

District Judge James L. Robart
Magistrate Judge Michelle L. Peterson

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE CASTAÑEDA JUAREZ, *et al.*,

Petitioners-Plaintiffs,

v.

NATHALIE ASHER, *et al.*,

Respondents-Defendants.

**GOVERNMENT’S RETURN MEMORANDUM
AND MOTION TO DISMISS THE PETITION**

Case No. 20-cv-700-JLR-MLP

Noting Date: August 7, 2020

1 Federal Respondents, United States Immigration and Customs Enforcement (“ICE”), ICE
2 Deputy Director and Senior Official Performing the Duties of the Director, Matthew T. Albence,
3 and ICE Seattle Field Office Director Nathalie Asher (collectively, the “Government”), by and
4 through their attorneys, Brian T. Moran, United States Attorney for the Western District of
5 Washington, and Michelle R. Lambert and Matt Waldrop, Assistant United States Attorneys,
6 respectfully move to dismiss the Petition for Writ of Habeas Corpus and Class Action Complaint
7 for Injunctive and Declaratory Relief (“Petition”). Dkt. No. 1 (“Pet.”). This Court should dismiss
8 the Petition because Petitioners have not demonstrated that their detention at the Northwest ICE
9 Processing Center (“NWIPC”) violates the Fifth Amendment solely because of the Coronavirus
10 Disease 2019 (“COVID-19”) pandemic in the United States.

11 I. INTRODUCTION

12 Petitioners seek immediate release from the Northwest ICE Processing Center (“NWIPC”)
13 based on conditions they contend place them “at risk for serious illness or death so long as they
14 are held in detention” due to COVID-19. Pet., ¶ 95. The Court should grant the Government’s
15 motion to dismiss because Petitioners fail to demonstrate that the robust practices and protocols
16 ICE and the ICE Health Service Corp (“IHSC”) have implemented to protect NWIPC’s detainees
17 and staff, or the conditions inside of NWIPC, make their detention (1) unreasonably safe, or (2) an
18 excessive condition in relation to the legitimate objective of immigration detention. Since the
19 onset of the COVID-19 pandemic, ICE continues to reduce the detainee population at NWIPC,
20 which now is approximately 31% of its typical capacity.¹ In addition, comprehensive COVID-19
21 testing of detainees and staff has revealed that the Government’s rigorous screening, testing, and
22 quarantine measures reasonably prevent and contain the spread of COVID-19 in the NWIPC.

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26 ¹ Since commencement of this litigation, ICE has released one of the named Petitioners from detention based on ICE’s
continuing review of high-risk individuals in custody at NWIPC, and a second Petitioner because of events in his
immigration proceedings.

1 The Government recognizes that COVID-19 presents outcomes a significant, fluid, and
2 unprecedented challenge for everyone, including Petitioners and the putative class in this action.
3 As the understanding of COVID-19 has evolved, so too have the preventative measures
4 implemented at NWIPC. The Government’s actions to prevent and protect against the spread of
5 COVID-19 complies with guidance from the Centers for Disease Control and Prevention (the
6 “CDC”), local and state public health recommendations, and the Constitution.

7 This Court should dismiss the Petition for lack of jurisdiction and failure to state a claim.
8 First, all claims by Petitioners J.A.M. and Jose Castañeda Juarez are moot as they have been
9 released from detention. Second, ICE’s lawful authority to detain the remaining Petitioners is
10 without dispute. Third, Petitioners’ continued detention does not violate substantive due process
11 as it provides for Petitioners’ reasonable safety. Furthermore, as the Supreme Court has repeatedly
12 recognized, detention is a constitutionally permissible aspect of the Government’s enforcement of
13 the immigration laws and fulfills the legitimate purpose of ensuring that individuals appear for
14 their removal proceedings. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018); *Demore v. Kim*,
15 538 U.S. 510, 523 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). Consistent with the
16 requirements of due process, their confinement is thus “reasonably related” to a legitimate
17 government interest. *Bell v. Wolfish*, 441 U.S. 535, 538-39 (1979).

18 Finally, Petitioners cannot establish a substantive due process violation based on the
19 Government’s purported deliberate indifference to their medical needs. ICE has proactively
20 mobilized to prevent, contain, and treat COVID-19 cases. ICE has implemented CDC guidance,
21 including screening, comprehensive testing, and appropriately quarantining all new and returning
22 detainees for 14 days, as well as anyone showing COVID-19 symptoms; suspended social
23 visitation at NWIPC; and increased the scope and frequency of sanitation procedures and the
24 availability of cleaning supplies, soap, and masks. Accordingly, the Government requests that its
25 motion be granted.

1 **II. FACTUAL BACKGROUND**

2 **A. Framework for COVID-19 Response at NWIPC.**

3 The policies and procedures that have been implemented to prevent COVID-19 from
4 entering and spreading at the NWIPC are based on a variety of guidance documents prepared from,
5 among other sources, the CDC and ICE’s Enforcement and Removal Operations (“ERO”).

6 As a baseline, NWIPC and IHSC² comply with criteria set out in ICE’s 2011 Performance-
7 Based National Detention Standards (“2011 PBNDS”), which mandate that facilities have written
8 plans addressing the management of infectious diseases, including the use of isolation, prevention,
9 treatment and education. Declaration of Jack Lippard (“Lippard Decl.”), ¶¶ 11, 13; Declaration of
10 Sheri Malakhova, M.D. (“Malakhova Decl.”), ¶ 4. The 2011 PBNDS require collaboration and
11 reporting to state and local health departments, as needed. Lippard Decl., ¶ 13. ICE maintains a
12 pandemic workforce protection plan, portions of which were implemented in January 2020 in
13 response to COVID-19. Malakhova Decl., ¶ 5. Epidemiologists from ICE have also been tracking
14 COVID-19 and providing regular updates to IHSC on infection prevention and control protocols.
15 *Id.*, ¶ 6.

16 The specific COVID-19 policies and procedures in place at NWIPC are primarily adopted
17 from the CDC’s *Interim Guidance on Management of Coronavirus Disease 2019 in Correctional*
18 *and Detention Facilities* (“CDC Interim Guidance”), CDC’s *Overview of Testing for SARS-CoV-*
19 *2*, CDC’s *FAQs for Correctional and Detention Facilities*, ERO’s *COVID-19 Pandemic Response*
20 *Requirements* (the “ERO PRR”), recently updated on June 22, 2020, a dynamic document
21 developed by ICE in consultation with the CDC, and IHSC’s *Interim Reference Sheet on 2019-*
22 *Novel Coronavirus (COVID-19): Detainee Care* (“IHSC Interim Reference Sheet”), most recently
23 revised on May 21, 2020. Lippard Decl., ¶¶ 12, 16; Malakhova Decl., ¶ 7.

