

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 HON. TERRY J. HATTER)

**Brief of Nikolas Bowie, Erwin Chemerinsky, Michael Dorf, Leah
Litman, Pamela S. Karlan, Amanda Shanor, David Strauss,
Laurence H. Tribe, Stephen I. Vladeck, Ten Experts in Medicine
and Public Health, and Physicians for Human Rights As *Amici
Curiae* In Opposition To Defendants-Appellant's Motion For A Stay**

Mark Rosenbaum
Judy London
Talia Inlender
Jesselyn Friley
Amanda Savage
PUBLIC COUNSEL
610 S. ARDMORE AVENUE
LOS ANGELES, CA 90005
(213) 385-2977
mrosenbaum@publiccounsel.org

Joshua A. Matz
Counsel of Record
Kyla Magun
Dylan Cowit
Michael Skocpol
KAPLAN HECKER & FINK
350 FIFTH AVENUE | SUITE 7110
NEW YORK, NY 10118
(212) 763-0883
jmatz@kaplanhecker.com

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTEREST AND IDENTITY OF <i>AMICI CURIAE</i>	1
INTRODUCTION & SUMMARY OF ARGUMENT.....	3
ARGUMENT	5
A. There is No Clear Error in the Fact Finding Below	5
B. The Government is Unlikely to Succeed on the Merits	6
1. Deliberate Indifference to State-Created Danger.....	7
2. Violation of the “Special Relationship”	8
3. Imposition of Punitive Conditions	9
C. Release is an Appropriate Remedy Here.....	11
CONCLUSION.....	13
Appendix A	14
Appendix B	19
CERTIFICATE OF COMPLIANCE.....	22
CERTIFICATE OF SERVICE	23

TABLE OF AUTHORITIES

CASES

Basank v. Decker,
 No. 20 Civ. 2518, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020).....8

Bell v. Wolfish,
 441 U.S. 520 (1979).....9

Benjamin v. Malcolm,
 803 F.2d 46 (2d Cir. 1986).....12

Boumediene v. Bush,
 553 U.S. 723 (2008).....12

Brown v. Plata,
 563 U.S. 493 (2011).....12

Castillo v. Barr,
 No. 5:20 Civ. 605, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020).....2, 4

Castro v. City of Los Angeles,
 833 F.3d 1060 (9th Cir. 2016).....3

DeShaney v. Winnebago,
 489 U.S. 189 (1989).....3, 8

Duran v. Elrod,
 713 F.2d 292 (7th Cir. 1983).....12

Fofana v. Albence,
 No. 20 Civ. 10869, 2020 WL 1873307 (E.D. Mich. Apr. 15, 2020).....8

Gilmore v. California,
 220 F.3d 987 (9th Cir. 2000).....11

Gordon v. Cty. of Orange,
 888 F.3d 1118 (9th Cir. 2018).....3, 9

<i>Helling v. McKinney</i> , 509 U.S. 25 (1993).....	7
<i>Hernandez v. City of San Jose</i> , 897 F.3d 1125 (9th Cir. 2018).....	3,7
<i>Jones v. Blanas</i> , 393 F.3d 918 (9th Cir. 2004).....	3
<i>Kaur v. U.S. Dep’t of Homeland Sec.</i> , No. 22 Civ. 3172, 2020 WL 1939386 (C.D. Cal. Apr. 22, 2020).....	10
<i>Kennedy v. City of Ridgefield</i> , 439 F.3d 1055 (9th Cir. 2006).....	3,7
<i>King v. Cty. of Los Angeles</i> , 885 F.3d 548 (9th Cir. 2018).....	3, 9
<i>Lopez-Marroquin v. Barr</i> , No. 18-72922, 2020 WL 1808002 (9th Cir. Apr. 9, 2020).....	13
<i>Padilla v. ICE</i> , 953 F.3d 1134 (9th Cir. 2020).....	13
<i>Parsons v. Ryan</i> , 754 F.3d 657 (9th Cir. 2014).....	7
<i>Perez v. Wolf</i> , No. 5:19 Civ. 05191, 2020 WL 1865303 (N.D. Cal. Apr. 14, 2020).....	8
<i>Sharp v. Weston</i> , 233 F.3d 1166 (9th Cir. 2000).....	11
<i>Soc’y for Good Will to Retarded Children, Inc. v. Cuomo</i> , 737 F.2d 1239 (2d Cir. 1984).....	12
<i>Thakker v. Doll</i> , No. 20 Civ. 480, 2020 WL 1671563 (M.D. Pa. Mar. 31, 2020).....	10,12

Vazquez Barrera v. Wolf,

No. 4:20 Civ. 1241, 2020 WL 1904497 (S.D. Tex. Apr. 17, 2020)10, 11

Zaya v. Adducci,

No. 20 Civ. 10921, 2020 WL 1903172 (E.D. Mich. Apr. 18, 2020).....8, 11

INTEREST AND IDENTITY OF *AMICI CURIAE*¹

Amici curiae are distinguished scholars of constitutional law and those with expertise in medicine, public health, and epidemiology. They have joined in filing a brief because this case presents questions at the intersection of their respective fields.

