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SOUTHERN DISTRICT OF CALIFORNIA**

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BRODERICK, Marlene CANO, Jose  
CRESPO-VENEGAS, Noe GONZALEZ-  
SOTO, Victor LARA-SOTO, Racquel  
RAMCHARAN, George RIDLEY,  
Michael Jamil SMITH, Leopoldo  
SZURGOT, Jane DOE, on behalf of  
themselves and those similarly situated.

Plaintiff-Petitioners,

v.

Christopher J. LAROSE, Senior Warden,  
Otay Mesa Detention Center,

Steven C. STAFFORD, United States  
Marshal for the Southern District of  
California,

Donald W. WASHINGTON, Director of  
the United States Marshal Service.

Defendants-Respondents.

**Case No.: '20CV0782 AJB BGS**

**PLAINTIFF-PETITIONERS'  
NOTICE OF MOTION AND  
MOTION FOR CLASS  
CERTIFICATION**

**DATE: TBD**

**TIME: TBD**

**COURTROOM: TBD**

**JUDGE: TBD**

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23  
24  
25  
26  
27  
28  
  
\*Application for *pro hac vice* forthcoming

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that as soon as the matter may be heard before the  
3 judge assigned to this case at a date and time to be designated by the assigned  
4 judge, of which Plaintiff-Petitioners will serve notice, Plaintiff-Petitioners will and  
5 hereby do move this Court for an order granting class certification of the proposed  
6 classes and subclasses defined as follows:

- 7
- 8 • **Pretrial Class** (Plaintiffs Alvarez, Broderick, Lara-Soto, Ridley, Szurgot,  
9 and Doe): All current and future persons in pretrial detention at OMDC;

10 ***Pretrial Medically Vulnerable Subclass*** (Plaintiffs Alvarez, Ridley,  
11 Szurgot, and Doe): All current and future people detained pretrial at  
12 OMDC who are aged 45 years or older or who have medical conditions  
13 that place them at heightened risk of severe illness or death from COVID-  
14 19;<sup>1</sup>

- 15 • **Post-Conviction Class** (Plaintiffs Cano, Crespo-Venegas, Gonzalez-Soto,  
16 Ramcharan, and Smith): All current and future persons in post-conviction  
17 detention at OMDC;

18 ***Post-Conviction Medically Vulnerable Subclass*** (Plaintiffs Crespo-  
19 Venegas, Gonzalez-Soto, and Smith): All current and future people  
20 detained post-conviction at OMDC who are aged 45 years or older or who  
21 have medical conditions that place them at heightened risk of severe  
22 illness or death from COVID-19.<sup>2</sup>

23 Plaintiff-Petitioners' Motion for Class Certification is based on: this Notice  
24 of Motion and Motion for Class Certification; the concurrently-filed Memorandum  
25 and Points of Authorities in Support of Plaintiff-Petitioners' Motion for Class  
26 Certification; the Declaration of Attorney Joan McPhee in Support of Plaintiff-

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27 <sup>1</sup> Qualifying medical conditions for the Medically Vulnerable Subclasses will be informed  
28 by standards set by the CDC. *See, e.g., People Who Are at Higher Risk for Severe Illness*, CDC,  
<https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html> (last  
visited Apr. 20, 2020). Pregnancy also qualifies a detained person for Subclass membership.

<sup>2</sup> *Id.*

1 Petitioners' Motion for Class Certification, Declaration of Attorney Sirine Shebaya  
2 in Support of Plaintiff-Petitioners' Motion for Class Certification, Declaration of  
3 Attorney Bardis Vakili in Support of Plaintiff-Petitioners' Motion for Class  
4 Certification, and Declaration of Attorney Z Gabriel Arkles in Support of Plaintiff-  
5 Petitioners' Motion for Class Certification; all papers, pleadings, records, and files  
6 in this case; all matters of which judicial notice may be taken; and such other  
7 argument and/or evidence as may be presented to this Court at a hearing on this  
8 Motion.

9 Plaintiff-Petitioners respectfully request a hearing on this Motion.

10  
11  
12 DATED: April 25, 2020

Respectfully submitted,

**ROPES & GRAY LLP**

/s/ Nicole D. Horowitz

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Plaintiff-Petitioners,

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Steven C. STAFFORD, United States  
Marshal for the Southern District of  
California,

Case No. '20CV0782 AJB BGS

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF PLAINTIFF-  
PETITIONERS' MOTION  
FOR CLASS  
CERTIFICATION**

Donald W. WASHINGTON, Director of the  
United States Marshal Service.

Defendants-Respondents.

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## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	STATEMENT OF FACTS.....	6
A.	COVID-19 is Extremely Dangerous.....	6
B.	Congregate Environments Like OMDC Increase The Risk of Spread and Infection, Which May Strain Limited Community Health Resources.....	8
C.	USMS Has Failed to Take Adequate Measures to Protect Detained Persons in OMDC.....	10
III.	ARGUMENT .....	12
D.	The Proposed Classes and Subclasses Meet the Requirements of Rule 23(a)(1) Through (4) .....	12
1.	Numerosity .....	12
2.	Commonality .....	15
3.	Typicality .....	18
4.	Adequacy of Representation.....	19
E.	The Proposed Class Meets the Requirements of Rule 23(b)(2) .....	21
F.	Provisional Certification Is Urgently Needed for the Plaintiffs in Light of the Severe Risks Posed by COVID-19 .....	23
IV.	CONCLUSION .....	24



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<i>Abdullah v. U.S. Sec. Assocs., Inc.</i> , 731 F.3d 952 (9th Cir. 2013) .....	15
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<i>Hum v. Dericks</i> , 162 F.R.D. 628 (D. Haw. 1995) .....	13

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	<i>Robidoux v. Celani,</i>	
	987 F.2d 931 (2d Cir. 1993) .....	14

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13	<a href="https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf">https://www.who.int/docs/default-source/coronaviruse/who-china-</a>	
14	<a href="https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf">joint-mission-on-covid-19-final-report.pdf</a> .	7
15	U.S., CDC, Apr. 23, 2020, <a href="https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html">https://www.cdc.gov/coronavirus/2019-</a>	
16	<a href="https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html">ncov/cases-updates/cases-in-us.html</a> .....	6
17	U.S. Const. amend. V .....	5, 17, 20, 22
18	U.S. Const. amend. VIII .....	<i>passim</i>
19	<i>Updated Data</i> , Kaiser Family Foundation, Apr. 1, 2020,	
20	<a href="https://www.kff.org/global-health-policy/issue-brief/how-many-adults-are-at-risk-of-serious-illness-if-infected-with-coronavirus/">https://www.kff.org/global-health-policy/issue-brief/how-many-</a>	
21	<a href="https://www.kff.org/global-health-policy/issue-brief/how-many-adults-are-at-risk-of-serious-illness-if-infected-with-coronavirus/">adults-are-at-risk-of-serious-illness-if-infected-with-coronavirus/</a> .....	13
22	<i>Which States and Cities Have Told Residents to Stay at Home</i> , N.Y.	
23	Times (last updated Apr. 7, 2020)	
24	<a href="https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html">https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-</a>	
25	<a href="https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html">home-order.html</a> .....	8
26	WHO, Feb. 28, 2020, at 12 <a href="https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf">https://www.who.int/docs/default-</a>	
27	<a href="https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf">source/coronaviruse/who-china-joint-mission-on-covid-19-final-</a>	
28	<a href="https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf">report.pdf</a> .....	7
	William B. Rubenstein, <i>Newberg on Class Actions</i> , § 3:11 (5th ed.,	
	Dec. 2019 Update) .....	15

1	Wyatt Koma et al., <i>How Many Adults Are at Risk of Serious Illness if</i>	
2	<i>Infected with Coronavirus? Updated Data</i> , Kaiser Family	
3	Foundation, Apr. 1, 2020, <a href="https://www.kff.org/global-health-policy/issue-brief/how-many-adults-are-at-risk-of-serious-illness-if-infected-with-coronavirus/">https://www.kff.org/global-health-</a>	
4	<a href="https://www.kff.org/global-health-policy/issue-brief/how-many-adults-are-at-risk-of-serious-illness-if-infected-with-coronavirus/">policy/issue-brief/how-many-adults-are-at-risk-of-serious-illness-if-</a>	
5	<a href="https://www.kff.org/global-health-policy/issue-brief/how-many-adults-are-at-risk-of-serious-illness-if-infected-with-coronavirus/">infected-with-coronavirus/</a> .....	13

## I. INTRODUCTION

Plaintiff-Petitioners (“Plaintiffs”) are either pretrial or post-conviction (but pre-sentencing) detained persons under the custody of the United States Marshals Service (“USMS”) who are being held at the Otay Mesa Detention Center (“OMDC”) under conditions that render them exceptionally vulnerable to the highly infectious novel coronavirus, Coronavirus Disease 2019 (“COVID-19”). An outbreak of COVID-19 is actively spreading at the OMDC: this week alone, the number of positive cases has increased to alarming levels among USMS detained persons.<sup>1</sup> The only known effective measure to protect people from COVID-19 infection is “social distancing,” or remaining physically separated from known or potentially infected individuals. *See* Decl. of Dr. Joe Goldenson (“Goldenson Decl.”), ¶ 15. An unprecedented and life-threatening crisis is unfolding at the facility due to Defendants’ failure to adhere to U.S. Centers for Disease Control and Prevention (“CDC”) guidance for limiting risk of infection. Most notably, Defendants’ failure to implement social distancing throughout OMDC, or to reduce the USMS detained population sufficiently to make such distancing possible, places Plaintiffs at imminent and unreasonable risk of serious illness or death.