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26 ² IHSC oversees medical care provided to detainees at NWIPC, and is currently staffed with more than 50 employees.
Malakhova Decl. at ¶¶ 2-3.

1 The ERO PRR establishes minimum consistent practices throughout ICE's detention
 2 operations to "mitigate the spread of COVID-19." Lippard Decl., ¶ 14. The ERO PRR requires
 3 NWIPC to comply with the CDC Interim Guidance and ICE's own internal memoranda. *Id.*, ¶ 16.
 4 The ERO PRR also mandates that facilities housing ICE detainees have a detailed COVID-19
 5 mitigation plan in place. *Id.*, ¶ 15. The IHSC Interim Reference Sheet, now in its eleventh version,
 6 also relies on the CDC Interim Guidance, and is frequently updated with new information and best
 7 practices. Malakhova Decl., ¶¶ 7-8.³

8 NWIPC's COVID-19 policies and practices are constantly reviewed and updated by ERO,
 9 IHSC, and the GEO Group, Inc.⁴ ("GEO"). Lippard Decl., ¶¶ 2, 4-5; Malakhova Decl., ¶¶ 5-8.
 10 These stakeholders, including NWIPC's dedicated Infectious Disease Prevention Officer ("IPO")
 11 conduct weekly meetings to ensure that COVID-19 safety measures are consistently implemented
 12 at the NWIPC. Lippard Decl., ¶ 70. At these weekly COVID-19 meetings, the IPO outlines
 13 various recommendations from the CDC, initiates discussion among the stakeholders to review the
 14 current practices in places at NWIPC, and advises as to whether changes are needed to remain in
 15 compliance with the CDC's recommendations. *Id.* If a change is made, the IPO confirms at
 16 subsequent meetings the exact steps taken to implement the previously discussed safety measure.
 17 *Id.*

18 A compliance section has been added to the newly amended ERO PRR that requires ICE
 19 to conduct bi-weekly spot checks of over-72 hour detention facilities to confirm whether the
 20 facility is complying with the requirements in the PRR. Lippard Decl., ¶ 71. Upon identification
 21 of a deficiency, ICE is required to provide written notice to the facility and allow seven business
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23 ³ Analysis contained in a declaration submitted by Petitioners' witness, Dr. Amon J. Joseph, relies on an outdated
 24 version of the IHSC Interim Guidance that was issued on March 6, 2020. *See* Dkt. No. 3, ¶ 28; Malakhova Decl., ¶
 25 8.

26 ⁴ GEO is an independent contractor that provides the facility, management, personnel and services for those held in
 ICE custody at the NWIPC. Bostock Decl., ¶ 4.

1 days for submission of a corrective action plan to ICE for approval. *Id.* Life/safety issues
2 identified by ICE will be corrected during the COVID-19 spot checks, if possible, or the facility
3 will be required to submit a corrective action plan within three business days. *Id.* The compliance
4 section further specifies that, for dedicated detention facilities such as the NWIPC, which operate
5 under Quality Assurance Surveillance Plans, ICE will issue a Contract Discrepancy Report
6 (“CDR”), which may include contract sanctions, for failure to bring the facility into compliance
7 with the minimum requirements of the ERO PRR within the ICE-approved timeframe. *Id.* Tacoma
8 ERO is in the process of implementing a formalized bi-weekly spot check program the NWIPC.
9 *Id.* In the interim, ICE Supervisory Detention and Deportation Officers have been participating in
10 weekly walk-throughs of the housing units with the IPO. *Id.*

11 The IPO is also responsible for acting as liaison for NWIPC, IHSC and the Pierce County,
12 Washington health department (“PCDOH”). Malakhova Decl., ¶¶ 25, 30. The IPO notifies
13 PCDOH whenever IHSC makes a decision to test, isolate and/or cohort a NWIPC detainee for
14 possible COVID-19 exposure. *See also* Dkt. No. 65, Decl. of Ranay Yonkers.

15 **B. Current Detainee Population at NWIPC.**

16 NWIPC has the capacity to house 1,575 detainees, and typically operates near capacity.
17 Lippard Decl., ¶ 6. Due to COVID-19, ICE continues to shrink NWIPC’s detainee population,
18 from 874 on March 3, 2020, to 489 as of July 14, 2020. *Id.* The last transfer of new detainees
19 from the southern border to NWIPC occurred during the first week of March, 2020. *Id.*, ¶ 7. At
20 this time, ICE does not anticipate any further transfers of new detainees from the southern border
21 to NWIPC. *Id.* Since mid-March, ICE has adjusted its enforcement policies and posture to ensure
22 safety for the detainees currently housed at NWIPC in light of COVID-19. *Id.*, ¶ 8.

23 **C. COVID-19 Testing at NWIPC.**

24 IHSC determines whether it is appropriate to administer a COVID-19 test to detainees
25 based on guidance issued by the CDC, which directs clinicians to use their judgment in determining
26 if a patient has signs and symptoms consistent with COVID-19. Malakhova Decl., ¶¶ 24, 26. The

1 IPO also consults with PCDOH as to whether ordering a COVID-19 test is appropriate. *Id.*, ¶ 25.
2 Any detainee who is positive or presumptively positive is housed individually in the Medical
3 Housing Unit (“MHU”), which has eight isolation rooms, including four negative pressure rooms
4 to help prevent the spread of airborne particles. *Id.*, ¶ 27. Two housing units are also empty and
5 designated as medical overflow units to house any COVID-19 patients in isolation should space
6 run out at the MHU. *Id.*, ¶ 28.