Amici curiae scholars of constitutional law have substantial academic, pedagogical, and/or professional experience bearing on the legal questions presented for this Court's review. They urge denial of a stay based on their understanding of the district court's findings of fact and the legal issues before the Court.

Health and epidemiology *amici* have medical, scientific, public health and correctional health expertise. They include the international non-profit organization Physicians for Human Rights (PHR) and the following doctors affiliated with PHR: Ranit Mishori (PHR, Georgetown); Chris Beyrer (Hopkins Bloomberg SPH); Gregg Gonsalves (Yale); Michele Heisler (PHR, Michigan); Katherine C. McKenzie (Yale); Parveen Parmar (USC); Katherine Peeler (Harvard); Adam Richards; Altaf Saadi (Harvard); and Joseph Shin (Weill Cornell). These *amici* believe they can offer special assistance to the Court by providing an expert perspective on the health

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

risks and implications of this case. For the reasons explained below, PHR and its affiliated *amici* urge the Court to deny a stay, because these are issues of utmost importance for both the vulnerable parties in this case, as well as for the broader public interest in mitigating the spread of the novel coronavirus (“coronavirus”) and curtailing the catastrophic effects of this global pandemic. *Amici* urge the denial of a stay based on their knowledge of the public health implications discussed below, while at the same time claiming no special expertise in the attendant constitutional law issues presented for this Court’s consideration.

Amici submit this brief to make three points.

First, the district court’s factual findings, particularly its findings regarding the crucial role of social distancing in preventing the spread of coronavirus, comport with the broad consensus of leading public health experts.

Second, substantial precedent supports the district court’s conclusion that Petitioners are likely to succeed on their Fifth Amendment claims.

Finally, in light of the district court’s detailed factual findings, release is an appropriate remedy for the Fifth Amendment violations identified below.

A full list of *amici* is attached as Appendix A.²

² Counsel for *amici* note that they separately represent several individuals who were recently arrested and detained at Adelanto, and who have been released from Adelanto by virtue of temporary restraining orders issued by the district court. *See Castillo v. Barr*, No. 5:20 Civ. 605, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020).

INTRODUCTION & SUMMARY OF ARGUMENT

Under the Fifth Amendment, ICE is subject to three fundamental restrictions when it subjects a person to civil detention. First, it cannot affirmatively place that person in danger and act with deliberate indifference to the threat. *See, e.g., Hernandez v. City of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018); *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006). Second, it cannot fail to provide for the detainee’s basic human needs (including their medical care and reasonable safety). *See, e.g., DeShaney v. Winnebago*, 489 U.S. 189, 197 (1989); *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018); *Castro v. City of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016). Finally, it cannot inflict punishment—and thus it cannot impose conditions of confinement that are objectively excessive in relation to a non-punitive governmental purpose. *See, e.g., King v. Cty. of Los Angeles*, 885 F.3d 548, 558 (9th Cir. 2018); *Jones v. Blanas*, 393 F.3d 918, 926 (9th Cir. 2004).

Applied here, these precedents teach that ICE cannot lawfully detain people, subject them to a substantial risk of exposure to the coronavirus, deny them the ability to protect themselves, and insist that inaction or half measures are acceptable. Yet based on the district court’s factual findings—which are in accord with the consensus of public health experts—that is exactly what has happened at Adelanto. Petitioners are therefore likely to succeed on their Fifth Amendment claim.

The Government asserts that the district court erred in requiring the release of detainees as a remedy for this constitutional violation. The Government is mistaken. Given the extraordinary factual record before the district court—which reveals ICE’s ineffectual and intransigent response to the threat of COVID-19, and which shows that *only* population reduction can effectively remedy the constitutional violation—it was appropriate for the district court to require that Adelanto’s population be reduced in a measured, deliberate manner that allows for social distancing within the facility. The district court properly afforded the Government broad flexibility in designing and implementing a population reduction plan over the coming weeks, while recognizing the need for swift action as the virus spreads across California.

