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**United States District Court  
Central District of California**

11 ARMANDEEP KAUR,

12                   Petitioner,

13                   v.

14 U.S. DEPARTMENT OF  
15 HOMELAND SECURITY ET AL.,

16                   Respondents.

Case No. 2:20-cv-03172-ODW (MRWx)

**ORDER GRANTING APPLICATION  
FOR TEMPORARY RESTRAINING  
ORDER [5] AND  
ORDER TO SHOW CAUSE**

17                   **I. INTRODUCTION**

18                   Before the Court is Petitioner Armandeep Kaur’s (“Petitioner”) *Ex Parte*  
19 Application for Temporary Restraining Order (“TRO,” ECF No. 5), seeking an order  
20 directing her immediate release from Adelanto Processing Center in light of the  
21 serious threats to her health and safety posed by the current COVID-19 pandemic.  
22 Respondents U.S. Department of Homeland Security *et al.* (“Respondents”) filed an  
23 Opposition to Petitioner’s TRO. (Opp’n to TRO (“Opp’n”), ECF No. 10.) The Court  
24 has considered Petitioner’s TRO and Respondents’ Opposition. For the reasons to  
25 follow, the Court **GRANTS** Petitioner’s TRO.

26                   **II. BACKGROUND**

27                   Petitioner Armandeep Kaur (“Petitioner”) is a non-citizen who fled India with  
28 her husband due to political persecution. (Pet. ¶¶ 1, 15, ECF No. 1.) She sought

1 asylum in the United States and was taken into custody by U.S. Customs and Border  
2 Protection Officers on October 8, 2019. (Pet. ¶¶ 14–15.) Although her husband  
3 received a credible fear determination and was released on bond, Petitioner received a  
4 negative credible fear determination and was ordered removed. (Pet. ¶¶ 2–4, 15.)  
5 Petitioner has remained detained at the Adelanto Processing Center since October 8,  
6 2019. (Pet. ¶ 1.) Petitioner suffers from Piles Disease, severe depression, and has  
7 recently suffered significant weight loss and fainting resulting in her hospitalization.  
8 (TRO 3, 5.)

9 On April 6, 2020 Petitioner filed a Petition for Writ of Habeas Corpus pursuant  
10 to 28 U.S.C. § 2241 (“Petition”). (See Pet.) The Court granted an emergency stay of  
11 Petitioner’s deportation and removal to India, pending resolution of her Petition.  
12 (ECF No. 3.) On April 17, 2020, Petitioner filed the instant TRO application, asking  
13 the Court to “issue a temporary restraining order directing the Respondents to  
14 immediately release the Petitioner,” in light of the serious risks to her health and  
15 safety posed by the COVID-19 pandemic. (TRO 2, 24.)

16 Adelanto Processing Center (“Adelanto”), located in San Bernardino,  
17 California, is a privately owned and operated immigration facility run by the GEO  
18 Group on behalf of U.S. Immigration and Customs Enforcement. (TRO 5.) Petitioner  
19 asserts it can hold over 1600 detainees, is “crowded,” and has been cited for its  
20 “inability to give adequate medical care even in the best of times.” (TRO 9, 11.)  
21 Indeed, courts have recognized that “[o]ver the years, and as recently as 2018, DHS’s  
22 Office of the Inspector General had, repeatedly, found that significant and various  
23 health and safety risks existed at Adelanto.” *Castillo v. Barr*, No. CV 20-00605-TJH  
24 (AFMx), 2020 WL 1502864, at \*1 (C.D. Cal. Mar. 27, 2020). Respondents state they  
25 have recently implemented precautions in light of the COVID-19 pandemic, including  
26 voluntarily reducing the population size, housing new arrivals separately from the  
27 general population for fourteen days, and housing detainees in cohorts, among other  
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1 things. (Opp’n 1, 3–8.) Respondents assert that, as of April 18, 2020, Adelanto has  
2 no confirmed cases of COVID-19. (Opp’n 1, 16.)