Many Plaintiffs suffer from underlying medical conditions, including HIV, leukemia, diabetes, and chronic lung disease, and face a heightened risk of serious illness or death if they contract COVID-19. These Plaintiffs (the “Medically Vulnerable Plaintiffs”) seek immediate release due to the urgent threat to their lives, especially in light of the growing number of confirmed positive cases of COVID-19 among OMDC staff and detained persons.

Indeed, while public health and elected officials throughout the United States have taken swift and drastic action to cabin the threat posed by COVID-19, Defendants’ response has been entirely inadequate, falling far short of relevant

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<sup>1</sup> Kate Morrissey (@bgirledukate), Twitter (Apr. 23, 2020, 10:50 PM), <https://twitter.com/bgirledukate/status/1253471366621196288>.

1 CDC guidance. Decl. of Dr. Joseph J. Amon (Amon Decl.), ¶ 48. OMDC is a  
2 “minimum/medium security” detention facility privately owned by CoreCivic that  
3 currently holds approximately 340 USMS detained persons and hundreds more  
4 under the jurisdiction of U.S. Immigration and Customs Enforcement (“ICE”).  
5 Comp. ¶ 2, 7. On or around March 31, 2020, an OMDC staff member was  
6 confirmed positive for COVID-19. By April 17, at least 27 people—18 ICE  
7 detained persons, and 9 USMS detained persons—had tested positive. As of April  
8 23, a reporter for the San Diego Union Tribune stated that **97 people** have tested  
9 positive: 38 USMS detained persons, and 59 ICE detained persons.<sup>2</sup> Many  
10 additional detained persons held at OMDC are reporting symptoms of the disease.  
11 See Goldenson Decl. ¶ 23. These numbers are likely just the tip of the iceberg,  
12 since newly-infected people typically do not show symptoms for 2 to 14 days, and  
13 since the infection spreads rapidly to additional people. *Id.* Indeed, the rate of  
14 infection for COVID-19 observed in the community would be magnified within  
15 OMDC, where adequate social distancing has been impossible to maintain. *Id.*  
16 ¶ 27.

17 Yet even as OMDC teeters on the brink of disaster, detained persons remain  
18 confined in conditions that do not allow for social distancing or the type of hygiene  
19 necessary to minimize transmission risk. This dire situation endangers all detained  
20 persons, OMDC staff, and the San Diego community as a whole. As OMDC staff  
21 move between the facility and the community at large, they risk the spread of  
22 COVID-19 infections throughout San Diego, imperiling the most vulnerable  
23 community members who could suffer severe complications, including death, if  
24 infection rates spike. *Id.* This Court’s immediate intervention is required to protect  
25 the health of all residents of San Diego.

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26  
27  
28 <sup>2</sup> *Id.*



Plaintiffs bring this class action to require USMS to reduce the population at OMDC to levels at which CDC-recommended social distancing is possible and to adequately protect those who remain confined from COVID-19 infection. Each plaintiff seeks to represent a class and/or subclass of fellow detained persons. Specifically, Plaintiffs seek certification of the following proposed classes and subclasses:

- **Pretrial Class** (Plaintiffs Alvarez, Broderick, Lara-Soto, Ridley, Szurgot, and Doe): All current and future persons in pretrial detention at OMDC;

***Pretrial Medically Vulnerable Subclass*** (Plaintiffs Alvarez, Ridley, Szurgot, and Doe): All current and future people detained pretrial at OMDC who are aged 45 years or older or who have medical conditions that place them at heightened risk of severe illness or death from COVID-19;<sup>3</sup>

- **Post-Conviction Class** (Plaintiffs Cano, Crespo-Venegas, Gonzalez-Soto, Ramcharan, and Smith): All current and future persons in post-conviction detention at OMDC;

***Post-Conviction Medically Vulnerable Subclass*** (Plaintiffs Crespo-Venegas, Gonzalez-Soto, and Smith): All current and future people detained post-conviction at OMDC who are aged 45 years or older or who have medical conditions that place them at heightened risk of severe illness or death from COVID-19.<sup>4</sup>

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<sup>3</sup> Qualifying medical conditions for the Medically Vulnerable Subclasses will be informed by standards set by the CDC. *See, e.g., People Who Are at Higher Risk for Severe Illness*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html> (last visited Apr. 20, 2020). Pregnancy should also qualify a detained person for Subclass membership because the CDC acknowledges that “[p]regnant people have had a higher risk of severe illness when infected with viruses from the same family as COVID-19.” *See Pregnancy and Breastfeeding*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html> (last visited Apr. 20, 2020).

<sup>4</sup> *Id.*

1 In addition, Plaintiffs request provisional certification, and issuance of a  
2 temporary restraining order, preliminary injunction, and/or writ of habeas corpus as  
3 described in Plaintiffs' Request for Relief.

4 This case readily meets the four requirements of Federal Rule of Civil  
5 Procedure 23(a) for each Class and Subclass. *First*, the Pretrial and Post-  
6 Conviction Classes and Subclasses are numerous under Rule 23(a)(1) because there  
7 are approximately 330-340 individuals currently detained by the USMS in OMDC,  
8 many of whom are medically vulnerable. Joinder is impracticable because  
9 proposed Class members' ability to file and vigorously pursue claims has been  
10 dramatically impeded in light of recent measures at the OMDC—reportedly  
11 including a suspension on legal calls—limiting their access to lawyers and experts  
12 who could help them bring individual claims, which is extremely limited. *Second*,  
13 there are common questions under Rule 23(a)(2) because all Class and Subclass  
14 members are experiencing the same denial of their due process right against  
15 unlawful punishment, and/or their right against cruel and unusual punishment while  
16 in government confinement, and a ruling in their favor would cure that violation for  
17 each of the Classes. *Third*, the named Plaintiffs present claims typical of the Class  
18 and Subclass each seeks to represent under Rule 23(a)(3). Like all Class members,  
19 each is detained under conditions that place them at heightened risk of exposure to  
20 COVID-19, and like all Subclass members, the Medically Vulnerable Plaintiffs  
21 have medical conditions that increase their risk of severe illness or death if exposed.  
22 *Fourth*, the Class representatives will fairly and adequately protect the Class under  
23 Rule 23(a)(4). Class counsel are experienced in civil rights, criminal law, and class  
24 action cases, and Plaintiffs have no interests separate from those of the Class with  
25 respect to the claims and issues in this case. They seek only to protect the health  
26 and safety of all persons in USMS custody at OMDC.

27 This case also qualifies for certification under Rule 23(b). Defendants'  
28 policies and practices deprive all class members of fundamental constitutional

1 rights – specifically the Fifth Amendment Right to Due Process with respect to the  
2 Pretrial Class and the Fifth Amendment right to Due Process and/or the Eighth  
3 Amendment right against Cruel and Unusual Punishment with respect to the Post-  
4 Conviction Class – by placing them at unreasonably high risk of contracting  
5 COVID-19 such that “final injunctive relief or corresponding declaratory relief is  
6 appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

7 Plaintiffs respectfully request this Court certify the proposed Classes and  
8 Subclasses, as other courts have done in actions brought by detained persons,  
9 including an order from yesterday provisionally certifying a substantively similar  
10 class. *See* Provisional Class Certification Order, *Hernandez Roman v. Wolf*, No.  
11 EDCV 20-00768 TJH (PVC) (C.D. Cal. Apr. 23, 2020), ECF No. 52 (provisionally  
12 certifying class of immigration detained persons at ICE facility seeking reduction of  
13 detained persons population to allow for social distancing during COVID-19  
14 pandemic); *see also Gerstein v. Pugh*, 420 U.S. 103(1975) (describing certified  
15 class of pretrial detained persons); *Rutherford v. Pitchess*, 457 F. Supp. 104 (C.D.  
16 Cal.1978), *aff’d in part and rev’d in part on other grounds*, 710 F.2d 572 (9th Cir.  
17 1983), *rev’d sub nom. Block v. Rutherford*, 468 U.S. 576 (1984) (describing  
18 existence of certified class of pre-trial and post-conviction detained person “floor-  
19 sleepers”); *Pierce v. Cty. of Orange*, 526 F.3d 1190 (9th Cir. 2008) (describing  
20 certification of class, under 23(b)(2), of pretrial detained persons and subclass of  
21 disabled detained persons); *Thomas v. Baca*, 514 F. Supp. 2d 1201 (C.D. Cal. 2007)  
22 (discussing certification of class of pre-trial and post-conviction detained persons  
23 alleging that they were required to sleep on the floor of jail facilities); *Hernandez v.*  
24 *Cty. of Monterey*, 305 F.R.D. 132 (N.D. Cal. 2015) (describing certification of class  
25 of incarcerated persons challenging jail safety and health care policies and  
26 practices, and a subclass of incarcerated persons challenging jail disability policies  
27 and practices).

