rights Project, NIJC also investigates conditions and systemic problems in immigration detention centers, and has authored or co-

¹ Per Federal Rule of Appellate Procedure 29(a)(4)(E), no party’s counsel authored the brief in whole or in part; no party’s counsel contributed money intended to fund preparing or submitting the brief; and no person—other than *amici* and their counsel—contributed money intended to fund preparing or submitting the brief. All parties consented to this brief’s filing.

authored a number of reports regarding inhumane conditions in the immigration detention system.

INTRODUCTION

A COVID-19 outbreak at the Adelanto Immigration and Customs Enforcement Processing Center (“Adelanto”) is inevitable given that *reported* cases for detainees have doubled in just five days (ten cases as of June 26, 2020), plus at least one staff member. On June 18, 2020, the Office of the Inspector General (“OIG”) for the Department of Homeland Security (“DHS”) found in a report addressing ICE’s response to the pandemic so far that COVID-19 cases in detention facilities increased by 496 percent between April and May.

Amici, as experts in ICE facility conditions and Adelanto in particular, know that ICE is incapable of responding appropriately to the COVID-19 pandemic by protecting people in civil detention. *Amici* monitor conditions in immigration detention facilities using quantitative and qualitative data. *Amici*’s familiarity with conditions nationwide and in Adelanto specifically underscores the particularly high-risk situation there during the COVID-19 pandemic.

Amici’s earlier reports have documented Adelanto’s dangerously unhygienic facilities and history of subpar medical care. *See Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration* (2020); *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration*

Detention (2018); *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention* (2017); *Fatal Neglect: How ICE Ignores Deaths in Detention* (2016).

Government investigators, including DHS's OIG, have also found that Adelanto fails to provide a healthy and safe environment. *See Concerns about ICE Detainee Treatment and Care at Four Detention Facilities* (2019); *Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California* (2018). A 2017 DHS Office for Civil Rights and Civil Liberties report found that problems it had identified in 2015 remained.

These sources demonstrate a long history of inadequate medical care at Adelanto. Staff dangerously delay or deny medical care, often resulting in preventable deaths. Some of the government's own reports show a particularly substandard level of medical care at Adelanto, with medical staff even falsifying records.

ICE's practices at Adelanto will increase infection rates. ICE continues to transfer people among its facilities, including from facilities with confirmed cases. In Adelanto, ICE has also released transferees from quarantine into the general population on a rolling basis, defeating the purpose of a quarantine and placing the entire facility at a high risk of a rapid outbreak.

Significantly, the staff and detainees at Adelanto are unable to practice social distancing, which is the “best way to prevent” the spread of COVID-19.² Photographs confirm how Adelanto’s layout of living and dining areas will inherently defeat social distancing until the population is significantly reduced. See Figs. 1, 2, 3, 4, and 5, *infra*. Toilets, which are shared, lack lids to prevent the virus’s spread, nor are they regularly or properly cleaned.



Fig. 1. Alonso Yanez/La Opinion, four-person room at Adelanto, in *Abuse in Adelanto*, DETENTION WATCH NETWORK 15 (2015), <https://www.detentionwatchnetwork.org/sites/default/files/reports/CIVIC%20ODWN%20Adelanto%20Report.pdf>.

Given Adelanto’s current conditions and its documented historical practices, detainees face a grave risk of harm or death. An outbreak of COVID-19 at

² *How to Protect Yourself and Others*, Centers for Disease Control and Prevention (Apr. 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

Adelanto also threatens public health because the local health care system is already under stress from the pandemic. Alternatives to detention can adequately protect any countervailing interests. The district court’s order should be affirmed.

ARGUMENT

I. ICE Cannot Protect People Detained at Adelanto from COVID-19 Illnesses or Death.

Adelanto, owned and operated by a private company, the GEO Group, is one of the country’s largest ICE detention centers.³ Operating under ICE’s 2011 Performance-Based National Detention Standards (“PBNDS”),⁴ Adelanto houses civil detainees in removal proceedings including “asylum-seekers who have been found to have a credible claim to protection,” such as plaintiffs Kelvin Hernandez-Roman and Beatriz Forero Chavez, and “long-term residents . . . many of whom have strong claims to remaining in the US,” such as Miguel Aguilar Estrada.⁵

³ CALIFORNIA DEPARTMENT OF JUSTICE, IMMIGRATION DETENTION IN CALIFORNIA 21 (Feb. 2019), <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>.

⁴ *Id.*

⁵ HUMAN RIGHTS WATCH, SYSTEMIC INDIFFERENCE 13 (2017), <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention> [hereinafter SYSTEMIC INDIFFERENCE].

A. Adelanto in Particular Has a Long History of Inadequate Medical Care.

The serious problems at Adelanto today were presaged by its well-documented pre-COVID-19 history of subpar medical care.⁶ DHS “is responsible for providing safe, secure, and humane confinement for detained aliens[.]”⁷ However, the DHS Office of Civil Rights and Civil Liberties found that in the span of 21 months at Adelanto, “[o]ver one-third of the grievance complaints relate to inadequate . . . access to medical and mental health care issues. *This large number of healthcare related grievances is not typical in a correctional setting, and is a key indicator that the healthcare needs of the detainee population [are] not being met.*”⁸

Amici reports like *Code Red*, *Systemic Indifference*, and *Fatal Neglect* have consistently documented Adelanto staff’s dangerous delays or denials of medical

⁶ See, e.g., SYSTEMIC INDIFFERENCE, *supra* n.5; HUMAN RIGHTS WATCH *ET AL.*, CODE RED: THE FATAL CONSEQUENCES OF DANGEROUSLY SUBSTANDARD MEDICAL CARE IN IMMIGRATION DETENTION (2018), <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration> [hereinafter CODE RED].

⁷ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-16-231, IMMIGRATION DETENTION: ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND OVERSIGHT OF DETAINEE MEDICAL CARE 1 (Feb. 2016).