7 On June 2, 2020, IHSC conducted voluntary COVID-19 testing of all NWIPC detainees in
8 collaboration with the Washington State Department of Health. Malakhova Decl., ¶ 31. At that
9 time, there were 563 detainees in custody. *Id.* Of those, 111 detainees refused consent for testing.
10 Seven of those individuals requested and received COVID-19 testing several days later. *Id.* Of
11 the tests, a total of 455 were negative. *Id.* The only detainee to test positive during mass testing
12 had arrived at the facility only four days prior to testing and was housed in a cell in the 14-day
13 observation unit with only one cellmate, who tested negative. *Id.* That detainee had never been
14 exposed to the general population. *Id.*

15 Effective June 4, 2020, IHSC began voluntary COVID-19 testing of all new detainees upon
16 intake to the NWIPC in addition to previously existing screening procedures. Malakhova Decl.,
17 ¶ 20. This new intake testing has been implemented in addition to the 14-day observation, or
18 NIMS, process as an additional measure to ensure that no COVID positive detainees are admitted
19 to the general population at the facility. *Id.*

20 As of the morning of July 15, 2020, more than 600 COVID-19 tests have been administered
21 to NWIPC detainees since the start of the pandemic. Malakhova Decl., ¶ 32. There are currently
22 two detainees at the NWIPC who are COVID-19 positive. *Id.* Both tested positive upon voluntary
23 intake testing and had been housed in the 14-day observation NIMS unit when their test results
24 were received. *Id.* Neither detainee was ever housed or exposed to the general population. *Id.*
25 To date, no detainee in the general population or exposed to the general population at the NWIPC
26 has tested positive for COVID-19. *Id.*

1 **D. Detainee Intake Procedures.**

2 Upon arrival at NWIPC, new detainees undergo medical and mental health screening,
3 including a temperature check and verbal pre-screening for any COVID-19 symptoms. Lippard
4 Decl., ¶ 18; Malakhova Decl., ¶ 16. Any new detainee showing symptoms of COVID-19 must
5 wear a mask, is isolated and referred to an IHSC medical provider for further evaluation.
6 Malakhova Decl., ¶ 16. Staff performing the screening intake wear PPE. *Id.*

7 New detainees shower and are provided with clean clothing, bedding, towels and personal
8 hygiene items, including instructions outlining proper hygienic practices, like hand washing and
9 covering coughs. Lippard Decl., ¶¶ 19-20. Posters, translated into multiple languages and with
10 accompanying pictures, are posted throughout NWIPC and emphasize the importance of proper
11 hand washing and cough covering. *Id.*, ¶ 21.

12 New and incoming detainees who do not meet IHSC's protocol for isolation monitoring
13 due to possible COVID-19 exposure, are placed in NIMS housing units and monitored for 14 days
14 for any signs or symptoms of possible COVID-19 infection. *Id.*, ¶ 22; Malakhova Decl., ¶ 17.
15 Newly arrived detainees are housed based on their date of arrival and their risk classification level.
16 Lippard Decl., ¶ 22. During the 14-day observational period, new detainees are not permitted to
17 come in contact with other detainees in the NWIPC common areas. *Id.* Once the 14-day period is
18 complete, detainees that exhibit no signs or symptoms of COVID-19 are released to the other
19 housing units in NWIPC's general population. *Id.* IHSC has designated a remote medical unit
20 that monitors the detainees housed in these 14-day observation units. Malakhova Decl., ¶ 18.

21 On June 4, 2020, IHSC began voluntary testing of all new detainees for COVID-19 upon
22 intake to the NWIPC. Lippard Decl., ¶ 23; Malakhova Decl., ¶ 20. Detainees who consent to
23 COVID-19 testing upon intake are not housed in the same cells in the NIMS with those who
24 decline consent. *Id.* Any detainee that tests positive for COVID-19 will be transferred to the
25 medical housing unit for continued monitoring in accordance with existing IHSC guidance. *Id.*

1 **E. COVID-19 Safety and Hygiene Measures at NWIPC.**

2 Consistent with the ERO PRR, surfaces and objects that are frequently touched, especially
 3 those in common areas, are cleaned and disinfected several times per day. Lippard Decl., ¶ 26.
 4 GEO, which is responsible for developing and implementing the safety and hygiene policies and
 5 procedures at NWIPC, has enhanced cleaning in all housing units, food preparation and service
 6 areas, intake rooms, and other common work areas. *Id.*, ¶ 28. GEO has also increased the stock
 7 of soap, hand sanitizers, tissue and PPE in every housing unit, including providing increased access
 8 to hand-cleaning supplies. *Id.*, ¶ 29. A review of the digital messaging system used by detainees
 9 to communicate with ICE officers at NWIPC from March 6 – May 7, 2020, and all detainee request
 10 forms, kites and/or grievances to GEO from March 1, 2020 to May 12, 2020 concerning soap,
 11 paper towels and/or cleaning supplies, revealed one detainee request on March 6, 2020 for a bar
 12 of soap.⁵ *Id.*

13 GEO is conducting weekly town halls to educate detainees on proper hand washing and
 14 cough covering techniques, as well as providing information on how to properly clean and disinfect
 15 common areas at the facility. *Id.*, ¶ 30. Detainees are kept informed about the screening and
 16 quarantine procedures in place at NWIPC and are reminded to go to the medical unit if they feel
 17 ill. *Id.*, ¶ 31.

18 The IPO conducts separate medical town halls to answer questions and educate detainees
 19 about how COVID-19 spreads, and best practices to prevent infection, including guidance on how
 20 to properly social distance and how to wear face masks. Lippard Decl., ¶ 32.

21 Three days per week, GEO distributes new face masks to the detainee population for
 22 voluntary use along with written and pictorial instructions on how to wear them. *Id.*, ¶ 33.
 23 Detainees may contact their unit staff GEO officer if masks need replacement prior to the next
 24 issuance date. *Id.*

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 26 ⁵ The request was closed because liquid soap was already available in the housing unit. *Id.*

1 IHSC has implemented a variety of measures at the medical clinic and MHU to help
2 prevent the introduction and spread of COVID-19 at NWIPC. Malakhova Decl., ¶ 9. These
3 include reducing the number of individuals that can gather in the waiting room, placing visible
4 guides on the floor to assist in maintaining social distancing, and limiting rooms to single patient
5 occupancy. *Id.*, ¶¶ 10-11. All IHSC and GEO employees in the medical clinic and MHU must
6 wear surgical masks at all times. *Id.*, ¶ 13. IHSC has its own PPE stock and provides training to
7 IHSC and GEO employees regarding proper use. *Id.*, ¶¶ 14-15. IHSC continues to conduct
8 COVID-19 screening for any detainee that visits the medical clinic. *Id.*, ¶ 21.