## II. STATEMENT OF FACTS

### A. COVID-19 is Extremely Dangerous.

COVID-19 has reached global pandemic status, exhibiting rapid escalation and devastating impact. As of April 19, 2020, COVID-19 has claimed 43,200 lives in the United States, and has infected 804,194, the highest number of reported cases in the world. *See* Amon Decl. ¶ 5. Although these figures grow every day, they are likely an underestimate due to the lack of availability of testing. *Id.* Goldenson Decl. ¶ 12. As of April 24, 2020, these numbers are approximately 865,585 of reported cases and 48,816 deaths in the United States.<sup>5</sup>

Everybody is at risk of contracting the virus. There is no known cure or vaccine for COVID-19 and nobody is known to be immune; the only known effective measures to reduce risk of death or injury for vulnerable people are avoiding contagion by practicing social distancing and proper hygiene. *Id.* ¶ 15. The overall case fatality rate has been estimated to range from 0.3 to 3.5%, which is 5 to 35 times the fatality rate associated with influenza infection. *Id.* ¶ 7. More recent estimates place the U.S. fatality rate at between 4 and 5%, as much as 50 times higher than the fatality rate of influenza.<sup>6</sup>

For certain medically vulnerable people, the potential consequences of infection are particularly severe: the case fatality rate varies significantly with advancing age and is above 5% (1 in 20 cases) for those with pre-existing medical

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<sup>5</sup> *Cases of Coronavirus Disease (COVID-19) in the U.S.*, CDC, Apr. 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

<sup>6</sup> Chris Mooney, Juliet Eilperin & Joel Achenbach, *As U.S. Coronavirus Fatality Rate Rises to 5 Percent, Experts Are Still Trying to Understand How Deadly This Virus Is*, Wash. Post, Apr. 17, 2020, [https://www.washingtonpost.com/health/as-officials-plan-to-reopen-the-economy-a-key-unknown-remains-how-deadly-is-the-coronavirus/2020/04/17/0bd2f938-7e49-11ea-a3ee-13e1ae0a3571\\_story.html](https://www.washingtonpost.com/health/as-officials-plan-to-reopen-the-economy-a-key-unknown-remains-how-deadly-is-the-coronavirus/2020/04/17/0bd2f938-7e49-11ea-a3ee-13e1ae0a3571_story.html); Amy Harmon, *Why We Don't Know the True Death Rate for Covid-19*, N.Y. Times, Apr. 17, 2020 (last updated Apr. 18, 2020), <https://www.nytimes.com/2020/04/17/us/coronavirus-death-rate.html>.

1 conditions, including cardio-vascular disease, respiratory disease, diabetes, and  
 2 immune compromise. Goldenson Decl. ¶ 9.

3 People 45 years old and older are at higher risk for severe disease from  
 4 COVID-19. Amon Decl. ¶ 9. In addition, the CDC has concluded that certain  
 5 underlying medical conditions increase the risk of serious COVID-19 symptoms for  
 6 people of any age. These include lung disease (such as asthma), heart disease,  
 7 chronic liver or kidney disease, diabetes, epilepsy, compromised immune systems  
 8 (such as from cancer, HIV, or an autoimmune disease), blood disorders (including  
 9 sickle cell disease), metabolic disorders, stroke, developmental delay, and  
 10 pregnancy. *Id.* ¶ 8. Early reports estimate that the mortality rate for those with  
 11 cardiovascular disease was 13.2%, while it was 9.2% for diabetes, 8.4% for  
 12 hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer.<sup>7</sup> Most  
 13 COVID-19 patients who develop severe medical complications will need advanced  
 14 supportive care to survive, requiring highly specialized equipment that is in limited  
 15 supply, and an entire team of care providers, including 1:1 or 1:2 nurse to patient  
 16 ratios, respiratory therapists, and intensive care physicians.<sup>8</sup>

17 The risks of rapid infection and death due to COVID-19 have caused state  
 18 and local governments to take drastic measures to preserve public health, despite  
 19 overwhelming economic impacts. In San Diego County, government officials  
 20 banned gatherings of 10 or more and later encouraged people to not gather in  
 21 groups of any size.<sup>9</sup> On March 19, 2020, the state of California issued an executive

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22 <sup>7</sup> *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-*  
 23 *19)*, WHO, Feb. 28, 2020, at 12 [https://www.who.int/docs/default-](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf)  
 24 [source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf).

25 <sup>8</sup> Kevin McCoy and Katie Wedell, ‘*On-the-job emergency training*’: *Hospitals may*  
 26 *run low on staff to run ventilators for coronavirus patients*, USA Today, Mar. 27,  
 27 2020, [https://www.usatoday.com/story/news/nation/2020/03/27/coronavirus-](https://www.usatoday.com/story/news/nation/2020/03/27/coronavirus-hospitals-face-shortages-respiratory-therapists-run-ventilators/2914635001/)  
[hospitals-face-shortages-respiratory-therapists-run-ventilators/2914635001/](https://www.usatoday.com/story/news/nation/2020/03/27/coronavirus-hospitals-face-shortages-respiratory-therapists-run-ventilators/2914635001/).

28 <sup>9</sup> Gig Conaughton, *County Officials Give COVID-19 Update in Wake of Governor’s*  
 “*Stay Home*” Order, County News Ctr., Mar. 20, 2020,

order, ordering all California residents to shelter in place.<sup>10</sup> Governors and mayors across the country have ordered 95 percent of Americans—about 316 million people—to stay at home.<sup>11</sup>

**B. Congregate Environments Like OMDC Increase the Risk of Spread and Infection, Which May Strain Limited Community Health Resources.**

People in congregate environments—places where people live, eat, and sleep in close proximity—face increased danger of contracting COVID-19, as evinced by the rapid spread of the virus in cruise ships and nursing homes. Amon Decl. ¶ 18. As a result, governments have suspended activities that take place in congregate environments. *Id.* ¶ 13. Jails, prisons, and detention facilities pose significant dangers to detained persons, staff, and community members. When COVID-19 has entered carceral facilities, it has ripped through them like wildfire. On March 21, a jail oversight agency reported that 21 incarcerated people and 17 employees at Rikers Island in New York tested positive; by April 14, 323 positive cases were recorded; by April 17, five corrections staff members and two incarcerated persons had died.<sup>12</sup> Amon Decl. ¶ 39. The Cook County Jail has likewise seen an alarming rise in cases, with 524 confirmed cases among the incarcerated population as of April 13, 2020. *Id.*

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<https://www.countynewscenter.com/county-officials-update-covid-19-in-wake-of-governors-stay-home-order/>

<sup>10</sup> Cal. Gov., Exec. Order No. N-33-20, Mar. 19, 2020, <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

<sup>11</sup> Sarah Mervosh, et al., *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. Times (last updated Apr. 7, 2020),

<https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.

<sup>12</sup> Josiah Bates, *Campaigns, Fundraisers Work to Bail New York City Inmates Amid COVID-19 Outbreaks in Jails and Detention Centers*, TIME, Apr. 17, 2020, <https://time.com/5821512/bail-campaigns-new-york-inmates-coronavirus/>.



1 Putative Class members are pretrial and post-conviction detained persons  
2 confined in close quarters, housed together in pods, which consist of roughly 70 to  
3 100 persons each, where they are held in conditions that do not allow for the six-  
4 foot social distancing the CDC recommends. *See* Compl. ¶ 58. Within each pod,  
5 most individuals share small cells with two or three persons per cell. *Id.*; Amon  
6 Decl. ¶ 29. For example, Plaintiff Lara-Soto shares a three-by-five meter  
7 (approximately ten-by-sixteen feet) cell with three other people and, like everyone  
8 at the facility, is locked in the cell every evening with his cellmates for at least ten  
9 hours until morning. *See* Decl. of Plaintiff Lara-Soto, ¶¶ 4, 6. This is particularly  
10 problematic because “while hand washing and disinfecting surfaces is advisable,  
11 the main strategy for limiting disease transmission is social distancing and [] for  
12 such distancing to be effective it must occur before individuals display symptoms.”  
13 Amon Decl. ¶ 12.

14 Detention facilities like OMDC pose a “heightened public health risk to the  
15 spread of COVID-19, even greater than other non-carceral institutions.” *Id.* ¶ 17.  
16 Furthermore, detention facilities are closed environments, where the proportion of  
17 vulnerable people is high, medical care is scant, and conditions are crowded. *Id.*  
18 ¶ 18. Detained persons are forced to live in close quarters and share toilets, sinks,  
19 and showers; services, such as food preparation and laundry, are communal. *Id.*  
20 Detention facilities further offer little opportunity for surface disinfection. *Id.*

21 OMDC staff arrive and leave every day on a shift basis, facilitating the  
22 transfer of the disease between the detention center and the San Diego community  
23 at large. As more individuals are infected with COVID-19, the risk increases that  
24 large numbers of ill individuals will strain San Diego’s medical infrastructure. *Id.*  
25 ¶ 45. Once infection spreads throughout a detention center, overwhelming the  
26 facility’s limited resources, the burden will shift to local medical facilities, which  
27 will likely not be able to provide care to all infected people with grave cases,  
28 increasing the likelihood of death. *Id.*

**C. USMS Has Failed to Take Adequate Measures to Protect Detained Persons in OMDC.**

USMS confines detained persons in OMDC in cells within larger housing units, called pods. Many pods hold over 100 individuals who are unable to practice social distancing in their sleeping quarters or in common areas. *See, e.g.,* Amon Decl. ¶¶ 24, 25, 27; Goldenson Decl. ¶ 24; Decl. of Plaintiff Marlene Cano (“Cano Decl.”), ¶¶ 5, 6; Decl. of Plaintiff Raquel Ramcharan (“Ramcharan Decl.”), ¶¶ 3, 8. Indeed, in a recently quarantined pod, mealtime practices in place as of April 22, 2020 still did not ensure that detained persons were separated by six feet given that they were called out of their cells in large groups and lined up. Goldenson Decl. ¶ 24; Cano Decl. ¶ 6, Ramcharan Decl. ¶ 8. As of April 6, all other detained persons were no longer eating in the cafeteria but eat within their pod, but as of April 20, 2020 they still had to wait in line—less than six feet apart—to get food within their pod. Amon Decl. ¶ 24. Detained persons who worked in the kitchens were standing shoulder-to-shoulder while preparing food, and OMDC had not provided all of them with masks.<sup>13</sup> *Id.* As of April 23, due to additional positive COVID-19 cases, the OMDC kitchens appear to have closed and food is primarily distributed through boxed lunches.