In affording this relief, the district court did not strike out on a limb. Dozens of courts have ordered equitable relief at detention facilities based on ICE’s deficient response to the pandemic. (*See* Appendix B.) While most of these orders have released individual detainees, the public interest and principles of equity are better served through a reasoned, systematic approach to compliance with the Constitution. The district court here recognized as much, likely by virtue of its experience with several individual challenges to detention at Adelanto. *E.g.*, *Castillo v. Barr*, No. 5:20 Civ. 605, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020).

Because Petitioners are likely to succeed on the merits, and because the relief afforded below is necessary to remedy the constitutional violations at Adelanto, the

district court's order should be allowed to take immediate effect. Every passing day that ICE persists in its unlawful conduct at Adelanto is another day that it imperils those in its custody, the safety of its staff, the welfare of surrounding communities, and the capacity of nearby hospitals. Entering a stay would be a dangerous gamble—and would drastically increase the odds that Adelanto will be overwhelmed by a coronavirus outbreak in the interim. Neither law nor equity warrants that result.

ARGUMENT

The facts found by the district court comport with the broad consensus of public health experts. Those facts demonstrate the persistence of Fifth Amendment violations at Adelanto. Requiring a staged release of detainees is appropriate as the only effective remedy for those violations. The Court should therefore deny a stay.

A. There is No Clear Error in the Fact Finding Below

The district court did not commit clear error in its findings of fact regarding the threat posed by the coronavirus, the inadequacy of measures taken by Adelanto, and the need for effective preventive measures. Notably, the Government has not submitted a declaration from any independent experts in medicine stating that the conditions at Adelanto satisfy minimal protective standards. Among experts, it is *widely* recognized that social distancing is the single most important measure—by far—to prevent the spread of the coronavirus.

A new study predicting the spread of the coronavirus in immigration detention further confirms that point. Even under the study’s optimistic scenario, it estimates that 72% of people in the facilities evaluated (including Adelanto) will be infected within 90 days of an outbreak. *See Irvine et al., Modeling COVID-19 and impacts on U.S. Immigration and Enforcement (ICE) detention facilities, 2020, J. URBAN HEALTH 2020, *1.* At a facility of 1000 people—similar to Adelanto’s current size—the study predicts that a minimum of 722 will fall ill. *See id.* at *6. In that scenario, the study finds that local hospital capacity and ICE beds would quickly be overwhelmed. In the study’s optimistic scenario, it takes 90 days for ICE facilities such as Adelanto to produce a number of critical care patients that outstrips ICU bed capacity within a 10-mile radius; in the study’s more pessimistic scenario, it takes only 30 days. *Id.* at *7. The study concludes that “[l]owering a population’s density” is the most effective way to “slow the spread” of disease. *Id.* Thus, only by releasing enough detainees at Adelanto to permit social distancing and slow the spread of the virus can the Government avoid an impending public health disaster.

B. The Government is Unlikely to Succeed on the Merits

The Government does not identify any proposition of Fifth Amendment law that it believes the district court misstated. Instead, it objects to the district court’s findings of fact and weighing of the evidence. But the Government fails to show that the district court committed clear error in its factual determinations. Given that the

district court correctly stated the law and then reasonably applied it to the facts it found, the Government is not likely to succeed on the merits of its appeal.

1. Deliberate Indifference to State-Created Danger

First, the Fifth Amendment prohibits the Government from “affirmatively plac[ing]” a person “in a position of danger . . . which he or she would not otherwise have faced” and then acting with “deliberate indifference.” *Hernandez v. City of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018); *see also Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006).

Here, as the district court found, the Government has affirmatively placed detainees at Adelanto in a position of danger. This threat is both “particularized” and “foreseeable.” *Hernandez*, 897 F.3d at 1133. Specifically, through its policies and procedures, the Government has subjected detainees at Adelanto to a substantial and extremely high risk of very serious harm in the event of a COVID-19 outbreak—even as the Government has drastically increased the likelihood of such an outbreak at Adelanto and stripped detainees of any measures by which to protect themselves. *See Parsons v. Ryan*, 754 F.3d 657, 678 (9th Cir. 2014) (collecting cases holding that exposure to a substantial risk of harm is itself a constitutional injury).