⁸ CORRECTIONS EXPERT’S REPORT ON ADELANTO CORRECTIONAL FACILITY 9 (Nov. 16, 2017), <https://www.documentcloud.org/documents/6278922-HQ-Part2-Copy.html> (emphasis added) [hereinafter CORRECTIONS EXPERT’S REPORT].

care, including for emergencies.⁹ People have waited “weeks and months to see a doctor . . . and their appointments were sometimes canceled with no explanation” and “then placed back on the waiting list.”¹⁰ They are often not given their prescribed medications.¹¹ Detainee death reviews since fiscal year 2015 found that failure to provide timely medical care resulted in preventable deaths at Adelanto.¹² For example, as documented in *Code Red*, Jose Azurdia died after staff waited two hours to take him to a hospital with heart attack symptoms.¹³

Medical staffing, including high turnover rates, is another shortcoming at Adelanto.¹⁴ As reported in *Systemic Indifference*, a doctor who reviewed death reports from the Office of Detection Oversight (“ODO”) concluded that medical staff “were providing medical care and making critical decisions they were not qualified to make in a way that was dangerous.”¹⁵ DHS’s Office of Civil Rights

⁹ *E.g.*, CODE RED, *supra* n.6, at 45.

¹⁰ Dep’t of Homeland Sec., Office of the Inspector Gen., *Management Alert – Issues Requiring Action at The Adelanto Ice Processing Center In Adelanto, California* 8 (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf> [hereinafter *Management Alert*].

¹¹ *Id.*

¹² *Id.*

¹³ CODE RED, *supra* n.6, at 16.

¹⁴ SYSTEMIC INDIFFERENCE, *supra* n.5, at 46.

¹⁵ *Id.* at 47.

and Civil Liberties found that Adelanto lacked adequate medical escort staff, “result[ing] in delayed medical transports to outside care and cancelled onsite medical appointments and medical clinics which prevents timely access to medical [care and] can create life threatening conditions.”¹⁶

Government inspectors have repeatedly found that Adelanto keeps inaccurate and even false medical records. DHS’s Office of Civil Rights and Civil Liberties stated that logs for people with serious mental illness were “incorrect.”¹⁷ Similarly, in 2018, DHS’s OIG reported observing doctors “stamping their name on the detainee records” outside the cell “without having any contact with 10 of the 14 detainees.”¹⁸

According to these reports, medical staff are not using translators when providing medical care, despite a 2011 PBNDS requirement. This includes a doctor speaking to multiple non-English-speaking patients in English.¹⁹ An ODO

¹⁶ CORRECTIONS EXPERT’S REPORT, *supra* n.8, at 14.

¹⁷ *Id.* at 7.

¹⁸ *Management Alert, supra* 10, at 7.

¹⁹ *Id.*

report noted several instances of nurses not using translation services.²⁰ Staff also fail to use interpreters consistently during the intake process.²¹

Even more troubling, government reports “show no indication that dangerous substandard medical practices . . . were flagged or resulted in any penalties for the facility.”²² Adelanto’s failures to provide adequate medical care or timely transfer individuals to hospitals have thus gone unremedied. There is no reason to think Adelanto can or will provide adequate care during the COVID-19 pandemic either.

Over the years, numerous people have died of preventable or treatable causes because of the inadequate medical care at Adelanto. The death of Fernando Dominguez-Valdivia, 58, of pneumonia is representative.²³ According to the ODO

²⁰ *Detainee Death Review – Osmar Epifanio Gonzalez-Gadba, JICMS#201705550*, 18–19, Office of Detention Oversight, <https://www.ice.gov/doclib/foia/reports/ddrGonzalez.pdf> (last visited June 26, 2020).

²¹ CORRECTIONS EXPERT’S REPORT, *supra* n.8, at 7.

²² SYSTEMIC INDIFFERENCE, *supra* n.5, at 86; *see also* Letter from Senators to George C. Zoley, Chief Executive Officer, The Geo Group (Nov. 15, 2018) (noting Adelanto consistently fails federal detainee treatment standards but continued to receive federal funding).

²³ ACLU *ET AL.*, FATAL NEGLECT: HOW ICE IGNORES DEATHS IN DETENTION 16 (2016), <https://immigrantjustice.org/research-items/report-fatal-neglect-how-ice-ignores-deaths-detention> [hereinafter FATAL NEGLECT]. Other individuals who have died in ICE custody include Jose Ibarra Bucio, Jose Manuel Azurdia Hernandez, Juan Pablo Flores-Segura, Osmar Epifanio Gonzalez-Gadba, Raul Ernesto Morales-Ramos (discussed *infra*), Sergio Alonso Lopez, and Vicente

and as reported in *Fatal Neglect*,²⁴ staff failed to provide basic medical care starting with the person performing the intake assessment, who noted Dominguez-Valdivia’s hands were trembling and had cuts but did not forward the forms to the medical department.²⁵ On November 29, 2011, Dominguez-Valdivia was ordered to have an urgent cardiology consult, but one did not occur until three weeks later, on December 20, 2011.²⁶ On February 16, 2012, a registered nurse examined him but never performed a hands-on evaluation.²⁷ Adelanto officials waited nine hours to take him to the hospital, using their own transport van instead of an ambulance “due to concerns regarding financial resources,” even though Dominguez-Valdivia had signs of septic shock.²⁸

Caceres-Maradiaga. See SYSTEMIC INDIFFERENCE, *supra* n.5; CODE RED *supra* n.6.

²⁴ The ACLU submitted a FOIA request for the complete death review of Mr. Dominguez-Valdivia’s case but was told “there [was] no ‘urgency to inform your limited audience about past ICE actions’ and that the information in Mr. Dominguez’[s] death review would not ‘have any bearing on immediate or resultant future situations.’” FATAL NEGLECT, *supra* n.23, at 17.

²⁵ Memorandum from the Office of Detention Oversight to Executive Associate Director Enforcement and Removal Operations 15 (2018), <https://creeclaw.org/wp-content/uploads/2019/02/Dominguez-Valdivia-Detainee-Death-Review-1.pdf>.

²⁶ *Id.* at 16.

²⁷ *Id.* at 21.

²⁸ *Id.* at 17–18.