USMS cannot ensure the proper sanitation of commonly used surfaces, as the facility requires cleaning by detained persons, many of whom are not provided with sufficient protective equipment while cleaning such as gloves or masks. Amon Decl. ¶¶ 24, 25. Moreover, showers, which are shared by all individuals within each pod, are only cleaned once or twice a day rather than after every use, and telephones—which are generally not six feet apart—are not wiped down after each use. *Id.*; Goldenson Decl. ¶ 25.

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<sup>13</sup> As of April 23, due to additional positive COVID-19 cases, the OMDC kitchens appear to have closed and food is primarily distributed through boxed lunches. Compl. ¶ 60.



1 Further, USMS has failed to provide a sufficient amount of the most basic  
 2 products to detained persons to maintain proper hygiene, including soap, hand  
 3 sanitizer, and toilet paper. Amon Decl. ¶¶ 24, 25.

4 Under these conditions, it is no surprise that an outbreak is underway at  
 5 OMDC. As of April 15, 2020, OMDC had 24 confirmed COVID-19 cases.<sup>14</sup> By  
 6 April 22, 2020, that number had jumped to at least 42 for persons in ICE detention  
 7 alone, with likely a corresponding increase in the number of those in USMS  
 8 custody.<sup>15</sup> The rapidly escalating outbreak at OMDC has drawn attention from  
 9 Congressional leaders.<sup>16</sup>

10 Because it is virtually impossible to engage in the social distancing and  
 11 hygiene required to mitigate the risk of transmission in a congregate environment,  
 12 public health experts agree releasing detained persons from custody to reduce  
 13 crowding is the most effective mitigation strategy. Amon Decl. ¶¶ 50, 52, 53.  
 14 Release of medically vulnerable people from detention is especially important  
 15 given the heightened risks to their health and safety. *Id.* ¶ 50; Goldenson Decl.  
 16 ¶ 29.

17 Releasing individuals will also allow for easier provision of preventive  
 18 measures such as facilitating social distancing, which are also advisable, for  
 19 remaining detained persons. Amon Decl. ¶ 50; Goldenson Decl. ¶ 30. These  
 20 measures will protect all Class members and Subclass members, whether they are  
 21 among the released or not. Yet Defendants have failed to take these measures at  
 22 OMDC.

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24 <sup>14</sup> Kate Morrissey, *Sen. Kamala Harris calls for investigation into Otay Mesa*  
 25 *Detention Center*, The San Diego Union Tribune, Apr. 15, 2020,  
 26 [https://www.sandiegouniontribune.com/news/immigration/story/2020-04-15/sen-](https://www.sandiegouniontribune.com/news/immigration/story/2020-04-15/sen-kamala-harris-calls-for-investigation-into-otay-mesa-detention-center)  
[kamala-harris-calls-for-investigation-into-otay-mesa-detention-center](https://www.sandiegouniontribune.com/news/immigration/story/2020-04-15/sen-kamala-harris-calls-for-investigation-into-otay-mesa-detention-center).

27 <sup>15</sup> See ICE Guidance on COVID-19, Confirmed Cases,  
 28 <https://www.ice.gov/coronavirus> (last checked Apr. 23, 2020).

<sup>16</sup> Morrissey, *supra* n.14.

### III. ARGUMENT

A plaintiff whose suit satisfies the requirements of Rule 23(a) and fits into one of the categories of Rule 23(b) has a “categorical” right “to pursue his claim as a class action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins.*, 559 U.S. 393, 398 (2010). Class actions “may encompass multiple classes if two distinct groups suffered similar injuries” or “a subclass if one large group suffered a particular type of injuries, with subsets of that group suffering different injuries,” and “one class action may encompass both multiple classes and subclasses—there is no inherent limit.” 3 *Newberg on Class Actions* § 7:27 (5th ed.). “When appropriate, a class may be divided into subclasses that are each treated as a class.” Fed. R. Civ. P. 23(c)(5). “[E]ach subclass must independently meet the requirements of Rule 23 for the maintenance of a class action.” *Betts v. Reliable Collection Agency, Ltd.*, 659 F.2d 1000, 1005 (9th Cir. 1981). Here, Plaintiffs’ two proposed Classes and their respective Subclasses meet all the requirements of Rule 23(a) and squarely fit within Rule 23(b)(2).

#### **D. The Proposed Classes and Subclasses Meet the Requirements of Rule 23(a)(1) Through (4).**

##### **1. Numerosity**

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Of the approximately 340 USMS detained persons at OMD, there are at least 50 persons in each of the Pretrial and Post-Conviction Classes, all of whom are experiencing conditions that place them at unconstitutional risk of contracting COVID-19. Compl. ¶ 2; Amon Decl. ¶ 21; Goldenson Decl. ¶ 24. That fact alone satisfies the numerosity requirement. *See Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010) (“In general, courts find the numerosity requirement satisfied when a class includes at

1 least 40 members.”); *see also Lyon v. U.S.s Immigration & Customs Enforcement*,  
 2 300 F.R.D. 628, 636 (N.D. Cal. 2014).

3 The proposed Pretrial and Post-Conviction Medically Vulnerable  
 4 Subclasses—which include detained persons age 45 and older or who have medical  
 5 conditions that heighten their risk of serious complications from COVID-19—also  
 6 meet the numerosity requirement. Where, as here, a plaintiff “seek[s] only  
 7 injunctive and declaratory relief, the numerosity requirement is relaxed and  
 8 plaintiffs may rely on [] reasonable inference[s] . . . that the number of unknown  
 9 [members] is sufficient to make joinder impracticable.” *Civil Rights Educ. & Enf’t*  
 10 *Ctr. v. Hosp. Props. Trust*, 317 F.R.D. 91, 100 (N.D. Cal. 2016) (internal quotation  
 11 marks omitted). “A relatively small class may be certified if joinder is impractical.”  
 12 *Daigle v. Shell Oil Co.*, 133 F.R.D. 600, 603 (D. Colo. 1990); *Hum v. Dericks*, 162  
 13 F.R.D. 628, 634 (D. Haw. 1995) (“[T]he representatives only need show that it is  
 14 extremely difficult or inconvenient to join all the members of the class.”). Indeed,  
 15 “[t]here is no magic number” for determining when numerosity has been satisfied,  
 16 and “[c]ourts have certified classes with as few as thirteen members.” *Hum*, 162  
 17 F.R.D. at 634; *see also Ark. Educ. Ass’n v. Bd. of Educ.*, 446 F.2d 763, 765–66 (8th  
 18 Cir. 1971) (class of 20 sufficient); *Daigle*, 133 F.R.D. at 603 (“[c]lasses with under  
 19 twenty people have been certified.”)

20 Plaintiffs need only “show some evidence of or reasonably estimate the  
 21 number of class members.” *Kincaid v. City of Fresno*, 244 F.R.D. 597, 601 (E.D.  
 22 Cal. 2007) (citation and quotation marks omitted). Plaintiffs have already identified  
 23 at least seven detained persons in OMDC who have medical vulnerabilities. Compl.  
 24 ¶¶ 85, 88. The prevalence of COVID-19 risk factors in the U.S. population as a  
 25 whole indicates that there are likely well over 40 detained persons both among  
 26 pretrial and post-conviction detained persons who are medically vulnerable.<sup>17</sup> The

27  
 28 <sup>17</sup> Wyatt Koma et al., *How Many Adults Are at Risk of Serious Illness if Infected with Coronavirus? Updated Data*, Kaiser Family Foundation, Apr. 1, 2020,

age composition of detention facilities across the country suggests that there are substantial numbers of pretrial and post-conviction detained persons who are over the age of 45.<sup>18</sup> *See Rivera v. Holder*, 307 F.R.D. 539, 550 (W.D. Wash. 2015) (noting “the exact size of the class need not be known so long as general knowledge and common sense indicate that it is [sufficiently] large.”) (quotation marks omitted); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal 1982) (“Where the exact size of the class is unknown but general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied.”). Defendants’ records will confirm that numerosity is met for the proposed Subclasses.

Furthermore, absent class certification, the Court will otherwise likely be flooded with hundreds of individual claims—enough to strain judicial resources, while nonetheless leaving many vulnerable individuals without relief. *Rodriguez v. Hayes*, 591 F.3d 1105, 1123 (9th Cir. 2010). This is so, not only because detained persons may not have a right to appointed counsel in habeas proceedings, but also because, in light of recent measures implemented that attempt to curtail the spread of COVID-19, Class members’ access to any legal counsel has been greatly impacted. For example, a suspension of arranged legal calls, impossibility of in-person meetings, and limited access to courts are all impeding detained persons’ access to counsel and relief. “The [lack of] ability to individually bring suit counsels in favor of finding numerosity.” *Pole v. Estenson Logistics, LLC*, No. CV 15-07196 DDP (Ex), 2016 WL 4238635, at \*5 (C.D. Cal. Aug. 10, 2016); *see also*

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<https://www.kff.org/global-health-policy/issue-brief/how-many-adults-are-at-risk-of-serious-illness-if-infected-with-coronavirus/> (“About four in ten adults . . . in the U.S. . . . have a higher risk of developing serious illness if they become infected with [the novel] coronavirus.”)

<sup>18</sup> *Cf.* Federal Bureau of Prisons: Inmate Age, [https://www.bop.gov/about/statistics/statistics\\_inmate\\_age.jsp](https://www.bop.gov/about/statistics/statistics_inmate_age.jsp). (last visited Apr. 24, 2020).