### 3 III. LEGAL STANDARD

4 A TRO is an “extraordinary remedy that may only be awarded upon a clear  
5 showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council*,  
6 555 U.S. 7, 22 (2008). The standard for issuing a temporary restraining order is  
7 “substantially identical” to that for issuing a preliminary injunction. *Stuhlbarg Int’l*  
8 *Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Pursuant to  
9 Federal Rule of Civil Procedure 65, a court may grant preliminary injunctive relief to  
10 prevent “immediate and irreparable injury.” Fed. R. Civ. P. 65(b). To obtain this  
11 relief, a plaintiff must establish the “*Winter*” factors: (1) “he is likely to succeed on the  
12 merits”; (2) “he is likely to suffer irreparable harm in the absence of preliminary  
13 relief”; (3) “the balance of equities tips in his favor”; and (4) “an injunction is in the  
14 public interest.” *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046,  
15 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20). “Where the government is a  
16 party to a case in which a preliminary injunction is sought, the balance of the equities  
17 and public interest factors merge.” *Padilla v. Immigration & Customs Enf’t*, 953 F.3d  
18 1134, 1141 (9th Cir. 2020).

19 In the Ninth Circuit, the *Winter* factors may be evaluated on a sliding scale:  
20 “serious questions going to the merits, and a balance of hardships that tips sharply  
21 towards the plaintiff can support issuance of a preliminary injunction, so long as the  
22 plaintiff also shows that there is a likelihood of irreparable injury and that the  
23 injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d  
24 1127, 1135 (9th Cir. 2011) (internal quotation marks omitted). The issuance of a  
25 temporary restraining order may not exceed fourteen days “unless before that time the  
26 court, for good cause, extends it for a like period or the adverse party consents to a  
27 longer extension.” Fed. R. Civ. Proc. 65(b)(2).

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#### IV. DISCUSSION

1  
2 The World Health Organization has designated COVID-19 a global pandemic.  
3 The State of California has declared a state of emergency. The President of the United  
4 States has declared a national emergency. On March 10, 2020, San Bernardino  
5 County, where Adelanto is located, also declared a state of emergency in response to  
6 the coronavirus and resulting COVID-19 pandemic.

7 The Centers for Disease Control and Prevention (“CDC”) reports that  
8 COVID-19 spreads easily and sustainably from person to person, and even  
9 asymptomatic infected people can spread the virus. *See Doe v. Barr*, No. 20-CV-  
10 02141-LB, 2020 WL 1820667, at \*2 (N.D. Cal. Apr. 12, 2020) (citing CDC reports  
11 and courts’ discussions concerning COVID-19). It can survive on surfaces for days  
12 and spreads more quickly in confined spaces. *Id.*; *Castillo*, 2020 WL 1502864, at \*2.  
13 The CDC reports that certain people, those over 65 and people with underlying health  
14 conditions or weakened immunity, are more likely to suffer severe illness or die from  
15 COVID-19. *See Perez v. Wolf*, No. EDCV 19-05191-EJD, 2020 WL 1865303, at \*11  
16 (N.D. Cal. Apr. 14, 2020) (discussing CDC guidance). There is no approved vaccine  
17 to prevent infection. *Doe*, 2020 WL 1820667, at \*2. The CDC has directed people to  
18 stay home, practice social distancing (staying six feet apart from other people), and  
19 increase hand-washing and sanitizing of surfaces to prevent infection. *Id.*

20 Significantly, the Ninth Circuit has recognized, in ordering the release of an  
21 immigration petitioner, that “the rapidly escalating public health crisis . . . will  
22 especially impact immigration detention centers.” *Xochihua-Jaimes v. Barr*, 798 F.  
23 App’x 52, 52 (9th Cir. Mar. 24, 2020).

24 Petitioner argues that continued detention in light of the serious threat to her  
25 health and safety posed by COVID-19 violates the Due Process Clause. (TRO 2–5.)  
26 She argues she faces irreparable harm and that the balance of equities is in her favor  
27 where her release prevents human suffering and reduces the risk of an outbreak.  
28 (TRO 21–24.) Respondents oppose and argue that Petitioner (1) may not challenge

1 the conditions of her confinement through a habeas petition; (2) lacks standing  
2 because her alleged injury is too speculative, and (3) has failed to show that she is  
3 entitled to a TRO. (*See* Opp’n 1–3, 10–25.)<sup>1</sup>

