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

17 Jacinto Victor ALVAREZ, Joseph
 18 BRODERICK, Marlene CANO, Jose
 19 CRESPO-VENEGAS, Noe GONZALEZ-
 20 SOTO, Victor LARA-SOTO, Racquel
 21 RAMCHARAN, George RIDLEY,
 22 Michael Jamil SMITH, Leopoldo
 23 SZURGOT, Jane DOE, on behalf of
 24 themselves and those similarly situated.
 25 Plaintiff-Petitioners,

26 v.

27 Christopher J. LAROSE, Senior Warden,
 28 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. 3:20-cv-00782-DMS-
 AHG**

**PLAINTIFF-PETITIONERS’
 RESPONSE TO DEFENDANT-
 RESPONDENTS’ EMERGENCY
 MOTION TO STAY BRIEFING
 ON CLASS CERTIFICATION
 OR, IN THE ALTERNATIVE,
 MOTION FOR EXTENSION OF
 TIME TO RESPOND**

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1 Plaintiff-Petitioners (“Plaintiffs”) file this Response to the Emergency
2 Motion to Stay Briefing on Plaintiffs’ Motion for Class Certification or, in the
3 Alternative, Motion for Extension of Time to Respond (“Motion to Stay”) filed by
4 Defendant-Respondents Donald T. Washington, Director of the United States
5 Marshals Service, and Steven C. Stafford, United States Marshal for the Southern
6 District of California (collectively, “Defendants”). Defendants filed their Motion to
7 Stay on April 29, 2020—having made no attempt first to meet and confer with
8 Plaintiffs or to resolve any disputed issues informally—representing that they
9 intend to file a motion no later than noon on May 1, 2020 seeking to deny
10 Plaintiffs’ Petition for lack of subject matter jurisdiction and for failure to state a
11 claim. Accordingly, Defendants’ April 29 Motion asks the Court to stay the
12 briefing and adjudication of Plaintiffs’ Motion for Class Certification (ECF Doc.
13 No. 3), pending resolution of this anticipated motion to deny. In the alternative,
14 Defendants ask the Court for a two-week extension, until and including May 15,
15 2020, of their time to file a response to Plaintiffs’ Motion for Class Certification.

16 As the Court is aware, provisional certification of the Medically Vulnerable
17 Subclasses is integral to Plaintiffs’ Motion for an Emergency Temporary
18 Restraining Order and for Preliminary Injunction (“Motion for an Emergency
19 TRO/PI”) (ECF Doc. No. 2).¹ Plaintiffs do not object, in principle, to Defendants’
20 request for a two-week extension of their time to respond to Plaintiffs’ motion for
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22 ¹ See Order Granting Plaintiff-Petitioners’ Emergency Ex Parte Motion For
23 Subclass-Wide Temporary Restraining Order, *Alcantara v. Archambeault*, No.
24 3:20-cv-00756-DMS-AHG (S.D. Cal. Apr. 30, 2020), ECF No. 38 (“ICE Order”)
25 (provisionally certifying the Otay Mesa Medically Vulnerable subclass, declaring
26 current conditions of confinement for subclass members held at the Otay Mesa
27 Detention Center unconstitutional under the Fifth Amendment because the
28 conditions of their confinement place subclass members at substantial risk of
serious illness or death, and ordering Defendants to immediately review subclass
members for release, and to release all subclass members suitable for release at the
discretion of Defendants after considering of the subclass members’ health, public
safety and mandatory detention requirements, with appropriate conditions to protect
the public, and the health, safety and well being of each subclass member).

1 class certification, provided that Defendants do not intend to contest provisional
2 certification of the Medically Vulnerable Subclasses. In other words, Plaintiffs
3 have no objection to the requested adjournment provided that it does not delay
4 resolution of Plaintiffs' Motion for an Emergency TRO/PI.

5 Alternatively, Plaintiffs have proposed to Defendants that the parties simply
6 stipulate to entry of an order in this case that is substantively identical to the
7 Court's order in *Alcantara v. Archambeault* (the "ICE Case") to resolve Plaintiffs'
8 Motion for an Emergency TRO. *See* ICE Order. Both the ICE Case and this case
9 seek the same relief on behalf of people being detained at the same detention
10 facility who are being subjected to the same life-threatening conditions based on the
11 same outbreak of COVID-19. Such an agreement would resolve Plaintiffs' Motion
12 for an Emergency TRO/PI and allow the parties to focus on implementing the
13 Court's order.

14 While Plaintiffs do not oppose Defendants' request for a two-week extension
15 of their time to file a response to Plaintiffs' Motion for Class Certification, subject
16 to the conditions discussed above, Plaintiffs do object to Defendants' request for an
17 indefinite stay of briefing on, and adjudication of, class certification until after the
18 Court resolves Defendants' anticipated motion to deny.

19 There is no reason why Plaintiffs' class certification motion and Defendants'
20 motion to deny cannot be decided in parallel. Defendants couch their stay request
21 in terms of conserving judicial resources, which is ironic given that their
22 substantive request is to ask the Court to hear hundreds of individual *habeas*
23 petitions rather than address the obvious problem at Otay Mesa Detention Center
24 ("OMDC") in an orderly fashion on a class-wide basis. OMDC has one of the
25 highest rates of COVID-19 infection of any detention facility in the country.
26 Detained persons at OMDC face imminent risk—*today*—of contracting COVID-19
27 and suffering serious illness or death. In light of these circumstances, Defendants'
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1 requested stay risks working severe damage to the Plaintiffs by stalling resolution
2 of their Petition, while at the same time relieving little hardship and no inequities
3 on behalf of Defendants. *See, e.g., Landis v. N. Am. Co.*, 299 U.S. 248, 254–55
4 (1936) (a party seeking a stay “must make out a clear case of hardship or inequity
5 in being required to go forward, if there is even a fair possibility that the stay for
6 which he prays will work damage to someone else.”).

7 For the foregoing reasons, Plaintiffs respectfully ask the Court to deny
8 Defendants’ motion for an indefinite stay and any implicit request to delay
9 Plaintiffs’ Motion for an Emergency TRO/PI. Provided that Defendants do not
10 intend to contest provisional certification of the Medically Vulnerable Subclasses,
11 Plaintiffs have no objection to providing Defendants until May 15, 2020 to respond
12 to Plaintiffs’ Motion for Class Certification.

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Respectfully submitted,

DATED: April 30, 2020

ROPES & GRAY LLP

/s/ Joan McPhee

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