1 *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993) (holding that because  
 2 putative class members “are also economically disadvantaged” this factor weighed  
 3 in favor of class certification). This is because “impracticability” under Rule  
 4 23(a)(1) “does not mean ‘impossibility,’ but only the difficulty or inconvenience of  
 5 joining all members of the class.” *Franco-Gonzalez v. Napolitano*, No. CV 10-  
 6 02211 DMG (DTBx), 2011 WL 11705815, at \*6 (C.D. Cal. Nov. 21, 2011)  
 7 (citation and quotation marks omitted). Thus, “although referred to as a numerosity  
 8 requirement, the real inquiry under Rule 23(a)(1). . . is whether joinder would be  
 9 impractical.” *Daigle*, 133 F.R.D. at 603. Accordingly, the so-called numerosity  
 10 requirement is actually “based on considerations of due process, judicial economy,  
 11 and the ability of claimants to institute suits.” William B. Rubenstein, *Newberg on*  
 12 *Class Actions*, § 3:11 (5th ed., Dec. 2019 Update); *see also Moreno v. DFG Foods,*  
 13 *LLC*, No. 02 C 4019, 2003 WL 21183903, at \*6 (N.D. Ill. May 21, 2003) (“Judicial  
 14 economy and the ability of class members to initiate individual suits are proper  
 15 considerations in determining whether joinder is impracticable.”); *Cervantez v.*  
 16 *Celestica Corp.*, 253 F.R.D. 562, 567 (C.D. Cal. 2008) (“Class actions have two  
 17 primary purposes: to further judicial economy by avoiding multiple suits and to  
 18 protect the rights of persons who ‘might not be able to present claims on an  
 19 individual basis.’”) (quoting *Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 647 (C.D.  
 20 Cal. 1996)).

## 21                   2.       Commonality

22               Rule 23(a) requires that there be “questions of law or fact common to the  
 23 class.” Fed. R. Civ. P. 23(a)(2). However, commonality “does not . . . mean that  
 24 every question of law or fact must be common to the class.” *Abdullah v. U.S. Sec.*  
 25 *Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013). Commonality simply requires that  
 26 “plaintiffs’ claims must depend on a common contention, such that determination  
 27 of [their] truth or falsity will resolve an issue that is central to the validity of each  
 28

1 one of the claims in one stroke.” *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir.  
 2 2014) (alteration in original) (citation and quotation marks omitted). Thus, “even a  
 3 single common question” will suffice to satisfy Rule 23(a). *Id.*; *see also Wal-Mart*  
 4 *Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011).

5 Suits for injunctive or declaratory relief “by their very nature often present  
 6 common questions satisfying Rule 23(a)(2).” 7A Charles Alan Wright, Arthur R.  
 7 Miller & Mary J. Kane, *Fed. Prac. & Proc. Civ.* § 1763 (3d ed. 2018).  
 8 Accordingly, the commonality requirement ““has been construed permissively,””  
 9 *Preap v. Johnson*, 303 F.R.D. 566, 585 (N.D. Cal. 2014), when ““the lawsuit  
 10 challenges a system-wide practice or policy that affects all of the putative class  
 11 members.”” *Unknown Parties v. Johnson*, 163 F. Supp. 3d 630, 635 (D. Ariz.  
 12 2016) (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)). This case  
 13 meets that liberal standard.

14 All members of the proposed Pretrial and Post-Conviction Classes share a  
 15 common core of facts: all are confined in the same facility as their fellow Class  
 16 members. They are also subject to the same practices: Defendants’ unwillingness  
 17 or inability to ensure the ability to practice social distancing at OMDC to protect  
 18 detained persons against serious illness or death. *Cf. Hernandez*, 305 F.R.D. at 155  
 19 (finding commonality where “a central question of injury is whether Defendants’  
 20 policies and practices reflect deliberate indifference as to Plaintiffs’ medical care,  
 21 mental health care, and safety needs.”).

22 Additional common questions of law and fact include:

- 23 a) Whether proposed Class members are able to adequately practice social  
 24 distancing at all times, and whether they in fact adequately practice social  
 25 distancing;
- 26 b) Whether Defendants are instituting sufficient health and safety measures  
 27 to adequately protect Class members from infection; and  
 28



1 c) Whether the failure to institute social distancing or other reasonable health  
 2 and safety measures subjects members of each proposed Class to a  
 3 heightened risk of serious illness and death in violation of their Fifth  
 4 Amendment Due Process Rights and/or Eighth Amendment Rights  
 5 Against Cruel and Unusual Punishment.

6 Indeed, federal courts have recently provisionally certified classes of persons  
 7 in immigration detention in constitutional challenges arising out of similar  
 8 detention conditions in the face of the COVID-19 pandemic, most recently on April  
 9 23, 2020 at the Adelanto detention facility where petitioners are seeking nearly  
 10 identical relief as Plaintiffs here. *See* Provisional Class Certification Order,  
 11 *Hernandez Roman v. Wolf*, No. 20-00768 TJH (PVCx), (C.D. Cal. Apr. 23, 2020),  
 12 ECF No. 52. There, the court reasoned:

13 The specific reason why each Petitioner and putative class member is being  
 14 detained is immaterial, here. The issue before the Court is whether the  
 15 manner of their detention – the conditions of their confinement – violates  
 their Fifth Amendment substantive due process rights.

16 *Id.* at 4.

17 Similarly, in *Savino v. Souza*, the court observed:

18 At bottom, a common question of law and fact in this case is whether the  
 19 government must modify the conditions of confinement—or, failing that,  
 20 release a critical mass of Detainees—such that social distancing will be  
 21 possible and all those held in the facility will not face a constitutionally  
 22 violative substantial risk of serious harm. Crucial to the Court’s  
 23 determination is the troubling fact that even perfectly healthy detainees are  
 24 seriously threatened by COVID-19. To be sure, the harm of a COVID-19  
 infection will generally be more serious for some petitioners than for others.  
 Yet it cannot be denied that the virus is gravely dangerous to all of us.

25 No. 1:20-cv-10617-WGY, WL 1703844, at \*7 (D. Mass. Apr. 8, 2020)  
 26 (citations and quotation marks omitted).

27 The proposed Medically Vulnerable Subclasses present the same common  
 28 questions as the proposed Classes, with the additional question whether the degree

1 of risk and imminence of harm warrants urgent relief for members of the  
 2 Subclasses.<sup>19</sup> Indeed, the Medically Vulnerable Subclass members are confined in  
 3 a facility with an active and growing outbreak of COVID-19 that will only spread  
 4 further under Defendants' current practices, the risk is so imminent and their  
 5 continued detention so unreasonable that an emergency Subclass-wide temporary  
 6 restraining order ("TRO"), preliminary injunction, and writ of habeas corpus is  
 7 necessary to preserve their Due Process rights and right against Cruel and Unusual  
 8 Punishment, as argued in the separately filed motion for TRO, preliminary  
 9 injunction, and writ of habeas corpus.

### 10 3. Typicality

11 Typicality exists if "the claims or defenses of the representative parties are  
 12 typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "[T]he  
 13 typicality requirement is permissive and requires only that the representative's  
 14 claims are reasonably coextensive with those of absent class members; they need  
 15 not be substantially identical." *Rodriguez*, 591 F.3d at 1124 (citation and quotation  
 16 marks omitted). "The test of typicality is 'whether other members [of the class]  
 17 have the same or similar injury, whether the action is based on conduct which is not  
 18 unique to the named plaintiffs, and whether other class members have been injured  
 19 by the same course of conduct.'" *Parsons*, 754 F.3d at 685 (citation and quotation  
 20 marks omitted). Typicality is satisfied "when each class member's claim arises  
 21 from the same course of events, and each class member makes similar legal  
 22

---

23 <sup>19</sup> The heightened risk faced by each Medically Vulnerable Subclass does not  
 24 render the risk of exposure faced by the larger proposed classes any less common.  
 25 While it is true that COVID-19 poses a higher likelihood of serious illness or death  
 26 for proposed Subclass members, it is also true that *all* detained persons are at risk.  
 27 See Goldenson Decl. 17, 18; Amon Decl. ¶ 16. As another court recently found,  
 28 "To be sure, the harm of a COVID-19 infection will generally be more serious for  
 some petitioners than for others. Yet it cannot be denied that the virus is gravely  
 dangerous to all of us." *Savino*, 2020 WL 1703844, at \*7.



arguments to prove the defendant’s liability.” *Rodriguez*, 591 F.3d at 1124 (citation and quotation marks omitted).

The proposed Classes meet the typicality requirement because the named Plaintiffs and proposed Class members at each facility are detained in the same facility under the same conditions, and their claims all arise from the same failure to adequately implement social distancing and other appropriate health and safety measures in response to COVID-19. *See, e.g.*, Amon Decl. ¶¶ 25–38; Goldenson Decl. ¶¶ 24–28. Finally, they all will suffer the same harm: the significant and avoidable risk of serious illness or death. *See, e.g., Kuang v. U.S. Dep’t of Def.*, 340 F. Supp. 3d 873, 892 (N.D. Cal. 2018) (finding typicality requirement met when “named Plaintiffs and putative class members have all suffered, and continue to suffer, the same general injury”).

The same is true for each proposed Subclass. Plaintiff Doe, who is HIV-positive, faces the same imminent harm and heightened risk of serious illness or death as other medically vulnerable or older pretrial detained persons confined in the midst of an outbreak. Goldenson Decl. ¶ 28. Similarly, Plaintiff Smith, who has hypertension, diabetes, and sleep apnea, faces the same heightened risk of serious illness or death as other medically vulnerable or older post-conviction detained persons. *Id.* ¶ 28.

#### 4. Adequacy of Representation

Adequacy exists if “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Whether the class representatives satisfy the adequacy requirement depends on the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive.” *Rodriguez*, 591 F.3d at 1125 (citation and quotation marks omitted). This requirement “tend[s] to merge with the commonality and typicality criteria of

1 Rule 23(a).” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997)  
 2 (alteration in original) (citation and quotation marks omitted). Those standards are  
 3 plainly met here.