The Government has acted with deliberate indifference to this serious threat by “disregard[ing] a known or obvious consequence of [its] actions.” *Kennedy*, 439 F.3d at 1064; *accord Helling v. McKinney*, 509 U.S. 25, 33 (1993) (“Nor can we

hold that prison officials may be deliberately indifferent to the exposure of inmates to a serious, communicable disease . . .”). The Government is well aware of the risks posed by COVID-19. The question is not *if* coronavirus will enter Adelanto, but rather *when* it will do so (if not already) and how quickly it will spread. Despite this, the Government has failed to implement measures to bring Adelanto into compliance with minimal requirements described by experts as crucial to address this threat. The failure to take these reasonable and well-known measures constitutes deliberate indifference as a matter of law. *See, e.g., Zaya v. Adducci*, No. 20 Civ. 10921, 2020 WL 1903172, at *5 (E.D. Mich. Apr. 18, 2020); *Fofana v. Albence*, No. 20 Civ. 10869, 2020 WL 1873307, at *11 (E.D. Mich. Apr. 15, 2020); *Perez v. Wolf*, No. 5:19 Civ. 05191, 2020 WL 1865303, at *12 (N.D. Cal. Apr. 14, 2020); *Basank v. Decker*, No. 20 Civ. 2518, 2020 WL 1481503, at *5 (S.D.N.Y. Mar. 26, 2020).

2. Violation of the “Special Relationship”

A related Fifth Amendment theory turns on the “special relationship” that the Government creates with those whom it takes into custody. *See DeShaney v. Winnebago*, 489 U.S. 189, 197 (1989). The Government violates the terms of this relationship where it “(i) made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the [Government] did not take reasonable available measures to abate the risk, even though a reasonable official in

the circumstances would have appreciated the high degree of risk involved . . . ; and (iv) by not taking such measures, the defendant caused the plaintiff's injuries." *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018).

Here, these elements are all satisfied: the Government has made intentional decisions with respect to conditions at Adelanto; those conditions have created a substantial risk of serious harm, which the detainees are powerless to protect against; the Government has not taken "reasonable available measures to abate the risk"; and the Government has thereby inflicted injury on detainees at Adelanto.

3. Imposition of Punitive Conditions

The Government may not subject civil detainees to conditions constituting punishment. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). In other words, it may not impose conditions that are objectively excessive in relation to a non-punitive purpose. *See King v. Cty. of Los Angeles*, 885 F.3d 548, 558 (9th Cir. 2018).

The Government asserts that "[t]he immigration detention of class members does not constitute punishment because it is reasonably related to the objective of enforcing immigration laws." Br. at 9. But this analysis focuses only on the fact of detention, not the conditions of detention. If accepted, the Government's logic could justify *any* conditions, so long as the Government had a valid reason for detention in the first place. That is simply mistaken. As the district court recognized, the true question here is whether detaining Petitioners at Adelanto *in these circumstances*

constitutes punishment. The answer is “yes.” As measured against an interest in routine immigration enforcement, the substantial risk of serious harm to which the Government is exposing detainees at Adelanto is punitively excessive.

This is particularly true given the availability of reasonable alternative measures, enumerated in the district court’s order, that would allow the Government to vindicate its interest in immigration enforcement without subjecting detainees to grave danger. Many courts have recognized this point. *See, e.g., Kaur v. U.S. Dep’t of Homeland Sec.*, No. 22 Civ. 3172, 2020 WL 1939386, at *4 (C.D. Cal. Apr. 22, 2020) (“[T]he Court finds the conditions of continued confinement [at Adelanto] in light of the severe risks posed by the COVID-19 pandemic are excessive in relation to Respondents’ objectives.”); *Vazquez Barrera v. Wolf*, No. 4:20 Civ. 1241, 2020 WL 1904497, at *5 (S.D. Tex. Apr. 17, 2020) (“Preventing Plaintiffs from protecting their own health from a high risk of serious illness or death does not reasonably relate to a legitimate governmental purpose and thus, violates the Fifth Amendment.”); *Thakker v. Doll*, No. 20 Civ. 480, 2020 WL 1671563, at *8 (M.D. Pa. Mar. 31, 2020) (“[W]e can see no rational relationship between a legitimate government objective and keeping Petitioners detained in unsanitary, tightly-packed environments—doing so would constitute a punishment to Petitioners.”).

C. Release is an Appropriate Remedy Here

The Government asserts that release is a prohibited remedy for the violations identified below. That is incorrect. “Once a constitutional violation has been found, a district court has broad powers to fashion a remedy.” *Sharp v. Weston*, 233 F.3d 1166, 1173 (9th Cir. 2000). Of course, “the nature and scope of the remedy are to be determined by the violation.” *Gilmore v. California*, 220 F.3d 987, 1005 (9th Cir. 2000). “But where, as here, a constitutional violation has been found, the remedy does not ‘exceed’ the violation if the remedy is tailored to cure the ‘condition that offends the Constitution.’” *Id.* (citation omitted).

