

1 ROBERT S. BREWER, JR.
 United States Attorney
 2 BRETT NORRIS, Calif. Bar No. 224875
 Deputy Chief, Civil Division
 3 DOUGLAS KEEHN, Calif. Bar No. 233686
 Assistant U.S. Attorney
 4 PAUL STARITA, Calif. Bar No. 219573
 Assistant U.S. Attorney
 5 Office of the U.S. Attorney
 6 880 Front Street, Room 6293
 San Diego, CA 92101-8893
 7 619-546-7620 / 619-546-7751 (fax)
 8 brett.norris@usdoj.gov
 douglas.keehn@usdoj.gov, paul.starita@usdoj.gov
 9

10 ATTORNEYS FOR RESPONDENTS

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

13 JACINTO VICTOR ALVAREZ,
 14 JOSEPH BRODERICK, MARLENE
 CANO, JOSE CRESPO-VENEGAS,
 15 NOE GONZALEZ-SOTO, VICTOR
 LARA-SOTO, RACQUEL
 16 RAMCHARAN, GEORGE RIDLEY,
 MICHAEL JAMIL SMITH,
 17 LEOPOLDO SZURGOT, JANE DOE
 on behalf of themselves and those
 18 similarly situated,

19 Petitioners,

20 v.

21 CHRISTOPHER J. LAROSE, Senior
 Warden, Otay Mesa Detention Center,

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

24 DONALD W. WASHINGTON,
 Director of the United States Marshals
 25 Service,

26 Defendant-Respondents.
 27
 28

Case No. 20-cv- 0782-DMS-AHG

**RESPONDENTS' RESPONSE IN
 OPPOSITION TO MOTION FOR
 CLASS CERTIFICATION**

(PROPOSED CLASS ACTION)

Date: May 5, 2020
 Time: 1:30 p.m.
 Hon. Dana M. Sabraw

1 Respondents Donald T. Washington, Director, United States Marshals Service, and
2 Steven C. Stafford, United States Marshal for the Southern District of California, oppose
3 Petitioners' Motion for Class Certification.

4 **I. BACKGROUND**

5 **A. Petitioners' Pending Criminal Cases**

6 Petitioners are not immigration detainees. They are "Pretrial and Post-Conviction"
7 federal criminal detainees at Otay Mesa Detention Center ("OMDC"). (ECF No. 2 at p.
8 3:7-19.) The following is a summary of each Petitioner's criminal case:¹

- 9 • **Jacinto Victor Alvarez**, Case No. 19-cr-05093-LAB (related case 19-cr-
10 4869). Mr. Alvarez is represented by Federal Defenders of San Diego, Inc.
11 He is charged in a two-count Indictment with attempted unlawful entry by an
12 alien, in violation of 8 U.S.C. § 1325 and attempted reentry of removed alien,
13 in violation of 8 U.S.C. § 1326(a) and (b). At his bond hearing, the court
14 ordered Mr. Alvarez detained as a flight risk. More recently, the court vacated
15 the motion *in limine* hearing and trial dates and set a status hearing for May 18,
16 2020. Further, the court excluded time under the Speedy Trial Act, 18 U.S.C.
17 §§ 3161(h)(7)(A) and 3174.
- 18 • **Joseph Broderick**, Case No. 19-cr-04780-GPC. Mr. Broderick is represented
19 by Federal Defenders of San Diego, Inc. He is charged as a co-defendant in
20 a 6-count Indictment with conspiracy to commit wire fraud, in violation of 18
21 U.S.C. § 1349, five counts of wire fraud, in violation of 18 U.S.C. § 1343, and
22 criminal forfeiture. Mr. Broderick and his co-conspirator submitted fraudulent
23 loan applications for real estate loans and received loan proceeds based on
24 these fraudulent applications. At his bond hearing, the court ordered
25 Mr. Broderick detained as a flight risk. Pursuant to a joint motion, the Court
26 ordered the Motion Hearing/Trial Setting continued to May 22, 2020 and
27

28 ¹ Pursuant to Fed. R. Evid. 201, Respondents respectfully ask the Court to take judicial notice of the factual and procedural posture of each Petitioner's criminal case.

1 excluded time under the Speedy Trial Act, 18 U.S.C. §§ 3161(h)(7)(A) and
2 3174. A motion for reconsideration of is pending.