4 First, the Court can address Petitioner’s challenges to the conditions of  
5 confinement in a habeas petition. *See Perez*, 2020 WL 1865303, at \*12. Habeas  
6 corpus relief is appropriate when a person is “in custody in violation of the  
7 Constitution or laws or treaties of the United states.” 28 U.S.C. § 2241(c)(3). Habeas  
8 corpus proceedings are “available as a forum for statutory and constitutional  
9 challenges” to the authority of the Attorney General to order detention of a person.  
10 *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). As Petitioner contends that her  
11 continued detention during the COVID-19 pandemic violates her substantive due  
12 process rights, “[t]his is patently a ‘challenge[] to the validity’ of [her] confinement.”  
13 *Bent v. Barr*, No. 19-CV-06123-DMR, 2020 WL 1812850, at \*2 (N.D. Cal. Apr. 9,  
14 2020) (quoting *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (“Challenges to the  
15 validity of any confinement or to particulars affecting its duration are the province of  
16 habeas corpus.”)).

17 Second, Petitioner has standing. The risk of injury from COVID-19 is not  
18 speculative. COVID-19 infections are rapidly increasing in the United States,  
19 including in California and San Bernardino, and “when introduced into a confined  
20 space” such as a jail or detention center “it can rapidly spread.” *Ortuno v. Jennings*,  
21 No. CV 20-02064-MMC, 2020 WL 1701724, at \*2 (N.D. Cal. Apr. 8, 2020.) The  
22 Court recognizes that Respondents have implemented precautionary measures at  
23 Adelanto, but they fail to address the serious risk of spread by asymptomatic carriers,  
24 other than by “cohorting” groups of detainees that have been identified as exposed.

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26 <sup>1</sup> To the extent Respondents argue that Petitioner is absolutely prohibited from seeking release  
27 because she is mandatorily detained under 8 U.S.C. § 1226(c) (Opp’n 18–19), “courts have the  
28 authority to order those detained in violation of their due process rights released, notwithstanding  
§ 1226(c).” *Basank v. Decker*, No. 20 CIV. 2518 (AT), 2020 WL 1481503, at \*6 (S.D.N.Y. Mar.  
26, 2020); *see also Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

1 Thus, the risk remains and Petitioner’s injury is not speculative. “Courts fielding  
2 habeas petitions in the wake of the escalating pandemic have rejected similar standing  
3 arguments, even when there is no evidence that a particular detention facility has  
4 detected a confirmed case of the virus.” *Bent*, 2020 WL 1812850, at \*3 (collecting  
5 cases) (“It is unquestionable that COVID-19 is spreading through ICE detention  
6 facilities despite Respondents’ precautions.”).

7 Third, as discussed below, Petitioner has demonstrated that injunctive relief is  
8 warranted.

9 **A. Irreparable Harm**

10 Petitioner must demonstrate a “probability of irreparable harm” if relief is not  
11 granted. The risk of irreparable harm must be “likely, not just possible.” *All. for the*  
12 *Wild Rockies*, 632 F.3d at 1131. Respondents argue that Petitioner’s alleged harm is  
13 merely speculative because Respondents have implemented precautions at Adelanto  
14 and there are currently no COVID-19 cases identified there. (Opp’n 21–23.)  
15 However, courts considering the issue have rejected these arguments as “miss[ing] the  
16 point.” *See, e.g., Perez*, 2020 WL 1865303, at \*12. “COVID-19 is a highly  
17 contagious and novel coronavirus. The mere fact that no cases have been reported in  
18 the [facility at issue] is irrelevant—it is not a matter of *if* COVID-19 will enter the  
19 facility, but *when* it will be detected there.” *Id.* (citation omitted) (collecting cases).  
20 “Even in the early days of the pandemic, and with few exceptions, courts did not  
21 hesitate to find irreparable harm as a result of potential COVID-19 exposure in prison  
22 and detention, including in facilities where there had not been a confirmed case. At  
23 this stage of the pandemic, the threat is even clearer.” *Fraihat v. U.S. Immigration*  
24 *and Customs Enf’t*, No. EDCV 19-01546-JGB (SHKx), ECF No. 132 at 36 (C.D. Cal.  
25 April 20, 2020) (Order Granting Pls.’ Mot. Prelim. Inj.).