The ODO found his death was preventable and that Adelanto was “not in compliance with the ICE PBNDS Medical Care Standard.”²⁹ Adelanto staff failed to monitor vital signs, delayed medication, did not timely review lab results, and did not schedule medically necessary follow-up appointments.³⁰ Shockingly, the ODO also found that “[t]hree sick call slips . . . were found to have been altered” by medical staff. The “additional information was not accurate and was not documented as a late entry.”³¹

Raul Morales-Ramos also died from lack of medical care. As noted in *Systemic Indifference*, two independent doctors found that “he likely suffered from symptoms of cancer starting in 2013, but that the symptoms essentially went unaddressed for two years, until a month before he died.”³² When Morales-Ramos first started showing symptoms in 2013, ICE failed to follow up with a gastrointestinal specialist and transferred him to Adelanto with no documentation of his symptoms.³³ At Adelanto, he repeatedly sought medical care for body aches, weight loss, pain in his joints, and diarrhea.³⁴ A month before his death, a nurse

²⁹ *Id.* at 15.

³⁰ *Id.* at 18.

³¹ *Id.* at 19.

³² SYSTEMIC INDIFFERENCE, *supra* n.5, at 1.

³³ *Id.* at 38.

³⁴ *Id.* at 39.

practitioner at Adelanto “instructed him to increase his water intake and exercise to promote bowel regularity.”³⁵ In the same time frame, lawyers heard reports of a man with diarrhea, severe abdominal pain, and uncontrollable leakage of urine.³⁶ On March 2, 2015, a nurse at Adelanto “noted Morales-Ramos had a distended abdomen” but she “did not detect a mass or protrusion.”³⁷ Four days later, a doctor with a certification in medical oncology found that Morales-Ramos “had ‘the largest [abdominal mass] she had ever seen in her practice,’ which was ‘notably visible through the abdominal wall.’”³⁸

Any medical care delays are particularly troubling during a COVID-19 outbreak. Patients can worsen within hours, with many likely requiring treatment at outside medical providers. Given Adelanto’s history of poor medical care and its structural impediments to effective social distancing, discussed *infra*, substantially reducing the population at Adelanto is crucial to protecting the health of the people detained there.

³⁵ *Id.*

³⁶ Kate Linthicum, *Salvadoran Immigrant Held at Adelanto ICE Facility Dies*, L.A. TIMES (Apr. 15, 2015), <https://www.latimes.com/local/lanow/la-me-ln-detainee-death-20150407-story.html>.

³⁷ SYSTEMIC INDIFFERENCE, *supra* n.5, at 38–39.

³⁸ *Id.* (alteration in original).

B. The Problems at Adelanto Are Emblematic of Healthcare Failures at ICE Detention Facilities.

Investigations from *amici*, similar organizations, and government inspectors have all identified pervasive subpar medical care in ICE facilities nationwide: understaffed medical units; inappropriate delays in transfers to hospitals; unqualified personnel providing medical care; inadequate access to medical care for non-English speakers; and unhygienic conditions of detention.³⁹ A 2017 DHS OIG inspection report “raised concerns about the treatment and care of ICE detainees,” including through identification of pervasive problems that “undermine . . . the provision of a safe and healthy environment.”⁴⁰ As detailed in *Code Red*, medical experts analyzing deaths in detention identified numerous instances of “unreasonable delays in the provision of care, poor quality care by facility and medical staff, and botched emergency responses.”⁴¹ *Amici*’s reports highlight that

³⁹ See *id.*; ACLU RESEARCH REPORT, JUSTICE-FREE ZONES U.S. IMMIGRATION DETENTION UNDER THE TRUMP ADMINISTRATION 4 (Apr. 2020), https://www.hrw.org/sites/default/files/supporting_resources/justice_free_zone_s_immigrant_detention.pdf [hereinafter JUSTICE-FREE ZONES]; Katherine Hawkins & Emma Stodder, *Past Deaths in Custody Highlight Dire Risks for Immigration Detainees During Coronavirus Outbreak*, POGO (Apr. 29, 2020), <https://www.pogo.org/investigation/2020/04/past-deaths-in-custody-highlight-dire-risks-for-immigration-detainees-during-coronavirus-outbreak/>.

⁴⁰ See Dep’t of Homeland Sec., Office of Inspector Gen., *Concerns About ICE Detainee Treatment and Care at Detention Facilities*, 3 (Dec. 11, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

⁴¹ CODE RED, *supra* n.6, at 11.

the negligent care contributing to preventable deaths has included: delays in transferring critically ill patients to the hospital despite obvious indications of illness, including respiratory distress;⁴² failure to identify infection through basic temperature monitoring;⁴³ and an unwillingness to provide care due to a fear of contracting illness.⁴⁴ Just last year, DHS’s Office for Civil Rights and Civil Liberties received a series of whistleblower complaints from OIG alleging that ICE “has systemically provided inadequate medical and mental health care and oversight to immigration detainees in facilities throughout the U.S.”⁴⁵

In fact, a 2018 expert analysis of recent death reviews released by ICE attributed *more than half* of these deaths to neglectful medical care.⁴⁶ And, in the

⁴² See, e.g., *id.* at 11, 19 (analyzing detainee death following three-day delay in transfer to hospital despite “dangerously low oxygen”); SYSTEMIC INDIFFERENCE, *supra* n.5, at 30 (analyzing detainee death following eight-hour delay in emergency room care despite patient’s “trouble breathing”).

⁴³ See SYSTEMIC INDIFFERENCE, *supra* n.5, at 38 (analyzing detainee death in which deficient care included omission of “basics like monitoring his temperature”).

⁴⁴ See CODE RED, *supra* n.6, at 15 (analyzing detainee death following, *inter alia*, nurse’s refusal to see patient because “she did not want to get sick”).

⁴⁵ Mem. from Cameron P. Quinn and Marc Pachon, U.S. Dep’t of Homeland Sec., to Ronald Vitiello, and Michael P. Davis, U.S. Immigration Customs and Enforcement 1 (Mar. 20, 2019), <https://www.documentcloud.org/documents/6575024-ICE-Whistleblower-Report.html>; JUSTICE-FREE ZONES, *supra* n.39, at 32.

⁴⁶ JUSTICE-FREE ZONES, *supra* n.39, at 31; SYSTEMIC INDIFFERENCE, *supra* n.5; SYSTEMIC INDIFFERENCE, *supra* n.5, at 27.

majority of cases lacking a direct causal connection between death and negligent care, the analysis revealed “evidence of dangerous and subpar medical care practices.”⁴⁷ As the death toll of detained individuals has continued to mount, ICE has scaled back the minimal available oversight by limiting access to information on causes of death and remedial actions taken (if any).⁴⁸ According to *amici*’s 2020 report, *Justice-Free Zones*, “it is not [even] clear whether ICE continues to investigate failures that may have led to a death or might lead to another death in the future.”⁴⁹

Particularly relevant here, ICE has proven unable to test adequately for, or appropriately contain, contagious diseases over the past decade.⁵⁰ The DHS OIG

⁴⁷ CODE RED, *supra* n.6, at 3; *see also* SYSTEMIC INDIFFERENCE, *supra* n.5, at 44–45.