In this case, the condition that offends the Constitution is exposure to a substantial risk of harm by virtue of the policies and procedures at Adelanto. As the district court found, the single most effective remedy for that violation—indeed, the *only* effective remedy—is for Adelanto to release enough detainees to allow necessary social distancing within the facility. *See, e.g., Zaya v. Adducci*, No. 20 Civ. 10921, 2020 WL 1903172, at *4 (E.D. Mich. Apr. 18, 2020) (“The evidence strongly suggests that release is the only justifiable option consistent with public health principles.”); *Vazquez Barrera v. Wolf*, No. 4:20 Civ. 1241, 2020 WL 1904497, at *4 (S.D. Tex. Apr. 17, 2020) (“[I]n most cases, unconstitutional conditions of confinement can be remedied through injunctions that require abusive practices be changed. However, the current case is not one where such injunctive

relief is available . . . Courts around the country have recognized similar assertions and ordered immediate release of particularly vulnerable detainees from ICE facilities under writs of habeas corpus as a result.” (collecting cases)); *Thakker*, 2020 WL 1671563, at *8 (“Social distancing and proper hygiene are the *only* effective means by which we can stop the spread of COVID-19.”).

Perhaps the closest analogy to this circumstance is the prison overcrowding context, where courts have long recognized that extreme cases of overcrowding endanger all inmates and justify a staged release order. *See, e.g., Benjamin v. Malcolm*, 803 F.2d 46, 53 (2d Cir. 1986); *Soc’y for Good Will to Retarded Children, Inc. v. Cuomo*, 737 F.2d 1239, 1251 (2d Cir. 1984); *Duran v. Elrod*, 713 F.2d 292, 298 (7th Cir. 1983). Passage of the Prison Litigation Reform Act merely ratified and structured that preexisting equitable authority as applied to prisons. *See Brown v. Plata*, 563 U.S. 493, 538 (2011). And here, invocation of a release remedy is warranted for a simple reason: Adelanto *is* overcrowded, as measured against constitutional and public health imperatives to guard against the coronavirus.

The Government’s objections to a release remedy are particularly unfounded in this case, where the district court also possesses habeas jurisdiction. “Because the central purpose of habeas corpus is to test the legality of executive detention, the writ requires most fundamentally an Article III court able to hear the prisoner’s claims and, when necessary, order release.” *Boumediene v. Bush*, 553 U.S. 723, 808

(2008). While the Government objects to habeas jurisdiction, the Ninth Circuit has recently rejected its arguments. *See Lopez-Marroquin v. Barr*, No. 18-72922, 2020 WL 1808002, at *1 (9th Cir. Apr. 9, 2020); *Padilla v. ICE*, 953 F.3d 1134, 1149 (9th Cir. 2020). Accordingly, the district court possessed the authority to order release as a remedy for the persistent, unabated Fifth Amendment violations at Adelanto.³

CONCLUSION

For the reasons set forth above, *Amici* respectfully submit that this Court should deny the Government's motion for a stay.

Dated: April 29, 2020

Respectfully Submitted,
/s/ Joshua Matz

Mark Rosenbaum
Judy London
Talia Inlender
Jesselyn Friley
Amanda Savage
PUBLIC COUNSEL
610 S. ARDMORE AVENUE
LOS ANGELES, CA 90005
(213) 385-2977
mrosenbaum@publiccounsel.org

Joshua Matz
Counsel of Record
Kyla Magun
Dylan Cowit
Michael Skocpol
KAPLAN HECKER & FINK
350 FIFTH AVENUE | SUITE 7110
NEW YORK, NY 10118
(212) 763-0883
jmatz@kaplanhecker.com

Counsel for Amici Curiae

³ If the Court has any issue with the stringency of the district court's remedy, the proper response, given the showing made by Petitioners, is to remand with guidance respecting such modifications as this Court deems proper within a set time frame.

Appendix A

Amici join this brief as individuals; institutional affiliation is noted for informational purposes only and does not indicate endorsement by institutional employers of positions advocated.

Constitutional Law Scholars:

- **Nikolas Bowie**, Assistant Professor of Law, Harvard Law School.
- **Erwin Chemerinsky**, Dean & Jesse H. Choper Distinguished Professor of Law, Berkeley Law School.
- **Michael Dorf**, Roberts S. Stevens Professor of Law, Cornell Law School.
- **Leah Litman**, Assistant Professor of Law, The University of Michigan Law School.
- **Pamela S. Karlan**, Kenneth and Harle Montgomery Professor of Public Interest Law, Co-Director, Stanford Supreme Court Litigation Clinic, Stanford Law School.
- **Amanda Shanor**, Assistant Professor, Wharton School at the University of Pennsylvania.
- **David Strauss**, Gerald Ratner Distinguished Service Professor of Law, Faculty Director of the Jenner & Block Supreme Court and Appellate Clinic, The University of Chicago Law School.
- **Laurence H. Tribe**, Carl M. Loeb University Professor and Professor of Constitutional Law, Harvard Law School.
- **Stephen I. Vladeck**, A. Dalton Cross Professor in Law, The University of Texas School of Law.