- 3 • **Victor Lara-Soto**, Case No. 19-cr-04949-BAS. Mr. Lara-Soto is represented
4 by Federal Defenders of San Diego, Inc. He is charged in a single count
5 Information with importation of 48 kilograms of methamphetamine, in
6 violation of 21 U.S.C. § 952 and 960. At his bond hearing, the court ordered
7 Mr. Lara-Soto detained as a flight risk. The Court ordered the Motion
8 Hearing/Trial Setting continued to May 18, 2020 and excluded time under the
9 Speedy Trial Act, 18 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i), (h)(B)(iv) and
10 3174. Further, a Change of Plea Hearing is set for May 21, 2020.
- 11 • **George Martinez-Ridley**, Case No. 19-cr-04905-DMS. Mr. Martinez-Ridley
12 is represented by Federal Defenders of San Diego, Inc. He is charged in a
13 three-count Information with attempted sex trafficking of children, in
14 violation of 18 U.S.C., §§ 1591 and 1594, attempted enticement of a minor, in
15 violation of 18 U.S.C. § 2422(b), and conspiracy to engage in sex trafficking
16 of children, in violation of 18 U.S.C. § 1594 (c). The court ordered Mr.
17 Martinez-Ridley detained as a danger to the community and as a flight risk. It
18 later denied his motion to reconsider the detention order. At the request of
19 counsel, the Motion Hearing set for April 10, 2020 to address the pending
20 Motion to Compel Discovery, to Preserve Evidence, and for Leave to File
21 Other Motions was continued to June 5, 2020. Mr. Martinez-Ridley's second
22 motion to reconsider the Court's order of detention is pending.
- 23 • **Leopaldo Szurgot**, Case No. 19-cr-4867-DMS. Mr. Szurgot is represented
24 by Federal Defenders of San Diego, Inc. He entered a guilty plea to Count
25 One of a two count Information alleging conspiracy to import 31 kilograms
26 of methamphetamine, in violation of 21 U.S.C. § 952, 960 and 963. The court
27 set a \$30,000 appearance bond for Mr. Szurgot, to be secured by the signature
28 of two financially responsible adults. A Pre-Sentence Report is on file and

1 the Court reset Mr. Szurgot's Sentencing Hearing from May 8, 2020 to August
2 14, 2020.

- 3 • **Jane Doe**, Case No. 19-cr-05184-MMA. Jane Doe is represented by Federal
4 Defenders of San Diego, Inc. She is charged in a single count Information
5 alleging attempted reentry of removed alien, in violation of 8 U.S.C. § 1326(a)
6 and (b). Initially, the court ordered Jane Doe detained pending trial, but it
7 later set a \$40,000 appearance bond to be secured by two financially
8 responsible adults with a \$4,000 cash deposit to be paid by a family member
9 or surety. Jane Doe is also pending a revocation of supervised release in case
10 number 18-cr-01417-MMA. The court, *sua sponte*, vacated the Motion
11 Hearing/Trial Setting set for April 20, 2020 and reset it for May 18, 2020.
- 12 • **Marlene Cano**, Case No. 20-cr-00036-BTM. Ms. Cano is represented by
13 Federal Defenders of San Diego, Inc. She entered a plea of guilty to a single
14 count Superseding Indictment alleging importation of 0.45 kilograms of
15 methamphetamine, in violation of 21 U.S.C. § 952 and 960. The court initially
16 set at a \$15,000 appearance bond for Ms. Cano, to be secured by the signature
17 of one financially responsible adult and 10 percent cash deposit. In a minute
18 order, the court denied Ms. Cano's request for a bond modification stating,
19 "[w]hile the Court is mindful of the serious risks any person faces due to the
20 COVID-19 pandemic, said reason alone is insufficient to modify the balance
21 of factors prescribed by Congress in determining appropriate bond in this
22 case." At the request of the assigned Probation Officer and with the
23 concurrence of defense counsel, the Court continued her Sentencing Hearing
24 from April 28, 2020 to August 4, 2020.
- 25 • **Jose Crespo-Venegas**, Case No. 19-cr-05169-JLS. Mr. Crespo-Venegas is
26 represented by Federal Defenders of San Diego, Inc. He entered a plea of
27 guilty to a single count Information alleging attempted reentry of removed
28 alien, in violation of 8 U.S.C. § 1326(a) and (b). At his bond hearing, the

1 court ordered Mr. Crespo-Venegas detained as a flight risk. A Pre-Sentence
2 Report is on file but a date for the Sentencing Hearing has not been set. A
3 motion to reconsider the Court's order of detention is pending.