⁴⁸ JUSTICE-FREE ZONES, *supra* n.39, at 31; *see also* CODE RED, *supra* n.6, at 11 (ICE’s “Detainee Death Reviews” evidenced “flawed investigatory practices” that “fail[ed] to evaluate the quality of care”). These reports primarily pre-date April 2018 because “ICE has released significantly less information about deaths in custody since April 2018.” Letter from Grace Meng, Senior Researcher, Human Rights Watch, to the Honorable Chief Justice Tani Cantil-Sakauye (May 1, 2020). Thus, the fact that the reports are less current is a reflection of the information available, not improved resolution of the issues identified.

⁴⁹ JUSTICE-FREE ZONES, *supra* n.39, at 32.

⁵⁰ J. David McSwane, *ICE Has Repeatedly Failed to Contain Contagious Diseases, Our Analysis Shows. It’s a Danger to the Public*, PROPUBLICA (Mar. 20, 2020), <https://www.propublica.org/article/ice-has-repeatedly-failed-to-contain-contagious-diseases-our-analysis-shows-its-a-danger-to-the-public>.

has also found evidence of noncompliance with screening measures designed to identify tuberculosis, which, like COVID-19, is an infectious respiratory disease.⁵¹

C. Adelanto Cannot Be Reconfigured to Permit Social Distancing.

Individuals detained at Adelanto are at risk for the simple reason that the fixed configuration of beds and tables in both of its wings makes social distancing impossible. The district court found “[c]lass members are suffering from a condition of confinement that takes away, *inter alia*, their ability to socially distance and remain safe” and “it appears to the Court that mandatory social distancing cannot be imposed at Adelanto because, quite simply, there are too many detainees at Adelanto for its size.”⁵²

⁵¹ See Dep’t of Homeland Sec., Office of Inspector Gen., *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, 3 (Dec. 2006), https://www.oig.dhs.gov/assets/Mgmt/OIG_07-01_Dec06.pdf.

⁵² Dkt. 53 ¶¶ 17, 73(D), 90 (findings of fact and conclusions of law).

1. Beds

Beds are bolted in place, leaving insufficient space to social distance consistently, including when accessing shared sinks and toilets. For example, in a West facility room for four people, assuming the bunk beds are “only 30 inches wide, there would only be 5 feet 6 inches between each bed.”⁵³ Even with only two people in a four-person room, social distancing is impossible. *See* Fig. 1, *supra*. In the East facility, “[i]f any of the [people] are walking between beds and a bed is occupied, there is not sufficient space to allow for social distancing.”⁵⁴



Fig. 2. Paul Wellman, Person in bunkbed at Adelanto, in *Among the Detainees at Adelanto*, SANTA BARBARA INDEPENDENT (Aug. 24, 2017), <https://www.independent.com/2017/08/24/among-detainees-adelanto/>.

⁵³ *Id.* ¶ 53.

⁵⁴ *Id.* ¶ 59.

2. Common Areas

Tables in common areas are also bolted down too close together to permit social distancing.⁵⁵ See Figs. 3, 4, 5. For example, in the West facility, “[t]he seats at each table are set 5 feet 3 inches from each other[.]”⁵⁶ And seats at neighboring tables are calculated to be as near as 3 feet, 9 inches.



Fig. 3. John Moore/Getty Images, men praying at table (2013), <https://www.gettyimages.com/photos/adelanto?family=editorial&phrase=adelanto&sort=mostpopular#license>.

⁵⁵ *Id.* ¶¶ 45, 61.

⁵⁶ *Id.* ¶ 45.



Fig. 4. Alonso Yanez/La Opinion, tables in East facility, in *Abuse in Adelanto*, DETENTION WATCH NETWORK 11 (2015), [https://www.detentionwatchnetwork.org/sites/default/files/reports/CI VIC% 20DWN% 20Adelanto% 20Report.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/CI%20VIC%20DWN%20Adelanto%20Report.pdf).



Fig. 5. GEO Group, tables at Adelanto, in *We Are Adrift*, AMNESTY INTERNATIONAL 19 (Apr. 7, 2020), <https://www.amnesty.org/en/documents/amr51/2095/2020/en/>.

Moreover, the district court found that people “are encouraged, but not required, to sit 6 feet apart” at tables.⁵⁷ Nothing suggests seats are blocked off to keep people apart, and they are inches apart when they line up for meals.⁵⁸

D. The Hygienic Conditions at Adelanto Are Dangerous.

Beyond inadequate cleaning supplies and untrained cleaning personnel, other hygienic conditions at Adelanto make people susceptible to illness.

People are not provided adequate cleaning supplies to sanitize toilets themselves.⁵⁹ One class member resorted to using his shampoo.⁶⁰ A 2019 report by DHS’s OIG found “mold and peeling paint on walls, floors, and showers, and unusable toilets.”⁶¹

⁵⁷ *Id.* ¶ 61.

⁵⁸ *Id.* ¶ 70.

⁵⁹ *Id.* ¶ 50–51.

⁶⁰ *Id.* ¶ 51.

⁶¹ Dep’t of Homeland Sec., Office of Inspector Gen., *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, 8 (June 3, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.



Fig. 6. Office of Inspector General DHS, toilet at Adelanto, in *Concerns about ICE Detainee*, *supra* n.61, at 9.

Adelanto’s communal toilets without lids present additional risk.⁶² *See* Fig. 2, *supra*, and Fig. 6. As the district court stated, “[n]ew information about COVID-19 suggests that it may be transmitted through shared bathrooms and cell toilets without lids.”⁶³ According to scientists, “[f]aecal shedding seems to occur in patients without gastrointestinal symptoms, which could enable asymptomatic individuals with no respiratory symptoms to be a source of faecal transmission.”⁶⁴

⁶² Dkt. 53 ¶ 52.

⁶³ *Id.* ¶ 73(A).