Experts in Public Health, Medicine, and Epidemiology:

- **Physicians for Human Rights** (“PHR”) is an international non-profit organization focused on the protection of human rights through the core

disciplines of science, medicine, and public health. Currently, PHR is working to ensure that individuals held in carceral environments, and particularly those at high risk of infection, are able to follow public health directives and guidelines regarding the COVID-19 pandemic. Established in 1986, PHR was founded by a group of dedicated physicians who, through meticulous, science-based, and forensic documentation, sought to prevent human rights violations and to demand accountability for them. *See About Us | Our History*, PHYSICIANS FOR HUMAN RIGHTS (“PHR”), <https://phr.org/about/history/> (last visited Apr. 6, 2020). PHR’s U.S. advocacy focuses on, among other issues, health crises within the Immigration and Customs Enforcement (ICE) detention system, including undertaking advocacy efforts to ensure that vulnerable individuals are protected by science-driven approaches to the unique challenge of mitigating the coronavirus outbreak.

- **Ranit Mishori, MD, MHS, FAAFP** is a professor of family medicine at Georgetown University, where she is also director of the department’s Global Health Initiatives’ Health Policy fellowship, a faculty leader of the Correctional Health Interest Group, and director of the Asylum program. Dr. Mishori is a fellow of the American Academy of Family Physicians and Diplomate of the American Board of Family Medicine. As an elected member of the American Academy of Family Physicians’ Commission on the Health of the Public and Science, she chaired the Public Health Issues sub-committee and was a lead author of the Academy’s comprehensive position paper on Incarceration and Health. Dr. Mishori received her MD at Georgetown University School of Medicine and MPH at the Johns Hopkins Bloomberg School of Public Health (focusing on the science of how to halt the spread of infectious diseases). Published frequently in areas pertinent to this case, she is a senior medical advisor at PHR.
- **Chris Beyrer MD, MPH** is the Desmond M. Tutu Professor of Public Health and Human Rights at the Johns Hopkins Bloomberg School of Public Health and a professor of epidemiology, international health, health, behavior and society, nursing, and medicine. He is the director of the Johns Hopkins HIV Epidemiology and Prevention Science Training Program and is a founding director of the Center for Public Health and Human Rights. He is also the associate director of the Johns Hopkins Center for AIDS Research and of the University’s Center for Global Health, and serves as a member of the MSM Working Group of the HIV Prevention Trials Network. Dr. Beyrer has served as an advisor to the PEPFAR Program, the HIV Vaccine Trials Network, the

Office of AIDS Research of the US NIH, the U.S. Military HIV Research Program, the World Bank, the Royal Thai Army Medical Corps, and the Thai Red Cross, as well as others. Dr. Beyrer was elected to membership in the U.S. National Academy of Medicine in 2014, and served as President of the International AIDS Society from 2014 to 2016. He is a member of PHR's advisory board.

- **Gregg Gonsalves, Ph.D.**, is an assistant professor of the epidemiology of microbial diseases at the Yale School of Public Health and an associate professor (adjunct) at the Yale Law School. For more than 30 years, he has worked on epidemic diseases, including HIV, tuberculosis and hepatitis C, with front-line service providers and now as a researcher using quantitative models to improve the response to epidemic disease around the world. He is a 2018 MacArthur "Genius" Fellow.
- **Michele Heisler, MD, MPA** is a professor of internal medicine and public health at the University of Michigan, as well as a research scientist, VA Center for Clinical Management Research, Ann Arbor VA. With continuous NIH and other federal funding since 2005, she has led groundbreaking research investigating determinants of health outcomes in chronic disease and effective interventions to improve health outcomes, authoring more than 200 peer-reviewed studies in medical and public health journals. Dr. Heisler was elected to the Association of American Physicians in 2017 for her scientific research contributions. She serves as Medical Director of PHR.
- **Katherine C. McKenzie, MD, FACP** is a faculty member at the Yale School of Medicine and, since 2007, has been the director of the Yale Center for Asylum Medicine (YCAM). At YCAM, she has performed forensic evaluations of asylum seekers at Yale and in detention facilities. She has testified as an expert witness in immigration court for individuals referred by law schools, human rights organizations, and immigration attorneys. Dr. McKenzie lectures and publishes extensively nationally and internationally on topics of asylum, detention and physician advocacy.
- **Parveen Parmar, MD** is the Chief of the Division of Global Emergency Medicine at the University of Southern California Keck School of Medicine, where she is an Associate Professor of Clinical Emergency Medicine. Dr. Parmar's research has focused on the study of health and human rights violations in refugees and internally displaced populations. Dr. Parmar has supported health care for refugees and other vulnerable persons globally in multiple settings--on issues such as emergency care delivery, maternal and