- 4 • **Noe Gonzalez-Soto** 19-cr-03858-BTM. Mr. Gonzalez-Soto is represented by
5 Federal Defenders of San Diego, Inc. He entered pleas of guilty to a two-
6 count Information alleging importation of 28 kilograms of methamphetamine,
7 in violation of 21 U.S.C. §§ 952 and 960, and importation of 26 kilograms of
8 cocaine, in violation of 21 U.S.C. §§ 952 and 960. At his bond hearing, the
9 court ordered Mr. Gonzalez-Soto detained as a flight risk. Pursuant to a joint
10 motion, the Court continued the Sentencing Hearing from March 10, 2020 to
11 May 5, 2020.
- 12 • **Racquel Ramcharan**, Case No. 19-cr-00869-GPC. Ms. Ramcharan is
13 represented by Federal Defenders of San Diego, Inc. She entered a plea of
14 guilty to a single count superseding indictment alleging possession with the
15 intent to distribute fentanyl, in violation of 21 U.S.C. § 841(a)(1).
16 Ms. Ramcharan was previously released on bond but the court remanded her
17 to custody after a failed drug screening. A Pre-Sentence Report is on file and
18 at the request of the parties, the court advanced the Sentencing Hearing from
19 June 19, 2020 to May 6, 2020.
- 20 • **Michael Jamil Smith**, Case No. 19-cr-01270-W. Mr. Smith is represented
21 by Federal Defenders of San Diego, Inc. He entered a plea of guilty to Count
22 One of a five-count Indictment alleging felon in possession of a firearm, a
23 double-barrel break-action shotgun, in violation of 18 U.S.C. § 922(g)(1).
24 The court initially ordered Mr. Smith detained as a flight risk, but it later set
25 a \$20,000 appearance bond secured by cash or a corporate surety. Mr. Smith's
26 Sentencing Hearing with Pre-Sentence Report is set for July 20, 2020.

1 **B. Southern District of California Interagency COVID-19 Committee**

2 In March of 2020, the Chief Judge and the United States Attorney's Office
3 established a federal interagency COVID-19 Committee. *See* Declaration of Keith Johnson,
4 filed concurrently herewith, at ¶ 9. The Committee's purpose is to ensure the orderly
5 operation of the criminal justice process during the pandemic. *Id.* The Committee members
6 include: the Chief Judge, the Presiding Magistrate Judge, the U.S. Attorney, the Executive
7 Director of Federal Defenders of San Diego, Inc., the coordinator for the Criminal Justice
8 Act Panel Attorneys, the Clerk of Court, the Chief of U.S. Probation, the Chief of U.S.
9 Pretrial Services, the Warden of the Metropolitan Correctional Center, and the U.S.
10 Marshal. *Id.* The Committee meets by telephone up to 3 times per week and their discussions
11 include the impact of the pandemic on inmate housing. *Id.* As a result of the Committee's
12 efforts, the overall inmate population in USMS custody decreased by thirty-three percent
13 between February 25 and April 30, 2020, from 3,454 to 2,297. And at OMDC, it decreased
14 by forty-two percent, from 537 to 310, during this same timeframe.² *Id.* at ¶ 13.

15 **C. The Petition in this Case**

16 Petitioners have initiated this action on behalf of themselves and a putative class of
17 unstated size, encompassing (1) a "Pretrial Class" of all current and future persons in
18 pretrial detention at OMDC; (2) a "Pretrial Medically Vulnerable Subclass" of all current
19 and future people detained pretrial at OMDC who are aged 45 years or older or who, by
20 undefined standards, have "medical conditions that place them at heightened risk of severe
21 illness or death from COVID-19"; (3) a "Post-Conviction Class" of all current and future
22 persons in post-conviction detention at OMDC; (4) a "Post-Conviction Medically
23 Vulnerable Subclass" of all current and future people detained post-conviction at OMDC
24 who are aged 45 years or older or who again, by undefined standards, have medical
25 conditions that place them at heightened risk of severe illness or death from COVID-19.

26
27 _____
28 ² USMS determines which of its inmates are housed at OMDC. Johnson Dec. at ¶ 3. While
USMS determines where inmates are housed, neither USMS nor OMDC controls which of
those inmates are ordered detained or released from detention. Johnson Dec. ¶ 3.

1 ECF No. 1 at 39, “Prayer for Relief”; *see* “[Proposed] Order Granting Class Certification[,]”
2 submitted by Petitioner ex parte via Chambers email, April 27, 2020.