9 **F. Housing and Movement-Related Measures.**

10 The affirmative steps ICE has taken to adjust its enforcement priorities, as well as the
11 continued review and release of detained individuals in appropriate circumstances, have resulted
12 in a greatly reduced detainee population at NWIPC, which provides flexibility to redistribute the
13 detainee population among the housing units and allow for greater social distancing. Lippard
14 Decl., ¶¶ 6, 10, 35-36. Of the fifteen units that contain detainees, the percentage of beds filled
15 ranges from 9.3% to 62.5%. *Id.*, ¶ 38. The beds at NWIPC are bolted to the floor for detainee
16 safety and facility security, so GEO has spread out the detainee population and implemented head-
17 to-foot sleeping arrangements to allow for greater distancing between detainees as they sleep. *Id.*,
18 ¶ 39.

19 In a further effort to promote social distancing and protect high-risk individuals, ICE and
20 GEO began interviewing selected high-risk detainees during the week of April 6, 2020 to see if
21 they would be agreeable to special accommodations, including relocation to single cells, or moving
22 to housing units that had bunk beds that would remain unoccupied. *Id.*, ¶ 40. A majority of the
23 detainees declined these relocation offers. *Id.*

24 Detainees eat within their housing unit, and food is delivered directly to them. *Id.*, ¶ 41.
25 Detainees may eat at their beds if they wish to practice greater social distancing. *Id.*

1 Movement at NWIPC is mostly unit-specific, which prevents comingling between the
2 different housing units. *Id.*, ¶ 42. Each unit has a specified time for recreation, religious services
3 and the law library. *Id.* All barber services have been suspended. *Id.*, ¶ 43. Safety measures,
4 such as enhanced cleaning of high contact areas and floor markings to ensure that workers remain
5 at least six feet apart, have been implemented in the laundry and kitchen for detainees who work
6 in those areas as part of the Volunteer Work Program. *Id.*, ¶ 44. Detainee movement for the pill
7 line, the medical unit for sick call (excluding urgent care) and attorney visits occur based on the
8 detainee's risk classification level. *Id.*, ¶ 45. GEO has placed six-foot indicator marks on benches
9 in the court/visitor holding rooms, medical holding room, intake holding room and in the hallways
10 where detainees wait to better assist in maintaining social distancing. *Id.*, ¶ 46.

11 **G. Visitors and Staff Measures.**

12 Social visitations have been temporarily suspended at NWIPC to protect against the
13 introduction and spread of COVID-19. *Id.*, ¶ 47. Detainees are able to communicate by telephone
14 and electronic tablets. *Id.* NWIPC has also cancelled tours, and suspended access by volunteers,
15 except for religious service providers. *Id.*, ¶ 48.

16 Those who are still able to come to NWIPC are subject to temperature screening and
17 questioned immediately upon arrival in the lobby, which has had chairs removed to provide for
18 social distancing, about potential symptoms of COVID-19. *Id.*, ¶¶ 49, 51. Anyone showing or
19 reporting possible symptoms or recent travel to areas of concern are prohibited from entering
20 NWIPC. *Id.*, ¶ 49. Attorney visits are non-contact, unless it is absolutely necessary and pre-
21 approved. *Id.*, ¶ 50. Any attorney meeting with a detainee in-person must wear PPE, and GEO
22 provides masks for attorneys who do not have their own PPE. *Id.* ICE also provides a daily duty
23 officer to facilitate unmonitored attorney-client phone calls so that detainees do not have to move
24 throughout the NWIPC. *Id.*

25 ICE and GEO employees are frequently instructed and reminded about hand washing and
26 covering coughs. *Id.*, ¶ 52. ICE employees have been provided with disinfectant wipes to conduct

1 additional daily cleaning of high-contact surfaces within their workspaces. *Id.* GEO provides its
2 employees individual-sized bottles of hand sanitizer that are checked out at the beginning of each
3 shift. *Id.* GEO is also cleaning all of its shared equipment, including radios and keys, several
4 times per day and at the conclusion of each shift. *Id.* All GEO, Executive Office of Immigration
5 Review (“EOIR”), IHSC and ICE employees at NWIPC are restricted to a single, controlled
6 entrance and undergo verbal and temperature screening every time they come to the facility. *Id.*,
7 ¶ 53; Malakhova Decl., ¶ 12. Staff that do not clear the screening process, or refuse to be screened,
8 are denied entry into NWIPC. Lippard Decl., ¶ 53.

9 On April 6, 2020, ERO requested that any of its officers who have contact with detainees
10 in any area of the NWIPC voluntarily wear masks. *Id.*, ¶ 55. On May 27, 2020, GEO issued a
11 memorandum stating that all GEO employees at the NWIPC will wear face masks when in
12 proximity to detainees and in common areas of the facility. *Id.* The newly amended ERO PRR
13 clarifies that all staff, including medical and correctional personnel, must “wear PPE when
14 encountering or interacting with any ICE detainee at a distance of less than six feet,” and that all
15 staff wear PPE, even when separated by six feet or more, if an individual appears feverish, ill,
16 and/or has respiratory symptoms. *Id.* On June 24, 2020, ICE conferred with the GEO Facility
17 Administrator regarding the newly amended PRR, and GEO concurred, in accordance with the
18 new language in the PRR, all GEO staff within six feet of NWIPC detainees are required to wear
19 face masks. *Id.*

20 ICE and GEO employees are directed to stay at home if they are sick, experiencing
21 symptoms of COVID-19, or if they have been in close contact with anyone diagnosed with
22 COVID-19. *Id.*, ¶ 56. GEO employees are required to report to their employer if they test positive
23 for COVID-19. *Id.* GEO has been voluntarily disclosing which of its employees have been tested
24 or diagnosed with COVID-19, when the employee was at NWIPC, and where they were assigned,
25 in order to facilitate any contact tracing that may be required. *Id.*

1 As of July 15, 2020, no GEO or ICE employee has tested positive for COVID-19. *Id.* The
 2 week of June 15, 2020, GEO coordinated with the Health Department to offer voluntary COVID-
 3 19 testing to all GEO, ICE and EOIR employees at the NWIPC. *Id.*, ¶ 57. According to numbers
 4 provided by GEO, 147 GEO employees, 14 ICE employees (and two family members) and 7 EOIR
 5 employees were tested. *Id.* The results of all the tests were negative. *Id.*

6 **H. Alternative Measures to Detention at NWIPC.**

7 Since March, ICE has regularly convened a working group of medical professionals,
 8 disease control specialists, detention experts, and field operators to identify additional steps to
 9 minimize COVID-19 spread. *Id.*, ¶ 72. On March 20, 2020, ERO officials at NWIPC began a
 10 discretionary review of the detained population to determine if continued detention of high-risk
 11 individuals was appropriate. *Id.*, ¶ 73. On April 5, 2020, ICE implemented custody reassessment
 12 reviews expanding on the CDC criteria list of individuals identified as potentially being at higher
 13 risk for serious illness from COVID-19 nationwide. *Id.*, ¶ 74. The June 22, 2020 ERO PRR
 14 amendments further expanded the list of populations potentially at higher risk for serious illness
 15 due to COVID-19 based on revised CDC criteria⁶ and the subclass and risk factors identified by
 16 the district court in *Fraihat v. U.S. Immigrations and Customs Enforcement*, 2020 WL 1932570
 17 (C.D. Cal. Apr. 2020). *See id.*, ¶ 74.