⁶⁴ Carmen V. McDermott et al., *Put a Lid on it: Are Faecal Bio-aerosols a Route of Transmission for SARS-CoV-2?*, *J. HOSPITAL INFECTIONS* (Apr. 18, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7166010/> (footnote omitted).

A toilet flush “generates droplet nuclei that are small enough to both contaminate surfaces and become airborne.”⁶⁵

The court also found only three of six showers in the East facility worked for a population of 118 people⁶⁶ and the showers are not mandated to be cleaned by professionally trained staff “or, even, by the detainees themselves.”⁶⁷

Additionally, recent information suggests the newly implemented cleaning protocol includes supplies that cause people to vomit blood. According to a complaint filed with DHS on May 21, 2020, Adelanto staff are spraying HDQ Neutral every 15-30 minutes in areas that lack good ventilation.⁶⁸ The safety information for HDQ Neutral states: “Harmful if inhaled. Causes severe burns and serious eye damage. . . . Use only outdoors or in a well-ventilated area. Wear protective gloves. Wear eye/face protection. Wear protective clothing.

⁶⁵ *Id.*; see also Fei Xiao et al., *Infectious SARS-CoV-2 in Feces of Patient with Severe COVID-19*, EMERGING INFECTIOUS DISEASES (Aug. 2020, forthcoming), https://wwwnc.cdc.gov/eid/article/26/8/20-0681_article.

⁶⁶ Dkt. 53 ¶ 63.

⁶⁷ *Id.* ¶¶ 47, 50.

⁶⁸ Letter from Rebecca Merton, Director of Visitation and Independent Monitoring, Freedom for Immigrants, and Lizabeth Abeln, Immigrant Detention Coordinator, Inland Coalition for Immigrant Justice, to David Marin, Field Office Director, ICE 2 (May 21, 2020), <https://www.documentcloud.org/documents/6923000-Adelanto-CRCL-Complaint-052120.html>.

IMMEDIATELY CALL A POISON CENTER OR PHYSICIAN.”⁶⁹ The chemicals are causing “bloody noses, burning eyes, headaches,” “blisters,” “coughing up blood” and bone aches.⁷⁰

Even more concerning, “the misuse of and purposeful exposure of such harsh chemicals [wa]s retaliatory” after nonprofit organizations “received and made public reports from people in detention in Adelanto that they were cleaning the facility ‘just with water’ or shampoo and were not provided appropriate cleaning supplies to sanitize the facility.”⁷¹ This was reported by class members in this very lawsuit.⁷² Reports document other instances of retaliation at Adelanto,⁷³

⁶⁹ *Safety Data Sheet*, SPARTAN CHEMICAL COMPANY 1 (Sept. 10, 2019), <https://www.spartanchemical.com/products/product/120204/#product-safety> (emphasis in original).

⁷⁰ *Merton*, supra n.33, at 2-3.

⁷¹ *Id.*

⁷² Dkt. 53 ¶ 51 (“[S]ome class members resorted to using shampoo to clean their toilets[.]”).

⁷³ *See, e.g.*, CORRECTIONS EXPERT’S REPORT, supra n.8, at 10; Tom Briesbach, *Exclusive: Video Shows Controversial Use of Force Inside an ICE Detention Center*, NPR (Feb. 6, 2020), <https://www.npr.org/2020/02/06/802939294/exclusive-video-shows-controversial-use-of-force-inside-an-ice-detention-center>; ABUSE IN ADELANTO, DETENTION WATCH NETWORK 12 (Oct. 2015), <https://www.detentionwatchnetwork.org/sites/default/files/reports/CIVIC%20DWN%20Adelanto%20Report.pdf> (fifty-five percent of people interviewed said they experience retaliation for filing grievances).

which is a profoundly troubling response to the exercise of fundamental rights of free speech and court access.

II. Civil Detainees at Adelanto Should Be Released.

A. ICE Is Unable to Adequately Address—and Is Already Mishandling—the COVID-19 Crisis, Endangering Lives.

If past is prologue, urgent concern for the safety and well-being of people detained at Adelanto is in order. Given the intractable pattern of deficient medical care, ICE cannot credibly claim it is prepared to meet the urgent medical demands of the COVID-19 pandemic. ICE’s inability to provide adequate medical care before the pandemic—including with respect to contagious diseases—leaves little doubt that its response to COVID-19 is tragically deficient, causing unnecessary suffering and preventable deaths.

On June 18, 2020, the government’s own investigators acknowledged ICE’s response is deficient, including at Adelanto. Facilities expressed “concerns” about “their inability to practice social distancing among detainees, and to . . . quarantine individuals,” the “availability of staff, as well as protective equipment for staff, if there were an outbreak of COVID-19 at the facility.”⁷⁴ According to the report, ICE does not track COVID-19 among third-party employees—often the only

⁷⁴ Dep’t of Homeland Sec., Office of Inspector Gen., *Early Experiences with COVID-19 at ICE Detention Facilities*, 6 (June 18, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf>.

detention employees in contact with detainees—and has no system-wide standard to determine whether and when to test individuals at a facility for the virus.⁷⁵ Seventy percent of all facilities still have not tested *anyone* for the virus.⁷⁶ Despite this inadequate response to the pandemic, few facilities have released those inside to mitigate the virus’s spread. Over half of facilities lack space to quarantine or isolate detainees suspected or confirmed to have COVID-19.⁷⁷ The report confirms that release of persons at Adelanto is a viable option; 33 facilities have “released detainees for reasons related to COVID-19.”⁷⁸

The CDC’s COVID-19 guidance for detention facilities makes clear that Adelanto would need, *inter alia*, implementation of “social distancing strategies to increase the physical space between incarcerated/detained persons”; “sufficient stocks of hygiene supplies”; implementation of “intensified cleaning and disinfecting procedures”; and PPE use by staff and detainees in various scenarios.⁷⁹ Yet the evidence establishes that Adelanto has unsatisfactory social distancing,

⁷⁵ *Id.* at 3 n.3.

⁷⁶ *Id.* at 24.

⁷⁷ *Id.* at 9.

⁷⁸ *Id.* at 8.