3 II. ARGUMENT

4 A. CLASS CERTIFICATION STANDARD

5 Petitioners’ burden to certify the class is extraordinarily high. “Rule 23 does not set
6 forth a mere pleading standard.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).
7 Rather, [a] party seeking class certification must affirmatively demonstrate his compliance
8 with the Rule—that is, he must be prepared to prove that there are in fact sufficiently
9 numerous parties, common questions of law or fact, etc.” *Id.* (emphasis in original). In
10 addition, the Court cannot simply default to certification orders in other, similar cases. It
11 must conduct a “rigorous analysis” and conclude that Petitioners have established each Rule
12 23 element. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 980 (9th Cir. 2011).
13 Furthermore, “[c]lass action suits brought ... in a habeas corpus action are ordinarily
14 disfavored.” *Neal v. Rios*, No. 1:10CV0021-6LJOSMSHC, 2010 WL 1131646, at *1 (E.D.
15 Cal. Mar. 24, 2010) (citing *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010)).

16 Rule 23(a) consists of four elements—numerosity, commonality, typicality, and
17 adequacy. Fed. R. Civ. P. 23(a)(1)–(4). Since Petitioners seek injunctive relief (immediate
18 release), they must also satisfy Rule 23(b)(2), which requires proof that Respondents “acted
19 or refused to act on grounds that generally apply to the class.” Fed. R. Civ. P. 23(b)(2).
20 Failure to meet “any one of Rule 23’s requirements destroys the alleged class action.”
21 *Rutledge v. Elec. Hose & Rubber Co.*, 511 F.2d 668, 673 (9th Cir. 1975).

22 B. STATUTORY AND JURISDICTIONAL BARS TO RELIEF ALSO 23 PRECLUDE CLASS CERTIFICATION.

24 Petitioners are federal criminal detainees charged with, or convicted of, serious
25 crimes. They challenge the conditions of their confinement at OMDC as inadequate to
26 address the threat to health and safety posed by COVID-19. Rather than availing themselves
27 of (or exhausting) the opportunities for seeking release in their respective criminal cases set
28 forth under the Bail Reform Act, Petitioners filed this civil action on behalf of themselves

1 and a putative class seeking a highly extraordinary injunction that would require
2 Respondents immediately to release some number of detainees, that would appoint an
3 expert to recommend who and how many more detainees to release, and that would require
4 this Court to function as a judicial monitor regarding the conditions of a federal detention
5 center. For the reasons set forth in Respondents’ motion to deny the petition and opposition
6 to emergency injunctive relief, this action is wholly inappropriate. For those same reasons,
7 certifying a class of pretrial and post-conviction inmates in order to grant such relief on a
8 class-wide basis would be equally inappropriate. The bars to jurisdiction and class
9 certification here are:

10 1. The Prison Litigation Reform Act (“PLRA”) places strict limitations on a
11 district court’s ability to order the release of inmates. In fact, the PLRA expressly precludes
12 a single district judge from ordering such a release.

13 2. The PLRA also prohibits inmates from filing any action challenging the
14 conditions of their confinement without first exhausting their available administrative
15 remedies. Here, the OMDC has an administrative grievance process, but none of the
16 Petitioners exhausted it before filing this action.

17 3. The Bail Reform Act (“BRA”) allows inmates to seek modification of their
18 conditions of release or detention in their criminal cases. For example, at least four of the
19 Petitioners have already sought bond modifications in their criminal cases. By filing this
20 action, however, the Petitioners seek to circumvent not only the BRA, but also the
21 conditions of release set, and the detention orders issued, by the Magistrate Judge in each
22 Petitioner’s criminal case.

23 4. Petitioners seek injunctive relief on behalf of an undefined number of inmates,
24 broadly claiming that the risk to all will be reduced if they are released from OMDC. But
25 Petitioners fail to mention many inmates will have little or no access to housing or medical
26 care if released. As contemplated by the existing statutory framework, Petitioners’ are
27 required to seek relief on an individual basis before the appropriate Magistrate Judge and,
28 if need be, the District Court Judge assigned to their criminal case.

1 These legal arguments are set forth in more detail in Respondents’ Response in
2 Opposition to Motion for Emergency Temporary Restraining Order, and For Class-Wide
3 Preliminary Injunction, and Respondents incorporate them herein.