4 Class counsel are qualified when they can establish their experience in  
 5 previous class actions and cases involving the same area of law. *Lynch v. Rank*,  
 6 604 F. Supp. 30, 37 (N.D. Cal. 1984), *aff’d*, 747 F.2d 528 (9th Cir. 1984). Here,  
 7 Class counsel are attorneys from the ACLU Foundation of San Diego & Imperial  
 8 Counties, American Civil Liberties Union Foundation, National Immigration  
 9 Project of the National Lawyers Guild, and Ropes & Gray LLP who, collectively,  
 10 have extensive relevant experience and sufficient resources to litigate this matter to  
 11 completion. *See* Decl. of Joan McPhee (Exh. Q); Decl. of Sirine Shebaya (Exh. N);  
 12 Decl. of Bardis Vakili (Ex. O); Decl. of Z Gabriel Arkles (Exh. P). Collectively,  
 13 these lawyers have participated as Class counsel in numerous civil rights-related  
 14 cases before this Court and others. *Id.* Counsel will vigorously represent the  
 15 proposed Classes.

16 The named Plaintiffs are adequate Class representatives because there is no  
 17 conflict between them and other members of the proposed Classes and Subclasses  
 18 they seek to represent. The named Plaintiffs and other Class members have the  
 19 same injury and seek the same relief—namely, (1) a declaration that conditions of  
 20 confinement for all individuals held at their respective detention facilities are  
 21 currently unconstitutional under the Fifth Amendment Due Process Clause and/or  
 22 Eighth Amendment Rights Against Cruel and Unusual Punishment because they do  
 23 not permit social distancing or provide sufficient safeguards against COVID-19;  
 24 and (2) a Writ of Habeas Corpus or an injunction remedying those practices. *See*  
 25 Compl. (Request for Relief); *Kuang*, 340 F. Supp. 3d at 892 (finding adequacy  
 26 requirement met in part because “named Plaintiffs have a similar alleged injury as  
 27 the rest of the proposed class”). The Medically Vulnerable Plaintiffs also seek the  
 28

1 same relief for themselves as they do for all other members of their respective  
2 Subclasses.

3 Because named Plaintiffs' aim is to secure relief that will protect both  
4 themselves and all members of the Classes they represent from Defendants'  
5 challenged policies and practices and enjoin the Defendants from further violations  
6 of Class members' rights, this case satisfies the adequacy requirement of Rule  
7 23(a)(4).

8 **E. The Proposed Class Meets the Requirements of Rule**  
9 **23(b)(2).**

10 This action warrants certification because Defendants have "acted or refused  
11 to act on grounds that apply generally to the class, so that final injunctive relief or  
12 corresponding declaratory relief is appropriate respecting the class as a whole."  
13 Fed. R. Civ. P. 23(b)(2). "[I]t is sufficient to meet the requirements of Rule  
14 23(b)(2) that class members complain of a pattern or practice that is generally  
15 applicable to the class as a whole." *Rodriguez*, 591 F.3d at 1125 (citation and  
16 quotation marks omitted). Indeed, Rule 23(b)(2) "was adopted in order to permit  
17 the prosecution of civil rights actions." *Walters v. Reno*, 145 F.3d 1032, 1047 (9th  
18 Cir. 1998); *see also Parsons*, 754 F.3d at 686 (noting "the primary role of this  
19 provision has always been the certification of civil rights class actions."). The  
20 provision has repeatedly been used to certify classes of incarcerated persons  
21 seeking declaratory and injunctive relief, including for alleged widespread Eighth  
22 Amendment violations in prison systems. *Id.* at 686–87.

23 The Classes Plaintiffs seek to certify are paradigmatic Rule 23(b)(2) classes.  
24 First, Defendants are acting on grounds that are generally applicable to the Classes  
25 because they subject all members to the same policies or practices—namely, refusal  
26 to reduce facility populations to levels that permit all members of each Class to  
27 observe adequate social distancing or protect themselves from COVID-19 infection.  
28 Second, the injunctive relief requested by Plaintiffs is appropriate for each Class as

1 a whole. Each Class requests uniform relief in the form of (1) a declaration that  
 2 Defendants' current practices at OMDC violate the Fifth Amendment Due Process  
 3 Clause and/or Eighth Amendment Right Against Cruel and Unusual Punishment  
 4 because they do not permit social distancing or provide sufficient measures  
 5 necessary to minimize exposure to COVID-19; and (2) an injunction or writ of  
 6 habeas corpus mandating social distancing, including by establishing expedited  
 7 release procedures available to *all* Class and Subclass members, so as to bring  
 8 OMDC's population to levels where Defendants can implement and maintain  
 9 appropriate social distancing for all remaining detained persons. In order to comply  
 10 with that injunction, Defendants must release enough detained persons to ensure  
 11 that those remaining at the facility are able to engage in appropriate social  
 12 distancing.<sup>20</sup>

13 Because this remedy would afford the same relief to all Class members of the  
 14 Proposed Class, certification under Rule 23(b)(2) is appropriate. See *Parsons*, 754  
 15 F.3d at 689 (finding declaratory and injunctive relief proper as to class where  
 16 "every [member] . . . is allegedly suffering the same (or at least a similar) injury and  
 17 that injury can be alleviated for every class member by uniform changes in . . .  
 18 policy and practice"); *Rodriguez*, 591 F.3d at 1126 (certifying Rule 23(b)(2) class  
 19 of detained immigrants where class sought uniform procedure for release, because  
 20 "relief from a single practice is requested by all class members").

21 Although Pre-Trial and Post-Conviction Medically Vulnerable Subclass  
 22 members seek an emergency temporary restraining order and/or writ of habeas  
 23

---

24 <sup>20</sup> While Defendants may object that the proposed remedy does not run to all Class  
 25 members (because not all of them need to be released to comply with Plaintiffs'  
 26 demand), this objection misunderstands Plaintiffs' claim. Plaintiffs seek to stop the  
 27 government from holding all class members in unsafe conditions. Granting the  
 28 relief sought here would provide that relief for everyone. Whether inside or outside  
 the facility, all class members would see the ongoing violation of their Fifth  
 Amendment and/or Eighth Amendment rights remedied.

1 corpus to obtain this relief more urgently, this does not change the fact that  
 2 Defendants have acted or refused to act in a manner applicable to all Class  
 3 members. Even if they obtain the emergency order they seek, they still seek the  
 4 same “final injunctive relief” and “corresponding declaratory relief” as all other  
 5 Pretrial and Post-Conviction Class members. Fed. R. Civ. P. 23(b)(2).

6 **F. Provisional Certification Is Urgently Needed for the**  
 7 **Plaintiffs in Light of the Severe Risks Posed by COVID-19.**

8 Because OMDC now has one of the highest rates of COVID-19 infection of  
 9 any detention facility in the country, detained persons there are at especially severe  
 10 risk of contracting COVID-19 and suffering serious illness or death. This is  
 11 especially true for Medically Vulnerable Plaintiffs. The Court should grant  
 12 provisional certification, and issue a temporary restraining order, preliminary  
 13 injunction, and/or writ of habeas corpus directed at Defendants to protect Plaintiffs’  
 14 health and safety from imminent threat of serious illness or death.

15 When “considerable non-economic injuries” are imminent, federal courts in  
 16 the Ninth Circuit “routinely grant provisional class certification for purposes of  
 17 entering injunctive relief” under Rule 23(b)(2), when the plaintiffs establish that the  
 18 four prerequisites in Rule 23(a) are also met. Indeed, the U.S. District Court for the  
 19 Central District of California just provisionally certified a class of all persons in  
 20 immigration detention at the Adelanto detention facility who are seeking nearly  
 21 identical relief as Plaintiffs here. *See* Provisional Class Certification Order,  
 22 *Hernandez Roman v. Wolf*, No. 20-00768 TJH (PVCx), (C.D. Cal. Apr. 23, 2020),  
 23 ECF No. 52; *see also Carrillo v. Schneider Logistics, Inc.*, No. 11-cv-8557 CAS  
 24 (DTBx), 2012 WL 556309, at \*7, \*9 (C.D. Cal. Jan. 31, 2012) (citing *Barahona-*  
 25 *Gomez v. Reno*, 167 F.3d 1228, 1233 (9th Cir. 1999)); *Meyer v. Portfolio Recovery*  
 26 *Assocs., LLC*, 707 F.3d 1036, 1041 (9th Cir. 2012) (finding district court did not  
 27 abuse its discretion by provisionally certifying class for purpose of entering  
 28 preliminary injunction); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1202 (N.D. Cal.

2017) (provisionally certifying class of detained immigrant children), *aff'd*, 905 F.3d 1137 (9th Cir. 2018).

#### IV. CONCLUSION

The Court should certify the proposed Classes and Subclasses, including provisional certification.

Respectfully submitted,

DATED: April 25, 2020

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16 \*Application for *pro hac vice*  
17 forthcoming

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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9  
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11 BRODERICK, Marlene CANO, Jose  
12 CRESPO-VENEGAS, Noe GONZALEZ-  
13 SOTO, Victor LARA-SOTO, Racquel  
14 RAMCHARAN, George RIDLEY, Michael  
15 Jamil SMITH, Leopoldo SZURGOT, Jane  
16 DOE, on behalf of themselves and those  
17 similarly situated.

18 Plaintiff-Petitioners,

19 v.