⁷⁹ *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Centers for Disease Control and Prevention (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

inadequate cleaning supplies, irregular disinfectant practices, and inadequate use and supply of masks, among other critical shortcomings.⁸⁰

As of June 26, 2020, Adelanto has ten reported cases of detainees with COVID-19, and the number infected is likely higher. Without prompt steps, this small number will quickly turn into a lethal outbreak. A recent model predicted that, even under “the most optimistic scenario,” 72 percent of detainees in an ICE facility would be infected within just 90 days of the first five cases; the worst case scenario is 93 percent.⁸¹

The numbers in other facilities are alarming. Reportedly, 50 percent of the tests conducted throughout the ICE detention system come back positive.⁸² Otay Mesa Detention Center in San Diego County has 164 confirmed cases and one death.⁸³ At least 25 percent of Bluebonnet Detention Facility’s population in

⁸⁰ Dkt. 53 ¶¶ 42-77.

⁸¹ Michael Irvine et al., *Modeling COVID-19 and Impacts on U.S. Immigration and Enforcement (ICE) Detention Facilities, 2020*, J. URBAN HEALTH (forthcoming 2020), https://whistleblower.org/wp-content/uploads/2020/04/Irvine_JUH_ICE_COVID19_model.pdf (rates for facility of 1,000 people).

⁸² Press Release, *Heinrich, Senate Democrats To DHS: Halt Transfer Of ICE Detainees, Increase Agency COVID-19 Testing* (May 29, 2020), <https://www.heinrich.senate.gov/press-releases/heinrich-senate-democrats-to-dhs-halt-transfer-of-ice-detainees-increase-agency-covid-19-testing->.

⁸³ *ICE Detainee Statistics*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/coronavirus> (hereinafter *ICE Detainee Statistics*) (last visited June 26, 2020); Kate Morrissey, *First ICE detainee dies from COVID-19 after being hospitalized from Otay Mesa*

Texas are confirmed to have contracted COVID-19.⁸⁴ At Eloy Detention Center in Arizona, cases increased 460 percent in just four days.⁸⁵ “[T]he true number of people who have been infected” in ICE detention “may be 15 times higher than official numbers and is still increasing.”⁸⁶

These numbers are not surprising given ICE’s limited testing. As of June 16, ICE reported testing just twenty percent of people detained.⁸⁷ Further, “the false-negative rate for [COVID-19] is shockingly high,” making negative results unreliable.⁸⁸ If only those showing symptoms are tested, infection rates will soar.

Detention Center, SAN DIEGO TRIBUNE (May 6, 2020), <https://www.sandiegouniontribune.com/news/immigration/story/2020-05-06/first-ice-detainee-dies-from-covid-19-after-being-hospitalized-from-otay-mesa-detention-center>.

⁸⁴ Jamie Burch, *COVID-19 Outbreak: 111 cases at ICE detention facility in Anson*, KTXS12 (May 23, 2020), <https://ktxs.com/news/local/covid-19-outbreak-111-cases-at-ice-detention-facility-in-anson>.

⁸⁵ Laura Gomez, *COVID-19 cases at Eloy Detention Center surge by 460% since Friday*, AZMIRROR (June 15, 2020), <https://www.azmirror.com/blog/covid-19-cases-at-elay-detention-center-surge-by-460-since-friday/>.

⁸⁶ Nina Siulc, *Vera’s New Prevalence Model Suggests COVID-19 is Spreading through ICE Detention at Much Higher Rates than Publicized*, VERA INST. OF JUST. (June 4, 2020), <https://www.vera.org/blog/covid-19-1/veras-new-prevalence-model-suggests-covid-19-is-spreading-through-ice-detention-at-much-higher-rates-than-publicized>.

⁸⁷ *ICE Detainee Statistics*, *supra* n.83 (as of June 16, the webpage reflected testing numbers for June 6, suggesting serious delays).

⁸⁸ Lauren M. Kucirka et al., *False-Negative Rate of RT-PCR SARS-CoV-2 Tests*, ANNALS OF INTERNAL MED. (May 13, 2020).

People can spread the virus for up to five days before showing symptoms, and an estimated 44 percent of infections are spread by people without symptoms.⁸⁹

An outbreak at Adelanto will endanger lives outside the facility too. Adelanto employees and their families are at risk. Nationwide, at least 45 employees in detention facilities have tested positive⁹⁰ and four have died.⁹¹ Moreover, an outbreak will burden the San Bernardino County health care system, which is already struggling to handle COVID-19 cases. Cases are doubling every 17.6 days⁹² with 6,742 confirmed cases and 227 deaths in the county.⁹³ In one day, county officials reported 149 additional cases, two deaths, and only 156 ICU beds

⁸⁹ Xi He et al., *Temporal Dynamics in Viral Shedding and Transmissibility of COVID-19*, NATURE MED. (Apr. 15, 2020), <https://www.nature.com/articles/s41591-020-0869-5>.

⁹⁰ *Employee Confirmed Cases*, U.S. Immigration And Customs Enforcement, <https://www.ice.gov/coronavirus> (last visited June 26, 2020).

⁹¹ Noah Lanard, *A Fourth Guard at an ICE Detention Center Has Died of COVID-19*, MOTHER JONES (June 10, 2020), <https://www.motherjones.com/politics/2020/06/a-fourth-guard-at-an-ice-detention-center-has-died-of-covid-19/>.

⁹² Maria Sestito, *Coronavirus cases doubling in San Bernardino County about twice as fast as Riverside County*, VVDAILY PRESS (June 11, 2020), <https://www.vvdailypress.com/news/20200611/coronavirus-cases-doubling-in-san-bernardino-county-about-twice-as-fast-as-riverside-county>.

⁹³ *What You Need to Know about Coronavirus in San Bernardino County*, SAN BERNARDINO COUNTY, <https://sbcovid19.com/> (last visited June 12, 2020).

available.⁹⁴ An outbreak at Adelanto could quickly claim those open beds at a time when cases are spiking as California re-opens.⁹⁵

Finally, ICE continues to transfer people among detention facilities, further risking the spread of COVID-19.⁹⁶ For example, “on April 11, ICE transferred 72 individuals from jails in Pennsylvania and New York with a significant number of COVID-19 cases to a facility in Prairieland, Texas. Within two weeks, the Texas facility found itself with 41 cases of COVID-19[.]”⁹⁷ ICE relied on the lack of symptoms to refrain from testing people before the transfers.⁹⁸ The resulting outbreaks have further stressed already burdened local healthcare systems.

⁹⁴ See Sestito, *supra* n.92.