child health, gender-based violence, and primary care provision. Her research also focuses on deaths in ICE detention, and the provision of health care in ICE facilities. In January 2017, Dr. Parmar founded Southern California Physicians for Health Equity, a group committed to protecting access to care for all patients, including undocumented immigrants; protecting gains made by the ACA; advocating for single payer health care; and advocating for politicians and legislation that serve patients' needs. Dr. Parmar has served as a medical expert for Physicians for Human Rights since 2010.

- **Katherine Peeler, MD** is an instructor of pediatrics at Harvard Medical School and a pediatric critical care physician at Boston Children's Hospital Division of Medical Critical Care. She is a fellow of the American Academy of Pediatrics and the medical director of the Harvard Medical School Asylum Clinic, which focuses on issues of asylum seekers, including immigration detention. In her role as a medical expert at PHR, Dr. Peeler has performed dozens of evaluations for pediatric and adult asylum-seeker cases, including for asylum seekers in detention, and published in academic journals regarding the health of immigrants in federal custody.
- **Adam Richards, MD, PhD, MPH** is a health services researcher and licensed internist in the state of CA (license #A105190). Dr. Richards is the former faculty advisor of the LA Human Rights Initiative at UCLA, and has mentored dozens of clinicians throughout Southern California to conduct forensic evaluations of individuals seeking asylum in the United States. In addition to conducting homeless street outreach with Venice Family Clinic, he is a voluntary medical provider with the Los Angeles County Surge Unit, caring for individuals temporarily quarantined for exposure to COVID-19 or isolated for confirmed or suspected disease. Dr. Richards is a graduate of Harvard College, the Johns Hopkins University Schools of Medicine and Public Health (MD/MPH), and the UCLA School of Public Health (PhD). He is a member of the PHR board of directors
- **Altaf Saadi, MD, MSc** is a medical expert at PHR and a board-certified neurologist at Massachusetts General Hospital (MGH), Instructor of Neurology at Harvard Medical School, and Associate Director of the MGH Asylum Clinic. In her role as a medical expert for PHR, Dr. Saadi has conducted dozens of evaluations of asylum seekers in the community and in immigration detention centers. She has also assessed the medical conditions of confinement in immigration detention at facilities in Texas and California, including with Human Rights First and Disability Rights California. Her

academic work focuses on health disparities and immigrant health. She has been published in *JAMA*, the *British Medical Journal*, and *Neurology*, among others. Dr. Saadi is a graduate of Yale College and Harvard Medical School. She received her MSc in Health Policy and Management from UCLA.

- **Joseph Shin, MD, MSc** is Assistant Professor of Medicine at Weill Cornell Medicine and the Cornell Center for Health Equity, former medical director for the Weill Cornell Center for Human Rights and a medical expert for PHR for the past 10 years. He has conducted research related to trauma and adverse health outcomes among child asylum seekers, medical neglect and barriers to care in immigration detention centers. He has extensively evaluated inadequate medical care in jails and detention facilities leading to preventable complications, negative health outcomes, and even death. He has an MSc in clinical epidemiology and health services research. Prior to joining Cornell, Dr. Shin worked with the NYU/Bellevue Program for Survivors of Torture.

Appendix B

District court decisions granting emergency equitable relief based on pandemic-related Fifth Amendment violations at ICE detention facilities