18 IHSC is required to evaluate all new detainees within five days of intake to determine if
 19 they meet the populations/subclasses set forth above. Malakhova Decl., ¶ 46; Lippard Decl., ¶ 75.
 20 In addition, IHSC must evaluate any detainee who claims to fall into one of the
 21 populations/subclasses within five days of such a claim. *Id.* Any detainee identified as falling into
 22 one of those populations/subclasses must be referred to ERO within 12 hours of identification. *Id.*
 23 ERO will then conduct a custody reassessment to determine whether release is appropriate. *Id.*

24 _____
 25 ⁶ The CDC has subsequently revised the categories of populations who are, or might be, at higher risk for serious
 26 illness due to COVID-19 on June 25, 2020. *See People Who are At Increased Risk for Severe Illness*, June 25, 2020,
 available at: [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-
 risk.html?deliveryName=USCDC_2067-DM31413](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html?deliveryName=USCDC_2067-DM31413) (accessed June 30, 2020).

1 IHSC has implemented this process for all detainees who arrived at the NWIPC since June 22,
2 2020. *Id.* As a result of the June 22, 2020 criteria expansion, IHSC has also begun reevaluating
3 the medical records of every NWIPC detainee who was not previously been identified and referred
4 to ERO for custody reassessment to determine whether they meet the expanded and revised
5 criteria. Malakhova Decl., ¶ 47.

6 Based on this discretionary review, ICE has released a number of detainees from custody
7 at the NWIPC. Lippard Decl., ¶ 78. However, not all conditions of release are available. ICE
8 may not be able to mandate in-person reporting visits or in-home visits, and GPS ankle monitoring
9 may not be possible based on geographic limitations and health concerns. *Id.*, ¶ 79.

10 **I. The Named Petitioners.**

11 Two of the named petitioners are no longer in ICE custody. ICE released Petitioner J.A.M.
12 from custody on May 6, 2020 based on a discretionary review of his medical condition and case
13 file. Dkt. No. 63, Decl. Drew Bostock, ¶ 79. On July 1, 2020, the IJ granted Petitioner Castañeda-
14 Juarez's application for relief from removal and he was released from ICE custody under an Order
15 of Supervision ("OSUP"). Lippard Decl., ¶ 86.

16 Petitioner Favela-Avendano is a 46-year old native and citizen of Mexico. *Id.*, ¶ 95. On
17 January 22, 2014, Petitioner Favela-Avendano was convicted for Driving Under the Influence
18 ("DUI"). *Id.* He was arrested for DUI again on July 24, 2019 and February 13, 2020. *Id.* ICE
19 took him into custody on March 13, 2020, and served him with a Notice to Appear, charging him
20 as inadmissible pursuant 8 U.S.C. § 1182(a)(6)(A)(i).

21 He is currently being held under 8 U.S.C. § 1226(a). *Id.*, ¶ 97. At a bond hearing on June
22 2, 2020, the IJ found Petitioner had not met his burden to demonstrate that he is not a danger and
23 denied bond. *Id.* Petitioner Favela-Avendano is scheduled for an individual hearing on July 16,
24 2020 where he is seeking adjustment of status through his United States citizen mother. *Id.*, ¶ 98.

25 Petitioner Favela-Avendano is currently housed in a unit in which only 27 out of 90 beds
26 are occupied. *Id.*, ¶ 100. There are 13 tables in the common area of the housing unit, all of which

1 are designed to seat eight individuals per table. *Id.* With the current housing unit population, most
2 detainees may sit with only two detainees per table. *Id.* There are seven toilets and eight showers
3 in the housing unit. *Id.* In the area where Petitioner Favela-Avendano sleeps are 10 bunks, only
4 four of which are occupied. *Id.* Of those, only the bottom bunks are occupied and the top bunks
5 have been left empty. *Id.* The bunk directly across from Petitioner Favela-Avendano is
6 unoccupied. *Id.*

7 Petitioner Khan is a 47-year old native and citizen of Pakistan. *Id.*, ¶ 102. His status was
8 adjusted to that of lawful permanent resident in 2006 through his former spouse.⁷ *Id.* On April 4,
9 2019, Petitioner Khan was convicted in Snohomish County Superior Court for the offense of
10 felony Stalking-Domestic Violence in violation of R.C.W. §§ 9A.46.110(1), (5)(b), 9A.36.041(4).
11 *Id.* He was sentenced to 12 months imprisonment. *Id.* On April 24, 2019, Petitioner Khan was
12 convicted of Violation of Court Order-Domestic Violence in violation of R.C.W. §§ 26.50.110(1),
13 9A.36.041(4) and sentenced to 364 days, which were suspended. *Id.* He was taken into ICE
14 custody on October 7, 2019 and served with a Notice to Appear, charging him with removability
15 pursuant to 8 U.S.C § 1227(a)(2)(E)(ii). *Id.* At the conclusion of a bond hearing on October 24,
16 2019, the IJ found Petitioner Khan to be a danger and a flight risk and ordered him held with no
17 bond. *Id.*, ¶ 103.

18 On January 9, 2020, the IJ granted Petitioner cancellation of removal for certain permanent
19 residents under 8 U.S.C. § 1229b(a). *Id.* DHS appealed that decision to the Board of Immigration
20 Appeals (“BIA”). *Id.* On June 25, 2020, the BIA sustained DHS’s appeal and ordered Petitioner
21 Khan removed to Pakistan. *Id.*, ¶ 106. He is therefore currently within the 90-day mandatory
22 custody period pursuant to 8 U.S.C. § 1231(a)(1)(A). ICE has now begun the process of obtaining
23
24

25 ⁷ Petitioner Khan had previously been placed in removal proceedings in the late 1990s under a false identity. After
26 bonding out of custody, he failed to appear and proceedings were terminated. He subsequently adjusted status with
27 a waiver for fraud/misrepresentation under 8 U.S.C. § 1182(i). His application for naturalization was denied on
28 October 30, 2018.