20 Christopher J. LAROSE, Senior Warden,  
21 Otay Mesa Detention Center,

22 Steven C. STAFFORD, United States  
23 Marshal for the Southern District of  
24 California,

25 Donald W. WASHINGTON, Director of the  
26 United States Marshals Service.

27 Defendant-Respondents.  
28

Case No. '20CV0782 AJB BGS

**DECLARATION OF  
ATTORNEY SIRINE  
SHEBAYA IN SUPPORT OF  
PLAINTIFF-PETITIONERS'  
MOTION FOR CLASS  
CERTIFICATION**



**DECLARATION OF SIRINE SHEBAYA**

1  
2           1.     My name is Sirine Shebaya. I am over 18 years of age and competent  
3 to make this declaration. I, along with my colleague Matthew Vogel, seek to be  
4 appointed class counsel for the Pretrial Class, including the Pretrial Medically  
5 Vulnerable Subclass, and the Post-Conviction Class, including the Post-Conviction  
6 Medically Vulnerable Subclass, as defined in the above-captioned litigation.  
7

8           2.     I am the Executive Director of the National Immigration Project of the  
9 National Lawyers Guild (“NIPNLG”). In this capacity, I lead our civil rights  
10 litigation and advocacy efforts, including litigation on behalf of immigrants in  
11 detention and those who have contact with the criminal legal system. Prior to  
12 joining NIPNLG, I was the Interim Legal Director for Muslim Advocates, where I  
13 managed and litigated a range of civil rights and immigrants’ rights cases. Prior to  
14 that, I was Program Director of the Virginia Justice Program at the Capital Area  
15 Immigrants’ Rights Coalition, and before that a Staff Attorney with the American  
16 Civil Liberties Union of Maryland.  
17

18           3.     I am a 2012 graduate of Yale Law School, where I was awarded the  
19 Khosla Memorial Fund for Human Dignity Prize. I was first admitted to practice in  
20 New York in March 2013, and have since been admitted to practice in Maryland,  
21 the District of Columbia, and before ten federal district and circuit courts as well as  
22 the United States Supreme Court. I have been awarded the Capital Area Muslim  
23 Bar Association Award for Outstanding Pro Bono Service and Commitment to  
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1 Advancing Justice, the Americans for Democratic Action Winn Newman Equality  
2 Award, and the National Immigration Project of the National Lawyers Guild Daniel  
3 Levy Award.  
4

5 4. Matthew Vogel is a Senior Staff Attorney with NIPNLG. Prior to  
6 joining NIPNLG, he was a Staff Attorney at the Orleans Public Defenders in New  
7 Orleans, Louisiana, where he advised and trained public defenders on the  
8 immigration consequences of criminal legal system involvement. He also defended  
9 clients in death penalty and juvenile life without parole cases, and carried a docket  
10 of upper-level felonies and misdemeanors. Prior to that, he served as a law clerk to  
11 the Honorable Keith P. Ellison of the U.S. District Court for the Southern District  
12 of Texas. He is a 2013 graduate of Yale Law School.  
13  
14

15 5. Founded in 1980, the NIPNLG is a legal advocacy organization that  
16 works to promote justice and equality of treatment in all areas of immigration law,  
17 the criminal legal system, and social policies related to immigration. NIPNLG  
18 advances these objectives in part through litigation, including class actions, in  
19 federal and state courts. NIPNLG represents detained persons in several  
20 jurisdictions across the country in civil rights litigation and challenges to detention.  
21  
22

23 6. I have represented detained and incarcerated persons in federal civil  
24 rights cases (including class actions) and in habeas corpus petitions in Maryland,  
25 Virginia, California, the District of Columbia, and the Fourth and Sixth Circuits. I  
26 currently represent detained persons in six different lawsuits seeking release  
27  
28

1 because of the COVID-19 pandemic. My regular practice areas include civil rights  
2 litigation with a particular focus on issues affecting immigrants and those who are  
3 detained or incarcerated. I am also currently class counsel for the Parents Asylum  
4 Class in *Ms. L v. ICE*, Case No. 3:18-cv-00428, a case pending before this Court.  
5

6 7. I have given dozens of trainings, presentations, and CLE classes on  
7 detention and civil rights litigation, including presentations teaching lawyers how to  
8 file and litigate habeas corpus petitions on behalf of detained immigrants.  
9

10  
11 I declare under penalty of perjury that the foregoing is true and correct.  
12

13  
14 s/ Sirine Shebaya

Date: April 25, 2020

15 Sirine Shebaya (*pro hac vice* admission pending)

16 NATIONAL IMMIGRATION PROJECT

17 OF THE NATIONAL LAWYERS GUILD

2201 Wisconsin Ave NW, Suite 200

Washington, DC 20007

(202) 656-4788

sirine@nipnlg.org

1 **MITRA EBADOLAH** (SBN 275157) (mebadolahi@aclusandiego.org)  
2 **BARDIS VAKILI** (SBN 247783) (bvakili@aclusandiego.org)  
3 **SARAH THOMPSON** (SBN 323188) (sthompson@aclusandiego.org)  
4 **DAVID LOY** (SBN 229235) (davidloy@aclusandiego.org)  
5 **ACLU FOUNDATION OF SAN DIEGO &**  
6 **IMPERIAL COUNTIES**  
7 P.O. Box 87131  
8 San Diego, CA 92138-7131  
9 Telephone: (619) 398-4187

Counsel for Plaintiff-Petitioners

7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9  
10 Jacinto Victor ALVAREZ, Joseph  
11 BRODERICK, Marlene CANO, Jose  
12 CRESPO-VENEGAS, Noe GONZALEZ-  
13 SOTO, Victor LARA-SOTO, Racquel  
14 RAMCHARAN, George RIDLEY, Michael  
15 Jamil SMITH, Leopoldo SZURGOT, Jane  
16 DOE, on behalf of themselves and those  
17 similarly situated.

18 Plaintiff-Petitioners,

19 v.

20 Christopher J. LAROSE, Senior Warden,  
21 Otay Mesa Detention Center,

22 Steven C. STAFFORD, United States  
23 Marshal for the Southern District of  
24 California,

25 Donald W. WASHINGTON, Director of the  
26 United States Marshals Service.

27 Defendant-Respondents.  
28

Case No. '20CV0782 AJB BGS

**DECLARATION OF  
ATTORNEY BARDIS VAKILI  
IN SUPPORT OF PLAINTIFF-  
PETITIONERS' MOTION  
FOR CLASS  
CERTIFICATION**

1 I, Bardis Vakili, hereby declare as follows:

2 1. I have personal knowledge of the facts set forth below and if called to  
3 testify, I could and would do so competently.

4 2. I am a Senior Staff Attorney with the ACLU Foundation of San Diego  
5 & Imperial Counties (“ACLU SDIC”), a position I have held since 2014.

6 3. ACLU SDIC seeks to serve as class counsel for two classes of  
7 individuals detained in United States Marshals’ custody at the Otay Mesa Detention  
8 Center. ACLU SDIC also seeks to serve as class counsel for subclasses of  
9 individuals within each class who are at heightened risk of severe illness or death  
10 from COVID-19 due to age or underlying medical condition.

11 4. Collectively, ACLU SDIC attorneys have extensive relevant experience  
12 in complex litigation of all varieties, including class action litigation, immigration  
13 law, and constitutional law. Our collective experience as class counsel includes the  
14 following examples:

15 (a) ACLU SDIC Legal Director David Loy, Senior Staff Attorney  
16 Mitra Ebadolahi and I were appointed class counsel in the *Lopez-Venegas v.*  
17 *Johnson*, No. 13-cv-03972 JAK (PLAx), ECF No. 104 (C.D. Cal. Feb. 25, 2015)  
18 (order approving class settlement on behalf of immigrants subjected to “voluntary  
19 return” policies);

20 (b) Mr. Loy and I have been appointed class counsel in the additional  
21 following cases: *Doe v. Wolf*, No. 19-cv-02119 DMS (AGS), ECF No. 39 (S.D. Cal.  
22 Jan. 14, 2020); *Franco-Gonzales v. Napolitano*, No. 10-cv-02211 DMG (DTBx),  
23 2011 WL 11705815, \*1 (C.D. Cal. Nov. 21, 2011) (order certifying class of  
24 immigration detainees);

25 (c) Mr. Loy has been appointed class counsel in the following  
26 additional cases involving immigration detainees: *Woods v. Morton*, No. 07-cv-1078  
27 DMS (PCL), ECF No. 94 (S.D. Cal. June 20, 2011); *Kiniti v. Meyers*, No. 05-cv-  
28 1013 DMS (PCL), ECF No. 112 (S.D. Cal. Aug. 18, 2007);

1 (d) I have been appointed class counsel in the following additional  
2 cases involving immigration detainees: *Ms. L v. U.S. Immig. And Cust. Enf't*, 331  
3 F.R.D. 529 (S.D. Cal. 2018); *Aleman-Gonzalez, et al., v. Sessions, et al.*, No. 18-cv-  
4 01869-JSC, ECF No. 33 (N.D. Cal. June 5, 2018) (order granting class certification  
5 and preliminary injunction).

6 5. ACLU-SDIC has sufficient resources to litigate this matter to  
7 completion. We are providing, and will continue to provide, our services pro bono to  
8 the class, and will pursue this matter vigorously on behalf of all class members.

9  
10 I declare under penalty of perjury of the laws of the State of California and the United  
11 States that the foregoing statements are true and correct.

12  
13 Executed this 25<sup>th</sup> day of April in San Diego, California.

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16 s/ Bardis Vakili  
17 Bardis Vakili  
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1 **Z GABRIEL ARKLES\*** (NY SBN 4391918) (garkles@aclu.org)  
2 **CLARA SPERA\*** (NY SBN 5590229) (cspera@aclu.org)  
3 **AMERICAN CIVIL LIBERTIES UNION FOUNDATION**  
125 Broad Street, 18th Floor  
New York, NY 10014  
Telephone: (212) 549-2569

4 Counsel for Plaintiff-Petitioners  
5 \* Application for *pro hac vice* forthcoming

6  
7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9  
10 Jacinto Victor ALVAREZ, Joseph  
11 BRODERICK, Marlene CANO, Jose  
12 CRESPO-VENEGAS, Noe GONZALEZ-  
13 SOTO, Victor LARA-SOTO, Racquel  
RAMCHARAN, George RIDLEY, Michael  
Jamil SMITH, Leopoldo SZURGOT, Jane  
DOE, on behalf of themselves and those  
similarly situated.