- *Essien v. Barr*, No. 20 Civ. 1034, 2020 WL 1974761 (D. Colo. Apr. 24, 2020)
- *Sallaj v. U.S. Immigration & Customs Enf't*, No. 20 Civ. 167, 2020 WL 1975819 (D.R.I. Apr. 24, 2020);
- *Medeiros v. Martin*, No 20 Civ. 178, 2020 WL 1969363 (D.R.I. Apr. 24, 2020)
- *Basank v. Decker*, No. 20 Civ. 2518, 2020 WL 1953847 (S.D.N.Y. Apr. 23, 2020)
- *Malam v. Adduci*, No. 20 Civ. 10829, 2020 WL 1934895 (E.D. Mich. Apr. 22, 2020)
- *Kaur v. U.S. Dep't of Homeland Sec.*, No. 2:20 Civ. 3172, 2020 WL 1939386 (C.D. Cal. Apr. 22, 2020)
- *Gayle v. Meade*, No. 20 Civ. 21553, 2020 WL 1949737 (S.D. Fla. Apr. 22, 2020)
- *Durel B. v. Decker*, No. 20 Civ. 3430, 2020 WL 1922140 (D.N.J. Apr. 21, 2020)
- *Fraihat v. U.S. Immigration & Customs Enf't*, No. 19 Civ. 1546, 2020 WL 1932570 (C.D. Cal. Apr. 20, 2020)
- *Singh v. Barr*, No. 20 Civ. 2346, 2020 WL 1929366 (N.D. Cal. Apr. 20, 2020)
- *Amaya-Cruz v. Adducci*, No. 1:20 Civ. 789, 2020 WL 1903123 (N.D. Ohio Apr. 18, 2020)
- *Zaya v. Adducci*, No. 20 Civ. 10921, 2020 WL 1903172 (E.D. Mich. Apr. 18, 2020)

- *Barrera v. Wolf*, No. 4:20 Civ. 1241, 2020 WL 1904497 (S.D. Tex. Apr. 17, 2020)
- *Malam v. Adducci*, No. 20 Civ.10829, 2020 WL 1899570 (E.D. Mich. Apr. 17, 2020)
- *Leandro R.P v. Decker*, No. 20 Civ. 3853, 2020 WL 1899791 (D.N.J. Apr. 17, 2020)
- *Barbecho v. Decker*, No. 20 Civ. 281, 2020 WL 1876328 (S.D.N.Y. Apr. 15, 2020)
- *Fofana v. Albence*, No. 20 Civ. 10869, 2020 WL 1873307 (E.D. Mich. Apr. 15, 2020)
- *Jeferson V. G. v. Decker*, No. 20 Civ. 3644, 2020 WL 1873018 (D.N.J. Apr. 15, 2020)
- *Ortuno v. Jennings*, No. 20 Civ, 02064, 2020 WL 1866122 (N.D. Cal. Apr. 14, 2020)
- *Perez v. Wolf*, No. 5:19 Civ. 05191, 2020 WL 1865303 (N.D. Cal. Apr. 14, 2020)
- *Bent v. Barr*, No. 19 Civ. 06123 (Doc. 38) (N.D. Cal. Apr. 13, 2020)
- *Doe v. Barr*, No. 20 Civ. 02141, 2020 WL 1820667 (N.D. Cal. Apr. 12, 2020)
- *Arias v. Decker*, No. 20 Civ. 2802, 2020 WL 1847986 (S.D.N.Y. Apr. 10, 2020)
- *Ortuno v. Jennings*, No. 20 Civ. 02064, 2020 WL 1701724 (N.D. Cal. Apr. 8, 2020)
- *Hope v. Doll*, No. 1:20 Civ. 562 (Doc. 11) (M.D. Pa Apr. 7, 2020)
- *Ali v. Dep't of Homeland Sec.*, No. 20 Civ. 140, 2020 WL 1666074 (S.D. Tex. Apr. 2, 2020)
- *Hernandez v. Wolf*, No. 20 Civ. 617 (C.D. Cal. Apr. 1, 2020)

- *Hernandez v. Decker*, No. 20 Civ. 1589, 2020 WL 1547459 (S.D.N.Y. Mar. 31, 2020)
- *Thakker v. Doll*, No. 20 Civ. 480 (M.D. Pa. Mar. 31, 2020)
- *Fraihat v. Wolf*, No. 20 Civ. 590 (C.D. Cal. Mar. 30, 2020)
- *Coronel v. Decker*, No. 20 Civ. 2472, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020)
- *Basank v. Decker*, No. 20 Civ. 2518, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020)
- *Jimenez v. Wolf*, No. 18 Civ. 10225 (D. Mass. Mar. 25, 2020)

CERTIFICATE OF COMPLIANCE

Counsel for *amici curiae* certifies that this brief contains 2,586 words, based on the “Word Count” feature of Microsoft Word 2016.

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B)(iii), this word count does not include the words contained in the Corporate Disclosure Statement, Table of Contents, Table of Authorities, and Certificates of Counsel. Counsel also certifies that this document has been prepared in a proportionally spaced typeface using 14-point Times New Roman in Microsoft Word 2016.

Dated: April 29, 2020

By: /s/ Joshua Matz

JOSHUA MATZ

Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

Counsel for *amici curiae* certifies that on April 29, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: April 29, 2020

By: /s/ Joshua Matz

JOSHUA MATZ

Counsel for *Amici Curiae*