4 **C. PETITIONERS CANNOT SHOW COMMONALITY OR RULE 23(B)(2)’S**
5 **REQUIREMENTS.**

6 For purposes of commonality, what matters “is not the raising of common
7 ‘questions’—even in droves—but, rather the capacity of a classwide proceeding to generate
8 common answers apt to drive the resolution of the litigation. *Wal-Mart*, 564 U.S. at 350
9 (quoting Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev.
10 97, 131–32 (2009)). Thus, an assertion that putative class members “have all suffered a
11 violation of the same provision of law” does not support a finding of commonality. *Id.* Nor
12 is it enough to simply phrase a common question, “Is that an unlawful [] practice?” *Id.* at
13 349; *see also King v. Great Am. Chicken Corp.*, No. CV 17-4510-GW(ASX), 2019 WL
14 6348463, at *3 (C.D. Cal. July 18, 2019) (noting that a plaintiff cannot substitute, “by
15 linguistic sleight-of-hand,” a practice for “what is, in reality, simply each worker’s
16 individual experience”). The answer to the common question must “resolve an issue that is
17 central to the validity of each” class member’s claim “in one stroke.” *Id.* at 350.
18 Dissimilarities within a proposed class potentially impede the generation of common
19 answers. *Id.*

20 The commonality requirement is especially rigorous when classwide relief under
21 Rule 23(b)(2) is sought. As the Supreme Court recently noted in reviewing a Ninth Circuit
22 immigration detention case, “Rule 23(b)(2) applies only when a single injunction or
23 declaratory judgment would provide relief to each member of the class.” *Jennings v.*
24 *Rodriguez*, 138 S. Ct. 830, 852 (2018) (quoting *Wal-Mart*, 564 U.S. at 360). The
25 Supreme Court has also questioned whether a Rule 23(b)(2) class action could appropriately
26 resolve a due process claim given that they are best resolved on a case-by-case basis. *Id.*
27 Nonetheless, under Rule 23(b)(2), Petitioners must show that the challenged conduct is
28

1 “such that it can be enjoined or declared unlawful only as to all of the class members or as
2 to none of them.” *Wal-Mart*, 564 U.S. at 360.

3 The varying claims for relief are not conducive to resolution in one stroke or via
4 classwide relief. Each claim will require a case-by-case analysis and review of the
5 individual circumstances³. This is necessarily an individualized determination, with vastly
6 different considerations for each Petitioner. The following factors cannot be determined
7 individually: each petitioners’ risk factors for COVID-19 (age, medical condition, etc.),
8 seriousness of the criminal charges, procedural status of the criminal case, flight risk, and
9 risk to the community. Indeed, there is already a pending and proper judicial forum for each
10 putative class member to seek relief – each individual criminal case, in which Petitioners
11 can, through counsel, seek modification of their conditions of release or detention in their
12 criminal cases. Indeed, at least four of the petitioners have already done so. Certifying a
13 class in order to then require an individualized determination of whether release is
14 appropriate (and the conditions of such release) is inconsistent with the purposes of class
15 certification. The rule “does not authorize class certification when each individual class
16 member would be entitled to a different injunction or declaratory judgment against the
17 defendant.” *Wal-Mart*, 564 U.S. at 360.

18 **III. CONCLUSION**

19 For all of the foregoing reasons, Respondents respectfully request that the Court deny
20 Petitioners’ motion for class certification.

21 DATED: May 1, 2020

Respectfully submitted,

22 ROBERT S. BREWER JR.
23 United States Attorney

24 s/ Brett Norris
25 BRETT NORRIS
26 Deputy Chief, Civil Division

27 s/ Douglas Keehn
28 DOUGLAS KEEHN
Assistant U.S. Attorney

³ These case by case differences also foreclose a finding of typicality.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

s/ Paul Starita

PAUL STARITA
Assistant U.S. Attorney

DECLARATION OF CHIEF DEPUTY UNITED STATES MARSHAL
KEITH JOHNSON

I, Keith Johnson, Chief Deputy United States Marshal (CDUSM) for the Southern District of California, make the following statements under oath and subject to the penalty of perjury:

1. I am employed by the U.S. Department of Justice, United States Marshals Service (USMS), and currently serve as the CDUSM for the USMS Southern District of California. I have held this position since 2016. I have been employed by the USMS since 1993.
2. I provide this declaration based on my personal knowledge, belief, reasonable inquiry, and information obtained from various records, systems, databases, other USMS employees, and information portals maintained and relied upon by USMS in the regular course of business.
3. The USMS houses prisoners that have been remanded to its custody by a federal judicial officer pursuant to 18 U.S.C. §3142. All named petitioners in case number 20-cv-00782-AJB-BGS are either currently in a pre-trial status or a post-conviction/pre-sentence status. Decisions regarding the appropriateness of releasing prisoners in these statuses from USMS custody remain with the U.S. District Court responsible for issuing the remand order. The USMS has no authority to grant release in these situations.
4. As the USMS does not own or maintain detention facilities, the USMS must house federal prisoners in Federal Bureau of Prisons (BOP) Pretrial facilities, in state and local detention facilities pursuant to Intergovernmental Agreements (IGA), or private jails pursuant to a contract.
5. Otay Mesa Detention Center (OMDC) is a private jail operated by CoreCivic in San Diego, California.
6. The Immigration & Customs Enforcement Agency (ICE) has a contract with OMDC to house ICE detainees. The contract was originally signed and administered by the former Office of the Federal Detention Trustee (OFDT), the federal agency that was previously responsible for administration of the federal prisoner detention fund. OFDT, however, was subsumed by the USMS pursuant to a Congressional mandate. Thereafter, the USMS assumed administration of the contract with OMDC on behalf of ICE. In 2019, the USMS returned administration of the contract to ICE. However, to assist the USMS in fulfilling prisoner housing needs in the Southern District of California, the USMS “rides” the contract, by housing USMS prisoners in the facility. The OMDC provides the USMS bedspace for 350 prisoners at a fixed monthly rate. The USMS may also utilize an additional 262 beds at the contract per diem rate for a total of 612 beds.
7. Under the contract, OMDC is required to provide secure custody, safekeeping, housing, subsistence, and care of USMS prisoners in accordance with all state and local laws,

standards, regulations, policies, and court orders applicable to the operation of the facility. OMDC is required to house USMS prisoners pursuant to the Federal Performance Based Detention Standards (FPBDS), and/or any other standards delineated in the agreement. To ensure compliance with the contract terms, the USMS conducts yearly on-site Quality Assurance Reviews (QARs). Additionally, there is an on-site administrative Detention Contract Monitor to monitor daily contract compliance.

8. Medical care at OMDC is provided by the Immigration Health Services Corps (IHSC). Through an intergovernmental agreement, the USMS pays a per diem/per capita rate to ICE to provide these services to USMS prisoners.
9. In March of this year, I was invited to participate on the Interagency COVID-19 Committee. This committee, set up by the Chief Judge in conjunction with the U.S. Attorney's Office, is comprised of representatives from each of the agencies that have a part in ensuring the smooth operation of the court process during the pandemic. In addition to me, the committee members are the Chief Judge of the District Court, the Presiding Magistrate Judge, the U.S. Attorney and several Assistant U.S. Attorneys, the Executive Director of Federal Defenders of San Diego and several of her attorney staff, the coordinator for the Panel of Defense Attorneys, the Clerk of the U.S. District Court, the Chief of U.S. Probation, the Chief of U.S. Pretrial, the Warden of the Metropolitan Correctional Center, and the U.S. Marshal. The committee meets telephonically as often as three times a week to discuss all aspects of the Covid-19 crisis' effect on the court, the staff of the represented offices, and the prisoner housing facilities.
10. In addition to the telephonic meetings of the Interagency Committee, I have almost daily contact with the Executive Director of Federal Defenders of San Diego. I am also in frequent contact with other members of her office, sometimes on a daily basis. These conversations include general discussion of the changes to processes caused by COVID-19 as well as specific discussions about the status of particular defendants.
11. I have multiple staff members within my office who are assigned to liaison with defense attorneys and jail facilities. These staff members are in almost daily or daily contact with attorneys from Federal Defenders of San Diego to coordinate meetings, provide updates on facility statuses, and ensure concerns the attorneys have are addressed.
12. Each of the named petitioners in case number 20-cv-00782-AJB-BGS is represented in his/her respective criminal case by Federal Defenders of San Diego.
13. Due to the work of the Interagency Committee, between February 25th and April 30th of this year, the overall number of prisoners in the custody of the USMS Southern District of California has fallen 33%, from 3,454 down to 2,297. During the same period the population at OMDC has fallen by 42%, from 537 to 310.
14. As of this date, nearly half of the USMS prisoners housed at OMDC do not share a cell. In its current configuration, the average population level of each housing unit at OMDC with USMS prisoners is approximately 31% of its capacity, with 6 of the 9 housing

units at or below 33% of capacity. The housing unit closest to its designed capacity is approximately two-thirds full.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Dated: April 30, 2020

A handwritten signature in black ink, appearing to read 'K. Johnson', is written over a horizontal line.

Keith Johnson
Chief Deputy U.S. Marshal
Southern District of California
United States Marshals Service