1 a travel document to effect his removal to Pakistan. *Id.* Petitioner Khan was tested for COVID-
2 19 during the June 2, 2020 mass testing and the results were negative. *Id.*, ¶ 112.

3 Petitioner Khan is housed in a unit in which only 24 out of 90 beds are currently occupied.
4 *Id.*, ¶ 108. There are 13 tables in the common area of his housing unit, all of which are designed
5 to seat eight individuals. *Id.* With the current housing unit population, detainees may sit with only
6 two detainees or less per table. *Id.* There are seven toilets and eight showers in the housing unit.
7 *Id.* In the area where Petitioner Khan sleeps are 12 bunks, only four of which are occupied. There
8 is an entirely empty bunk between each detainee in that area. *Id.*

9 III. ARGUMENT

10 A. All habeas claims by Petitioners Castañeda-Juarez and J.A.M. are moot.

11 This Court no longer has jurisdiction over the claims by Petitioners Josue Castañeda-Juarez
12 or J.A.M. Dkt. No. 63, Bostock Decl., ¶ 79; Dkt No. 98, Notice of Release. For a federal court to
13 have jurisdiction, “an actual controversy must exist at all stages of the litigation.” *Biodiversity*
14 *Legal Foundation v. Badgley*, 309 F.3d 1166, 1173 (9th Cir. 2002). “For a habeas petition to
15 continue to present a live controversy after the petitioner’s release or deportation . . . there must
16 be some remaining ‘collateral consequence’ that may be redressed by success on the petition.”
17 *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007).

18 Here, Petitioners only challenge their detention, and do not allege any collateral
19 consequence that can be addressed by the Court. Pet., ¶ 92 (seeking release as “the only course of
20 action”). Now that Petitioners are no longer in custody, their claims in the habeas petition are
21 moot. *Abdala*, 488 F.3d at 1065 (describing habeas petitions that claim unconstitutional detention
22 as fully resolved and rendered moot by the petitioner’s release from custody). Accordingly, the
23 Government respectfully moves to dismiss these Petitioners’ claims as moot. *Foster v. Carson*,
24 346 F.3d 742, 745 (9th Cir. 2003) (court lacks jurisdiction to hear claims that are moot).

1 **B. ICE lawfully detains the remaining Petitioners.**

2 Petitioners do not dispute that ICE lawfully detains them pursuant to the INA. ICE
 3 currently detains Petitioner Favela-Avendano pursuant to 8 U.S.C. § 1226(a). Lippard Decl., ¶ 96.
 4 The requirements of due process were met once he was provided with a bond hearing. *Prieto-*
 5 *Romero v. Clark*, 534 F.3d 1053, 1066 (9th Cir. 2008) (due process is satisfied once alien receives
 6 a bond hearing from neutral adjudicator). Indeed, Petitioner has been individually considered for
 7 release on bond. The IJ deemed him to be a danger. Lippard Decl., ¶ 96. Furthermore, he has
 8 only been in ICE custody for approximately four months during the pendency of his immigration
 9 proceedings. *See id.*, ¶ 95.

10 ICE detains Petitioner Khan pursuant to 8 U.S.C. § 1231(a)(1)(A) of the INA as he is
 11 subject to a final order of removal. Lippard Decl., ¶ 106. The plain language of the statute requires
 12 his detention during the 90-day removal period. *See* 8 U.S.C. § 1231(a)(2) (“During the removal
 13 period, the [Secretary of Homeland Security] shall detain the alien.”). Petitioner Khan is well
 14 within the 90-day mandatory detention period as his removal order became administratively final
 15 on June 25, 2020. *See* Lippard Decl., ¶ 106.

16 Even if Petitioners are unsatisfied with the bases for the IJ’s decisions, this Court still does
 17 not have authority to review the merits of a bond hearing or, as in this case, to second-guess the
 18 manner in which an IJ exercises his or her discretion. Rather, discretionary authority over bond
 19 decisions is given to IJs and subject to administrative review under the relevant regulatory scheme.
 20 *See* 8 C.F.R. §§ 1003.10 (c) (decisions of IJ subject to review by the BIA), and 1003.19
 21 (establishing IJ’s authority over custody determinations).

22 **C. Petitioners have not established that the conditions of their confinement**
 23 **violate the Fifth Amendment.**

24 ***1. Petitioners have not shown that they have been denied reasonably safe***
 25 ***conditions at NWIPC.***

26 Petitioners allege that their continued detention during the COVID-19 pandemic violates
 27 their Fifth Amendment right to reasonable safety while in custody. *See* Pet., ¶¶ 93-97. Due process

1 requires the government to assume some responsibility for civil detainees' safety and well-being,
2 such as "food, clothing, shelter, medical care, and reasonable safety." *DeShaney v. Winnebago*
3 *Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989). The Ninth Circuit applies an objectively
4 unreasonable test to failure-to-protect claims brought under the Due Process Clause. *Castro v.*
5 *Cty. of L.A.*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc). "[T]he defendant's conduct must be
6 objectively unreasonable, a test that will necessarily 'turn on the facts and circumstances of each
7 particular case.'" *Id.* (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 396 (2015) (alterations and
8 internal quotation marks omitted).

9 Petitioners ignore the rigorous processes instituted by ICE because of the COVID-19
10 pandemic to abate the risks that may be posed to NWIPC detainees. First, ICE continues to release
11 detainees at risk for COVID-19 while continuously reviewing the standards for such release. *See*
12 *Lippard Decl.* ¶¶ 72-79. NWIPC's current population is at 31% of its historic capacity. *Id.*
13 Furthermore, ICE implemented comprehensive testing for the detainees at NWIPC and instituted
14 voluntary testing for new admissions to NWIPC, in addition to a mandatory 14-day quarantine
15 period. *Lippard Decl.*, ¶ 23; *Malakhova Decl.*, ¶¶ 31-32. The safety precautions implemented by
16 ICE and GEO at the NWIPC have been effective in preventing the transmission of COVID-19
17 within the facility. To date, no detainee within the general population has tested positive for
18 COVID-19. *Malakhova Decl.*, ¶ 32. Finally, significant preventative measures have been adopted
19 to prevent detainees at NWIPC from being exposed to COVID-19, and ICE continues to strengthen
20 these measures as more is learned about this novel coronavirus. Within the facility, sanitation and
21 hygiene measures have been dramatically increased. *Lippard Decl.*, ¶¶ 28-29. Both employees
22 and detainees have been provided with PPE and other hygienic supplies. *Id.*, ¶¶ 34, 52. Staff are
23 required to wear masks within six feet of detainees. *Id.*, ¶ 55.