14 Plaintiff-Petitioners,

15 v.

16 Christopher J. LAROSE, Senior Warden,  
17 Otay Mesa Detention Center,

18 Steven C. STAFFORD, United States  
19 Marshal for the Southern District of  
20 California,

Donald W. WASHINGTON, Director of the  
United States Marshals Service.

21 Defendant-Respondents.  
22  
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Case No. '20CV0782 AJB BGS

**DECLARATION OF Z  
GABRIEL ARKLES IN  
SUPPORT OF MOTION FOR  
CLASS CERTIFICATION**



1           1.       My name is Z Gabriel Arkles. I am over 18 years of age and competent  
2 to make this declaration. I, along with my colleague Clara Spera, seek to be  
3 appointed class counsel for the Pretrial Class, including the Pretrial Medically  
4 Vulnerable Subclass, and the Post-Conviction Class, including the Post-Conviction  
5 Medically Vulnerable Subclass, as defined in the above-captioned litigation.  
6

7           2.       I am a senior staff attorney at the American Civil Liberties Foundation.  
8 In this capacity, I litigate civil rights and civil liberties cases at trial and appellate  
9 levels, in state and federal court. I specialize in representing people who are living  
10 with HIV or who are lesbian, gay, bisexual, or transgender. I have appeared before  
11 the U.S. Supreme Court as counsel in *R.G. & G.R. Harris Funeral Homes v. EEOC*  
12 and the Ninth Circuit in *Parents for Privacy v. Barr*. Prior to joining the ACLU in  
13 2017, I was associate teaching professor at Northeastern School of Law for four  
14 years and acting assistant professor of lawyering at NYU School of Law for three  
15 years. In that capacity, I taught law students legal skills and professional  
16 responsibility. Prior to that, I was staff attorney and Director of Prisoner Justice at  
17 the Sylvia Rivera Law Project, where litigated at federal, state, and administrative  
18 levels primarily on behalf of incarcerated people in civil rights cases.  
19

20           3.       I am a 2004 *magna cum laude* graduate of NYU Law School, where I was  
21 Order of the Coif and a Florence Allen Scholar, and where I received the David  
22 Friedman Memorial Award for Outstanding Achievement in Evidence and the  
23 Arthur Garfield Hay Civil Liberties Fellowship. I was admitted to practice in New  
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1 York in 2006. I have been awarded the Dukeminier Award for Best Sexual  
2 Orientation and Gender Identity Law Review Article. I have given dozens of  
3 invited talks at schools and conferences such as Harvard School of Law, Seattle  
4 University School of Law, NYU School of Law, Brooklyn Law School, UCLA  
5 School of Law, Prisoners' Advocates Conference, Association of American Law  
6 School Annual Meeting, and Society of American Law Teachers Teaching  
7 Conference.  
8  
9

10 4. Clara Spera is an Equal Justice Works Fellow at the American Civil Liberties  
11 Foundation, where she litigates civil rights and civil liberties cases in federal court.  
12 She graduated *cum laude* from Harvard Law School in 2017, and received an  
13 M.Phil from the University of Cambridge in 2014 and a B.A. from the University  
14 of Chicago in 2012. She is admitted to practice in New York. She clerked for the  
15 Hon. Robert A. Katzmann, Chief Judge of the U.S. Court of Appeals for the Second  
16 Circuit, and the Hon. Denise L. Cote, District Court Judge for the U.S. District  
17 Court for the Southern District of New York. Previously, she worked at the U.S.  
18 Attorney's Office for the Eastern District of New York, the U.S. Navy Judge  
19 Advocate General's Corps in Naples, Italy, and in private practice.  
20  
21  
22  
23

24 5. Founded in 1920, the American Civil Liberties Union Foundation is a non-  
25 partisan 26 U.S.C. § 501(c)(3) organization that provides legal representation free  
26 of charge to individuals and organizations in civil rights and civil liberties cases and  
27 educates the public about civil rights and civil liberties issues across the country.  
28

1 With more than 1.5 million members and nearly 300 staff attorneys, the ACLU is  
2 the nation's largest public interest law firm, with a 50-state network of staffed,  
3 autonomous affiliate offices. The ACLU appears before the United States Supreme  
4 Court more than any other organization except the U.S. Department of Justice.  
5 About 100 ACLU staff attorneys collaborate with about 2,000 volunteer attorneys  
6 in handling close to 2,000 cases annually. The ACLU has nearly five decades of  
7 experience in complex prisoner rights class actions and has represented prisoners in  
8 five cases before the U.S. Supreme Court. Since its founding, the ACLU has  
9 litigated challenges to conditions of confinement in almost every U.S. state, as well  
10 as the District of Columbia.  
11  
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15

16 I declare under penalty of perjury that the foregoing is true and correct.  
17  
18

19 s/ Gabriel Arkles Date: April 25, 2020  
20 Gabriel Arkles (*pro hac vice* admission pending)  
21 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
22 125 Broad Street, 18th Floor  
23 New York, NY 10014  
24 (212) 549-2569  
25 garkles@aclu.org  
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28

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**HELEN GUGEL\*** (NY SBN 4910105) (helen.gugel@ropesgray.com)

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Counsel for Plaintiff-Petitioners

\*Application for *pro hac vice* forthcoming

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

Jacinto Victor ALVAREZ, Joseph  
BRODERICK, Marlene CANO, Jose  
CRESPO-VENEGAS, Noe GONZALEZ-  
SOTO, Victor LARA-SOTO, Racquel  
RAMCHARAN, George RIDLEY, Michael  
Jamil SMITH, Leopoldo SZURGOT, Jane  
DOE, on behalf of themselves and those  
similarly situated.

Plaintiff-Petitioners,

v.

Christopher J. LAROSE, Senior Warden,  
Otay Mesa Detention Center,

Steven C. STAFFORD, United States  
Marshal for the Southern District of  
California,

Donald W. WASHINGTON, Director of the  
United States Marshals Service.

Defendant-Respondents.

Case No. **'20CV0782 AJB BGS**

**DECLARATION OF  
ATTORNEY JOAN MCPHEE  
IN SUPPORT OF PLAINTIFF-  
PETITIONERS' MOTION  
FOR CLASS  
CERTIFICATION**

**DECLARATION OF JOAN MCPHEE**

I, Joan McPhee, hereby declare as follows:

1. I have personal knowledge of the facts set forth below and if called to testify, I could and would do so competently.

2. I am a Litigation and Enforcement Partner with the law firm of Ropes & Gray LLP (“Ropes & Gray”).

3. Ropes & Gray seeks to be appointed class counsel for the Pretrial Class, including the Pretrial Medically Vulnerable Subclass, and the Post-Conviction Class, including the Post-Conviction Medically Vulnerable Subclass, as defined in the above-captioned litigation.

4. I obtained my law degree from Harvard Law School in 1984 and am a member of the bars of New York, Massachusetts, and Rhode Island. Additionally, I am admitted to practice in the Federal District Courts for the Southern District of New York, District of Massachusetts, and District of Rhode Island. I have extensive experience representing clients in a wide array of litigation matters for over three decades. During my years in private practice, I have also engaged in substantial pro bono activities. This includes leading my firm’s partnerships with the Innocence Project and Lawyers Without Borders. I am also a member of the board of directors of the Legal Aid Society.

5. Collectively, Ropes & Gray attorneys have extensive relevant experience in complex litigation of all varieties.

6. Founded in 1865, Ropes & Gray is a global law firm, with more than 1,400 attorneys across 11 offices in the United States, Europe, and Asia. It has been consistently recognized as one of most preeminent firms in the legal industry, including being named to The American Lawyer’s “A-List,” an annual ranking of the top 20 law firms in the United States, in each of the previous nine years, and reaching the list’s top three in each of the past three years.

1           7. Ropes & Gray has also been consistently recognized for its *pro bono*  
 2 efforts, including being honored by Chambers & Partners as its “*Pro Bono Program*  
 3 of the Year” in 2019—an award Ropes also received in 2016. Among Ropes &  
 4 Gray’s notable *pro bono* representations was its successful argument on behalf of  
 5 the plaintiffs before the United States Supreme Court in *Obergefell v. Hodges*, the  
 6 landmark civil rights case in which the Court ruled that the fundamental right to  
 7 marry is guaranteed to same-sex couples by the United States Constitution.  
 8 Additionally, Ropes & Gray, together with The Legal Aid Society Prisoners’ Rights  
 9 Project and the law firm Emery Celli Brinckerhoff & Abady LLP, served as counsel  
 10 in *Nunez v. City of New York*, a class action lawsuit challenging the unconstitutional  
 11 use by Department of Correction staff of excessive force against inmates of the  
 12 New York City jails on Rikers Island that led to a landmark settlement in prison  
 13 reform.

14           8. Ropes & Gray has sufficient resources to litigate this matter to  
 15 completion. We are providing, and will continue to provide, our services *pro bono*  
 16 to the class, and will pursue this matter vigorously on behalf of all class members.

17  
 18 I declare under penalty of perjury of the laws of the State of California and the  
 19 United States that the foregoing statements are true and correct.  
 20  
 21

22 Date: April 25, 2020

s/ Joan McPhee  
 Joan McPhee (*pro hac vice* admission pending)  
 ROPES & GRAY LLP  
 1211 Avenue of the Americas  
 New York, NY 10036  
 (212) 596-9443  
 Joan.McPhee@ropesgray.com