⁹⁵ Maanvi Singh, *California Malls and Theaters Reopen as Coronavirus Cases See Surge*, GUARDIAN (June 15, 2020), <https://www.theguardian.com/world/2020/jun/15/california-coronavirus-reopen-testing-los-angeles>.

⁹⁶ See *Coalition of Rights Groups Urge Los Angeles County Sheriff and Board of Supervisors to Stop Transfers to Federal Immigration Authorities and the Adelanto Immigration Prison*, HUMAN RIGHTS WATCH (Mar. 19, 2020), <https://www.hrw.org/news/2020/03/19/coalition-rights-groups-urge-los-angeles-county-sheriff-and-board-supervisors-stop>.

⁹⁷ Press Release, *Heinrich, Senate Democrats To DHS: Halt Transfer Of ICE Detainees, Increase Agency COVID-19 Testing* (May 29, 2020), <https://www.heinrich.senate.gov/press-releases/heinrich-senate-democrats-to-dhs-halt-transfer-of-ice-detainees-increase-agency-covid-19-testing->.

⁹⁸ Hamed Aleaziz, *ICE Moved Dozens of Detainees Across the Country During the Coronavirus Pandemic. Now Many of Them Have COVID-19*, BUZZFEED NEWS (Apr. 29, 2020), <https://www.buzzfeednews.com/article/hamedaleaziz/ice-immigrant-transfer-jail-coronavirus>.

Additionally, Adelanto releases new arrivals into the general population on a rolling-basis, “rather than each cohort being quarantined for a fixed 14 day period.”⁹⁹ All of this heightens the risks at Adelanto.

B. Release of People Detained Is Needed to Protect Detainee Rights Under International Law.

The district court found that “[t]he conditions of confinement at Adelanto are inconsistent with contemporary standards of human decency.”¹⁰⁰ The conditions at Adelanto contravene U.S. obligations under international treaties to which it is a party, and guidance offered by the UN Human Rights Committee (“UNHRC” or “Committee”).¹⁰¹

The United States is bound by the International Covenant on Civil and Political Rights (“ICCPR”), Dec. 16, 1966, 999 U.N.T.S. 171, ratified in 1992, obligating states to respect the rights to life, liberty, and humane treatment.¹⁰² The UNHRC, the independent expert body that interprets the ICCPR, states that the

⁹⁹ Dkt. 53 ¶ 37.

¹⁰⁰ *Id.* ¶ 81.

¹⁰¹ The Supreme Court of the United States “has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment’s prohibition of cruel and unusual punishments.” *Roper v. Simmons*, 543 U.S. 551, 575 (2005) (quotation marks omitted).

¹⁰² International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), ratified 1992, arts. 6, 9 and 10. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed Apr. 20, 2020).

right to life “concerns the entitlement of individuals to be free from acts and omissions that . . . may be expected to cause their unnatural or premature death.”¹⁰³

The Committee has also stated that countries have “[t]he duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriately regular monitoring of their health.”¹⁰⁴

The UNHRC has noted that immigration detention generally “must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time.”¹⁰⁵ The Committee has stated that immigration detention is “arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding.”¹⁰⁶

Decisions about immigration detention “must take into account less invasive means of achieving the same ends, . . . [and] the effect of the detention on [people’s] physical or mental health.”¹⁰⁷

Immigration detention is especially difficult to justify as necessary or proportionate in the midst of the COVID-19 pandemic. Accordingly, the UN High

¹⁰³ UN Human Rights Committee, General Comment No. 36, ¶ 3.

¹⁰⁴ *Id.* ¶ 25.

¹⁰⁵ UN Human Rights Committee, General Comment No. 35, art. 9 (Liberty and Security of Person), CCPR/C/GC/35 (Dec. 16, 2014), ¶ 18.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

Commissioner for Human Rights has urged states to “urgently prioritize release from immigration detention and institute a range of human rights-based, non-custodial alternatives to detention in order to protect the rights and health of migrants and staff in immigration detention facilities.”¹⁰⁸

The ICCPR obligates governments to provide individuals with adequate medical care while detained.¹⁰⁹ Failure to do so can also violate the prohibition of cruel, inhuman, or degrading treatment under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the United States ratified in 1994.¹¹⁰ The requirement to protect people in custody from the

¹⁰⁸ *COVID-19 and the Human Rights of Migrants: Guidance*, UN Human Rights Committee, 3 (Apr. 7, 2020), https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf.

¹⁰⁹ *See Pinto v. Trinidad and Tobago*, Comm. No. 232/1987, U.N. Doc. A/45/40, p. 69 (HRC 1990).

¹¹⁰ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, G.A. Res. 39/46, ratified 1994, art. 1 <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx> (accessed Apr. 20, 2020). The American Convention on Human Rights, which the United States has signed but not ratified, also provides for the right to humane treatment, which bars torture, cruel, and inhuman treatment of people in detention. American Convention on Human Rights, Art. 5.

risk of torture or ill treatment has been interpreted to include effective methods of screening, prevention, and treatment of life-threatening disease.¹¹¹

The government may have a legitimate interest in detaining some non-citizens to guarantee their appearance at hearings and to ensure the deportation of those judged to be removable, but many people at Adelanto and elsewhere are held under statutory provisions that mandate detention without sufficient individualized review.

ICE cannot justify the continued detention of people during a pandemic in a facility with a documented history of inadequate medical care and conditions that are not in keeping with human rights principles. ICE cannot protect the rights to life, humane treatment, and health of the people detained at Adelanto without substantially reducing the population.

III. Immigration Laws Can Be Enforced Even if Detainees Are Released.

Refusing to release detainees to allow for appropriate social distancing at Adelanto amounts to punishment, in violation of the Fifth Amendment's Due Process Clause. Due process requires that immigration detention be "reasonably related to a legitimate governmental objective."¹¹² "[O]bjective evidence" is

¹¹¹ *See, e.g.*, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, CPT/IN/E, 2002, ¶ 31.

¹¹² *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

required to show that “the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose.”¹¹³ The government argues that confinement at Adelanto satisfies this standard because detention “furthers the government’s legitimate interest of enforcing the Nation’s immigration laws.”¹¹⁴ But refusing to release detained people during a COVID-19 outbreak is objectively excessive in relation to that interest, especially since that interest can be met without detention.