24 Second, the extensive steps taken by the Government are objectively reasonable measures
25 to abate the risk of COVID-19 within NWIPC. In order to prevail on their claim that the conditions
26 at NWIPC are so unsafe as to violate the Constitution, Petitioners must show that the precautions

1 taken to prevent harm are “objectively unreasonable,” not just that there is a potential risk of the
2 injury they are concerned about. *See Kingsley*, 576 U.S. at 389. Importantly, the governing
3 standard is not bare negligence, much less strict liability. As the Ninth Circuit explained in the
4 parallel context of pre-trial detainees, “the pre-trial detainee ‘must prove more than negligence but
5 less than subjective intent – something akin to reckless disregard.’” *Smith v. Washington*,
6 781 F. App’x. 595, 598 (9th Cir. 2019) (quoting *Castro*, 833 F.3d at 1071).

7 As this Court acknowledged in its Order denying Petitioners’ motion for a temporary
8 restraining order, “[no] one can entirely guarantee safety in the midst of a global pandemic.” Dkt.
9 No. 91, Order, at 17 (quoting *Dawson v. Asher*, 20-cv-409-JLR-MAT, 2020 WL 1704324, at *12
10 (W.D. Wash. Apr. 8, 2020)). Where a pandemic, such as this one, poses a threat to everyone
11 without discrimination, Petitioners do not gain a right of release by merely citing to the pandemic.
12 *See also Carroll v. DeTella*, 255 F.3d 470, 472 (7th Cir. 2001) (“Many Americans live under
13 conditions of exposure to various contaminants. The [Constitution] does not require prisons to
14 provide prisoners with more salubrious air, healthier food, or cleaner water than are enjoyed by
15 substantial numbers of free Americans.”). There is no precedent for the suggestion that if the
16 Government cannot eliminate every risk of harm to those in custody, then it cannot maintain
17 custody at all. Indeed, the Fifth Amendment does not require the government to eliminate all risk
18 to Petitioners. *DeShaney*, 489 U.S. at 200. Yet the absolute elimination of risk of COVID-19 at
19 NWIPC is the measurement by which Petitioners assess the Government’s practices and protocols
20 here. Petitioners argue that any confinement *per se* violates Petitioners’ constitutional rights. Pet.,
21 ¶ 92.

22 Petitioners have presented only conclusory allegations or generalized hearsay regarding
23 the alleged risks they face. While Petitioners cite to the decision in *Pimentel-Estrada v. Barr*, 20-
24 cv-495-RSM-BAT, 2020 WL 2092430 (W.D. Wash. Apr. 28, 2020), throughout the Petition for
25 support that ICE’s actions at NWIPC are “objectively unreasonable,” the Government has
26 provided evidence that addresses most of the concerns cited in that case.

1 For instance, ICE has reduced and rearranged the detainee population such that appropriate
2 and meaningful social distancing is possible. *Pimentel*, 2020 WL 2092430, at *14; Lippard Decl.,
3 ¶¶ 6, 35-40. In addition, the evidence shows social distancing is possible at meal times, seats have
4 been removed from certain areas of the facility, GEO employees are required to wear PPE in the
5 facility within six feet of detainees, and markers have been placed in various areas to aid detainees’
6 understanding of appropriate distancing. *See id.*, ¶¶ 41-46, 55. Finally, NWIPC has implemented
7 a comprehensive testing policy for new admissions after conducting a mass testing of
8 approximately 80% of the detainee population at NWIPC. Malakhova Decl., ¶¶ 31-32.

9 Accordingly, Petitioners cannot demonstrate that the Government has violated their Fifth
10 Amendment substantive due process right to reasonable safety.

11 **2. *Petitioners fail to show that ICE’s COVID-19 response results in punitive***
12 ***conditions of confinement at NWIPC.***

13 Petitioners allege that their continued detention during the COVID-19 pandemic violates
14 due process because it amounts to punishment. *See Pet.*, ¶¶ 94-97. While evaluating the
15 constitutionality of civil detention conditions under the Fifth Amendment, a district court must
16 determine whether those conditions “amount to punishment of the detainee.” *Bell*, 441 U.S. at
17 535; *see also Kingsley*, 135 S. Ct. 2466, 2473-74 (2015). A petitioner may show punishment
18 through an express intent to punish or a condition that is not “reasonably related to a legitimate
19 governmental objective.” *Bell*, 441 U.S. at 539; *see also Kingsley*, 576 U.S. at 398 (noting that “a
20 pretrial detainee can prevail by providing only objective evidence that the challenged
21 governmental action is not rationally related to a legitimate governmental objective or that it is
22 excessive in relation to that purpose”). “A restriction is punitive where it is intended to punish, or
23 where it is ‘excessive in relation to [its] non-punitive purpose.’” *See Jones v. Blanas*, 393 F.3d
24 918, 933-34 (9th Cir. 2004).

25 Petitioners’ detention is reasonably related to a legitimate government interest. Detention
26 is a constitutionally permissible aspect of the Government’s enforcement of the immigration laws
27 and fulfills the legitimate purpose of ensuring that individuals appear for their removal

1 proceedings. *See Jennings*, 138 S. Ct. at 836; *Demore*, 538 U.S. at 523; *Zadvydas*, 533 U.S. at
2 690-91. In addition, the conditions at NWIPC are reasonably related to the Government's
3 legitimate interest in effective management of a detention facility. *See Jones v. Blanas*, 393 F.3d
4 918, 932 (9th Cir. 2004). Otherwise, essentially all congregate housing facilities would become a
5 per se "punishment" during a pandemic. That is not the law, and it is not consistent with current
6 CDC guidance on COVID-19 infection control in congregate facilities.

7 Moreover, Petitioners' allegations fail to show that their detention is not proportionately
8 related to the Government's non-punitive responsibilities and administrative purposes. While civil
9 detainees retain greater liberty protections than individuals convicted of crimes, *see, e.g.,*
10 *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982); *Bell*, 441 U.S. at 535, Petitioners' continued
11 immigration detention pending removal cannot be described as punitive or excessive in relation to
12 the legitimate governmental purpose of protecting the public and ensuring their removal. This is
13 particularly true in light of the mass testing results of most of the detainee population, the
14 substantial steps taken by ICE to prevent the virus from entering the facility, and Petitioners'
15 failure to present evidence that the risk of COVID-19 at NWIPC is imminent.