26 Respondents also argue that Petitioner is not in the “high-risk” category because  
27 she presents no evidence of her asserted medical conditions other than her attorney’s  
28 declaration. (Opp’n 22.) The Court finds this argument unpersuasive. Courts in this

1 Circuit and across the country have recognized that the risk posed in immigration  
2 detention facilities of contracting and dying from the virus is so severe that it  
3 constitutes an irreparable harm supporting a TRO. *See Xochihua-Jaimes*, 798 F.  
4 App’x at 52; *Perez*, 2020 WL 1865303, at \*13; *Doe*, 2020 WL 1820667, at \*10;  
5 *Castillo*, 2020 W 1502864, at \*6; *Basank*, 2020 WL 1481503, at \*4. The Court  
6 agrees.

7 Finally, as discussed in the next section, Petitioner has established “[t]he threat  
8 of unconstitutional detention [which] on its own constitutes an irreparable injury.”  
9 *Bent*, 2020 WL 1812850, at \*6 (citing *Hernandez v. Sessions*, 872 F.3d 976, 994  
10 (2017)); *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal  
11 quotation marks omitted) (“It is well established that the deprivation of constitutional  
12 rights unquestionably constitutes irreparable injury.”).

### 13 **B. Likelihood of Success on the Merits**

14 To bring a Fifth Amendment due process claim, Petitioner must show that the  
15 conditions of her confinement “amount to punishment.” *Bell v. Wolfish*, 441 U.S.  
16 520, 535 (1979). Conditions amounting to punishment occur “(1) where the  
17 challenged restrictions are expressly intended to punish, or (2) where the challenged  
18 restrictions serve an alternative, non-punitive purpose but are nonetheless excessive in  
19 relation to the alternative purpose, or are employed to achieve objectives that could be  
20 accomplished in . . . alternative and less harsh methods.” *See Jones v. Blanas*, 393  
21 F.3d 918, 932 (9th Cir. 2004) (internal quotation marks and citation omitted).

22 Respondents argue that Petitioner fails to establish that her detention amounts to  
23 punishment in violation of the Fifth Amendment. However, the Court finds the  
24 conditions of continued confinement in light of the severe risks posed by the  
25 COVID-19 pandemic are excessive in relation to Respondents’ objectives.  
26 Respondents have a legitimate, non-punitive interest in ensuring individuals in  
27 removal proceedings appear for hearings and in protecting the public. *Padilla*, 953  
28 F.3d at 1143; *Jones*, 393 F.3d at 932. “However, attendance at hearings cannot be

1 secured reliably when the detainee has, is at risk of having, or is at risk of infecting  
2 court staff with a deadly infectious disease with no known cure.” *Fraihat*, No. EDCV  
3 19-01546-JGB (SHKx), ECF No. 132 at 34.

4 Courts have recognized that the risk of infection and severe illness or even  
5 death is high, especially in facilities like Adelanto. *See, e.g., Xochihua-Jaimes*, 798 F.  
6 App’x at 52 (“[T]he rapidly escalating public health crisis . . . will especially impact  
7 immigration detention centers . . . .”); *Castillo*, 2020 WL 1502864, at \*5 (“Under the  
8 Due Process Clause, a civil detainee cannot be subject to the current conditions of  
9 confinement at Adelanto.”) Respondents contend the precautions they’ve  
10 implemented at Adelanto in recent weeks facilitate social distancing and increased  
11 sanitization, but nothing prevents asymptomatic staff from transmitting the disease to  
12 detainees and detainees necessarily remain housed in cohorts and share cramped  
13 living, dining, and restroom quarters. Petitioner asserts it is not possible to practice  
14 meaningful social distancing, that she does not have consistent access to basic hygiene  
15 supplies, including hand sanitizer, and that Adelanto staff are not consistently  
16 observed practicing proper hygiene or care. Such communal confined conditions  
17 increase the risk of spreading COVID-19, such that Petitioner cannot meaningfully  
18 protect herself at Adelanto from the risks imposed by detention.