The government’s insistence that detention is the only way to prevent flight risk is baseless. The district court gave ICE discretion to determine which individuals to release and the conditions of their release. A number of people detained at Adelanto have recently been released, further indicating that release does not undermine the government’s interest.¹¹⁵ The required conditions have included obeying the law and not using or possessing drugs or alcohol; the court

¹¹³ *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015).

¹¹⁴ Gov’t Op. Br. 2.

¹¹⁵ *See, e.g., Yanez Montoya v. Wolf*, No. 5:20-cv-00713-TJH-JDE (C.D. Cal. Apr. 10, 2020); *Bogle v. Barr*, No. 5:20-cv-00650-TJH-FFM (C.D. Cal. Apr. 3, 2020); *Nguyen v. Marin*, No. 5:20-cv-00646-TJH-AGR (C.D. Cal. Apr. 3, 2020); *Perez Cruz v. Barr*, No. 5:20-cv-00668-TJH-KES (C.D. Cal. Apr. 3, 2020); *Singh v. Barr*, No. 5:20-cv-00653-TJH-MAA (C.D. Cal. Apr. 3, 2020); *Munoz v. Wolf*, No. 5:20-cv-00625-TJH-SHK (C.D. Cal. Apr. 2, 2020); *Sudney v. Wolf*, No. 5:20-cv-00626-TJH-JC (C.D. Cal. Apr. 2, 2020); *Hernandez v. Wolf*, No. 5:20-cv-00617-TJH-KLS (C.D. Cal. Apr. 1, 2020).

imposed house arrest in only a few cases. Moreover, existing travel limitations mean that flight risk is low.

ICE can and should utilize alternatives to detention that are more humane, efficient, and cost-effective amidst this pandemic. A NIJC report shows that when operated in compliance with best practices—including nonprofit management and the use of robust community-provided case management—such alternatives are extremely effective at ensuring compliance with immigration court hearings and appointments.¹¹⁶ Under ICE’s own recently discontinued Family Case Management Program (FCMP), compliance rates surpassed 99 percent.¹¹⁷ Furthermore, the daily cost of alternative-to-detention programs is also less than seven percent of the daily cost of detention, according to a 2014 Government Accountability Office study.¹¹⁸ Human rights and public health concerns, as well

¹¹⁶ NATIONAL IMMIGRANT JUSTICE CENTER, A BETTER WAY: COMMUNITY BASED PROGRAMMING AS AN ALTERNATIVE TO DETENTION 4–5 (Apr. 22, 2019), <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf>.

¹¹⁷ ICE’s own discontinued FCMP ensured that families received more tailored caseworker support. FCMP had compliance rates of over 99% with court hearings and ICE appointments, and saw compliance with removals and departures, all at a cost far below that of detention. NATIONAL IMMIGRANT JUSTICE CENTER ET AL., THE REAL ALTERNATIVES TO DETENTION 2 (JUNE 2019), <https://justiceforimmigrants.org/wp-content/uploads/2019/06/The-Real-Alternatives-to-Detention-June-2019-FINAL-v.2.pdf>

¹¹⁸ GOVERNMENT ACCOUNTABILITY OFFICE, ALTERNATIVES TO DETENTION (Nov. 2014), <https://www.gao.gov/assets/670/666911.pdf>. The Department of Homeland Security’s fiscal year (FY) 2020 Congressional Budget Justification

as fiscal efficiency, demand that anyone whose appearance can be assured by an alternative method should not be detained under current conditions in Adelanto during COVID-19.

The government argues that, by “maintaining custody of [non-citizens] in Adelanto—many of whom have criminal records,” it is “advanc[ing] the legitimate interest of protecting the community from dangerous criminal aliens” and that the district court’s order will “result in the mass release of hundreds of criminal aliens.”¹¹⁹ This argument is meritless.

The people detained at Adelanto are civil detainees. Moreover, many jails and prisons have *released people serving criminal sentences* to reduce the spread of COVID-19.¹²⁰ Since non-citizens in immigration detention are supposed to

notes that it costs \$139.07 per day to jail an adult immigrant in ICE custody and \$319.37 for an individual in family detention. The average cost per ATD participant would be \$4.33 per day.

¹¹⁹ Gov’t Op. Br. 3, 22.

¹²⁰ See, e.g., John Eligon, *‘It’s a Slap in the Face’: Victims Are Angered as Jails Free Inmates*, N.Y. TIMES (May 20, 2020), <https://www.nytimes.com/2020/04/24/us/coronavirus-jail-inmates-released.html> (“[T]housands of inmates [were] freed across the country in an effort to slow the coronavirus’s spread behind bars.”); Matt Hamilton et al., *California’s prisons and jails have emptied thousands into a world changed by coronavirus*, L.A. TIMES (May 17, 2020), <https://www.latimes.com/california/story/2020-05-17/coronavirus-prison-jail-releases> (“California prisons have released about 3,500 inmates[.]”); Rebecca Rosenberg, *More than 1,500 NYC inmates have been released during coronavirus crisis*, N.Y. POST (Apr. 10, 2020), <https://nypost.com/2020/04/10/more-than-1500-nyc-inmates-have-been->

receive ““more considerate treatment”” than people in criminal detention, non-citizens in Adelanto should be released.¹²¹ To “protect the community,” ICE should release people from Adelanto given the danger that an outbreak at Adelanto will overwhelm the county’s healthcare system.

CONCLUSION

For the reasons stated above and in the appellee’s brief, the judgment below granting the preliminary injunction should be affirmed.

Dated: June 26, 2020

Respectfully submitted,

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released-amid-coronavirus-crisis/ (“more than 1,500 inmates have been released . . . in three weeks).

¹²¹ *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting *Youngberg v. Romeo*, 457 U.S. 307, 321–22 (1982)).

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I certify that:

1. This brief complies with the type-volume limitation of Ninth Circuit Rule 32-1(a) and Federal Rule of Appellate Procedure 29(a)(5) because it contains 6,887 words, as determined by the word-count function of Microsoft Word, excluding the cover and the parts of the brief exempted by Ninth Circuit Rule 32-1.
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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2020, an electronic copy of the foregoing *Amicus* Brief was filed with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit using the Court's CM/ECF system and was served electronically by the Notice of Docket Activity upon registered CM/ECF participants.

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