16 **3. *Petitioners fail to demonstrate that the preventive measures taken by the***
17 ***Government constitute deliberate indifference towards the risk of COVID-19 at***
18 ***NWIPC.***

19 Petitioners are unable to show a substantive due process violation based on the
20 Government's purported deliberate indifference to their medical needs by not releasing them due
21 to the COVID-19 pandemic. Pet., ¶ 96. Certain government conduct that "shocks the conscience"
22 may violate an individual's substantive due process rights. *Sacramento v. Lewis*, 523 U.S. 833,
23 853 (1998). Where detention officials have the "luxury" of making unhurried judgments "largely
24 uncomplicated by the pulls of competing obligations," their "deliberate indifference to inmate
25 welfare" can be "truly shocking" so as to abridge substantive due-process limitations. *Id.* Litigants
26 claiming deliberate indifference must establish that government action is "objectively
unreasonable" – a standard akin to reckless disregard. *Gordon v. Cty. Of Orange*, 888 F.3d 1118,

1 1125 (9th Cir. 2018). While true that “[a] remedy for unsafe conditions need not await a tragic
2 event,” *Helling v. McKinney*, 509 U.S. 25, 32 (1993), courts applying the deliberate indifference
3 standard – which rests on the understanding that “the [government’s] responsibility to attend to
4 the medical needs of prisoners does not ordinarily clash with other equally important governmental
5 responsibilities” – must take due regard for the particular “constraints facing the official.” *Wilson*
6 *v. Seiter*, 501 U.S. 294, 302-03 (1991).

7 Here, multiple factors demonstrate that Petitioners have failed to establish a due process
8 violation concerning their medical welfare. ICE has adequately and promptly responded to an
9 unfolding, rapidly changing, public-health emergency. ICE continues to dutifully manage its
10 responsibility for NWIPC’s detainees’ medical needs in the midst of a pandemic, while continuing
11 to manage other important public responsibilities, such as ensuring the continued enforcement of
12 the United States’ immigration laws within real-world constraints involving existing resources and
13 physical facilities. Even in normal contexts, moreover, neither general allegations of negligence
14 nor a petitioner’s general disagreement with treatment received is enough to show deliberate
15 indifference. *See Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976). Rather, that standard can be met
16 “only when the decision by the [medical] professional is such a substantial departure from accepted
17 professional judgment, practice, or standards as to demonstrate that the person responsible actually
18 did not base the decision on such a judgment.” *Youngberg*, 457 U.S. at 323.

19 The evidence here defeats any suggestion of deliberate indifference. At NWIPC, ICE has
20 actively sought to address COVID-19 by implementing CDC guidance to the maximum extent
21 possible. The Government’s evidence shows that ICE officials have taken significant
22 precautionary steps to protect the health and well-being of detainees at NWIPC, and to prevent an
23 outbreak of COVID-19 within the facility. *See generally* Lippard Decl. The detainee population
24 at NWIPC remains significantly reduced in response to the COVID-19 pandemic. *Id.*, ¶ 6 (31%
25 of capacity – reduced 44% since the first week of March).

26 IHSC staff conduct intake medical screenings for all newly-arrived detainees to detect

1 disabilities, illnesses (including fever and respiratory illness), or other high-risk medical conditions
2 identified in CDC and ICE guidance. Malakhova Decl., ¶¶ 16-21. IHSC provides voluntary
3 COVID-19 testing and quarantines all new and returning detainees for a minimum of 14 days, as
4 well as anyone showing COVID-19 symptoms, *compare* Centers for Disease Control, Interim
5 Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correction and Detention
6 Facilities, at 19 (Mar. 23, 2020), [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf)
7 [ncov/downloads/guidance-correctional-detention.pdf](https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf) (CDC Guidelines), *with* Malakhova Decl.,
8 ¶¶ 16-21. ICE has established screening procedures to identify and isolate potentially infected
9 individuals, in accordance with CDC guidance, promote social distancing, and to avoid the
10 mingling of infected and uninfected detainees. *Id.*, ¶¶ 25-32. To date, this protocol has
11 successfully prevented new detainees from placement in general population upon admission to
12 NWIPC. *Id.*, ¶ 32.

13 The facility has increased sanitation frequency, including the disinfection of all common
14 areas in the facility multiple times each day. Lippard Decl., ¶ 28. The facility has provided staff
15 and detainees with increased cleaning supplies and disinfectant. *Id.* The facility provides detainees
16 with personal protective equipment such as masks. *Id.*, ¶ 34. Both GEO and IHSC have been
17 holding regular town hall meetings to educate detainees about COVID-19 prevention, including
18 instruction on hand washing and hygiene. *Id.*, ¶¶ 30-32. ICE has suspended in-person facility
19 visits and tours and restricted in person visits. *Id.*, ¶¶ 47, 48. Staff are checked every day upon
20 entry for their temperature and by questionnaire for potential COVID-19 exposure. *Id.*, ¶ 53. Staff
21 who do not clear the screening process, or refuse the enhanced health screening, are denied entry
22 into the facility. *Id.* Finally, GEO and ICE employees that come within six feet of detainees are
23 required to wear masks. *Id.*, ¶ 55.

24 Most notably, ICE has reduced and rearranged the detainee population such that
25 appropriate and meaningful social distancing is possible. *Id.*, ¶¶ 35-40. Because of the reduced
26 population, none of the housing pods are near capacity. *Id.*, ¶ 38. Facility management has

1 additionally been conducting daily assessments and modifying programming and housing in a way
2 that promotes social distancing. *Id.*, ¶¶ 41-46.

3 Here, ICE has responded promptly to an unfolding public-health emergency that continues
4 to evolve over time. The Government has submitted evidence detailing the significant efforts
5 undertaken at NWIPC, which are consistent with guidance issued by the CDC, to safeguard the
6 detainees in its custody and care. *See generally* Lippard Decl. & Malakhova Decl. There is no
7 legitimate basis for a deliberate indifference claim here.

8 **V. CONCLUSION**

9 The Government respectfully requests the Court grant its motion to dismiss the Petition.

10 DATED this 16th day of July, 2020.

11 Respectfully submitted,

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2 Recommended for entry this _____ of _____, 2020.
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4 _____
5 MICHELLE L. PETERSON
6 United States Magistrate Judge
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