19 Respondents acknowledge they have alternate means of ensuring Petitioner’s  
20 appearance at removal proceedings. (*See* Opp’n 25 (requesting conditions be imposed  
21 on Petitioner’s release if TRO is granted, including disclosure of residence and  
22 location monitoring).) Further, Petitioner has no criminal history and nothing  
23 indicates she poses a flight risk or a danger to the community. Indeed, courts have  
24 ordered immigration detainees released even where these factors were present. *See*  
25 *Perez*, 2020 WL 1865303, at \*13 (granting TRO for release despite evidence that  
26 petitioner posed a danger to the community); *Bent*, 2020 WL 1812850, at \*6 (granting  
27 TRO for release despite petitioner’s criminal history and risk of flight).



1           Accordingly, the Court finds that Petitioner’s detention, in light the serious risks  
2 to her health and safety posed by the escalating public health crisis, is “excessive in  
3 relation to [its] purpose” and may be “accomplished in . . . alternative and less harsh  
4 methods.” *Jones*, 393 F.3d at 932. Thus, this factor weighs in favor of Petitioner.

5 **C. Balance of Equities/Public Interest**

6           The last factors—the balance of equities and whether an injunction is in the  
7 public interest—merge. *Padilla*, 953 F.3d at 1141. The public’s interests are  
8 containing COVID-19, securing Petitioner’s appearance in her immigration  
9 proceedings, and preventing any danger to the community. *See Bent*, 2020 WL  
10 1812850, at \*7. Under the circumstances, the balance of equities and the public  
11 interest favor release. “Faced with . . . preventable human suffering, [the Ninth  
12 Circuit] ha[s] little difficulty concluding that the balance of hardships tips decidedly in  
13 plaintiffs’ favor.” *Hernandez*, 872 F.3d at 996. Also, as noted, Petitioner does not  
14 have a criminal record and nothing indicates she poses a flight risk or a danger to the  
15 community. Respondents recognize that release of immigration detainees in light of  
16 COVID-19 may be appropriate where “the petitioner was not found to be a flight risk  
17 or danger to the community. (Opp’n 24.) Further, Respondents have available  
18 alternative measures to ensure Petitioner’s appearance that do not violate her  
19 constitutional rights. And, of course, Petitioner’s failure to appear at her immigration  
20 proceedings would carry grave consequences for her case.

21           In the highly unusual circumstances posed by the COVID-19 crisis, the  
22 continued detention of civil detainees like Petitioner does not serve the public’s  
23 interest. “To the contrary, public health and safety are served best by rapidly  
24 decreasing the number of individuals detained in confined, unsafe conditions.”  
25 *Basank*, 2020 WL 1481503, at \*6; *see also Doe*, 2020 WL 1820667, at \*11  
26 (“Injunctive relief that prevents the further spreading of the virus and allows social  
27 distancing is in the public’s interest.”). Accordingly, this factor also weighs in favor  
28 of granting the TRO.

1 **V. CONCLUSION**

2 For the reasons stated above, the Court **GRANTS** Petitioner’s application for a  
3 temporary restraining order. (ECF No. 5.)

4 The Court further **ORDERS** that Respondents shall, **by 5:00 p.m. on April 23,**  
5 **2020**, release Petitioner from custody pending further order of this Court, and subject  
6 to the following conditions of release:

7 (1) Petitioner shall disclose where she will reside and shelter-in-place;

8 (2) Petitioner shall disclose how she will be transported from Adelanto directly  
9 to that disclosed residence;

10 (3) Petitioner shall remain at that residence, pending further order of the Court,  
11 except to obtain medical care;

12 (4) Petitioner shall not violate any federal, state, or local laws;

13 (5) At the discretion of Respondents, to enforce the above restrictions,  
14 Petitioner’s whereabouts may be monitored by telephonic and/or electronic and/or  
15 GPS monitoring and/or a location verification system and/or an automated  
16 identification system. If necessary to comply with the permitted monitoring,  
17 Petitioner shall ensure the presence of a residential telephone line without devices  
18 and/or services which may interrupt operation of any monitoring equipment.

19 This TRO will expire on May 6, 2020. Respondents shall **SHOW CAUSE**, if  
20 any, as to why the Court should not convert this TRO to a preliminary injunction in  
21 this case. Respondents’ Response, if any, to this order to show cause shall be filed by  
22 5:00 p.m. on April 29, 2020. Petitioner must file a response by May 4, 2020.

23  
24 **IT IS SO ORDERED.**

25 April 22, 2020

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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**