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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 Respondents.
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Case No. 20-cv-00782-DMS-AHG

**RESPONDENTS' EMERGENCY
 MOTION TO STAY BRIEFING ON
 PETITIONER'S MOTION FOR CLASS
 CERTIFICATION OR, IN THE
 ALTERNATIVE, MOTION FOR
 EXTENSION OF TIME TO RESPOND**

1 Respondent Donald T. Washington, Director, United States Marshals Service and
2 Steven C. Stafford, United States Marshal for the Southern District of California
3 (collectively “Respondents”), respectfully move for an order staying the briefing on, and
4 adjudication of, Petitioners’ motion for class certification (ECF Doc. No. 3) pending
5 resolution of Respondent’s Motion to Dismiss Petitioners’ Class Action Petition Seeking
6 Writ of Habeas Corpus and Opposition to Petitioners’ Motion for Temporary Restraining
7 Order and Preliminary Injunction. In the alternative, Respondents request a two-week
8 extension of time until and including May 15, 2020, to file a response to Petitioners’
9 Motion for Class Certification.

10 In support of this Motion, Respondent states the following:

11 1. On Saturday, April 25, 2020, Petitioners Jacinto Victor Alvarez, et al.,
12 (collectively, “Petitioners”) filed the Petition for Writ of Habeas Corpus and Injunctive and
13 Declaratory Relief (“Petition”). ECF Doc. No. 1. On the same day, Petitioners filed a
14 Motion for an Emergency Temporary Restraining Order and Preliminary Injunction (“TRO
15 Motion”), and a Motion for Class Certification (“Class Motion”). ECF Doc. Nos. 2 & 3,
16 respectively.

17 2. Petitioners requested an “immediate hearing” on the TRO Motion, without
18 notice, attempts to confer, or opportunity for Respondent to oppose highly disputable and
19 potentially consequential assertions – a task that not only requires legal briefing but, more
20 importantly, collection of detailed responsive declarations from a range of officials and
21 experts. ECF Doc. No. 2 at 4. As for Petitioners’ Class Motion, however, Petitioners did
22 not request a response sooner than the time permitted by the Local Rules. ECF Doc. No. 3
23 at 4. This Court ordered Respondent to respond to both motions no later than noon on
24 May 1, 2020. ECF Doc. No. 17.

25 3. Respondent is preparing a response to the Petition and TRO Motion, and will
26 respond as ordered. While preparing its response to Petitioner’s application for injunctive
27 relief, however, Respondent learned that the Petition and TRO Motion raise issues that put
28 this Court’s jurisdiction into question, including whether the Prison Litigation Reform Act

1 (“PLRA”) precludes the relief Petitioners seek, and whether Petitioners have exhausted
2 their remedies under the PLRA and in their respective criminal proceedings under the Bail
3 Reform Act. Accordingly, no later than noon on May 1, 2020, Respondent will file a
4 motion to deny the Petition for lack of subject matter jurisdiction and for failure to state a
5 claim. *See* Fed. R. Civ. P. 12(b)(1) & (6).

6 4. Given the jurisdictional issues that Respondent’s motion will raise, and given
7 that Petitioner did not request an expedited response to their Class Motion, Respondent
8 respectfully requests a stay of the briefing and adjudication of Petitioners’ Class Motion,
9 and any hearing related thereto, until after the Court resolves Respondent’s anticipated
10 motion to deny.

11 5. District courts have broad inherent authority to stay proceedings. *See Clinton*
12 *v. Jones*, 520 U.S. 681, 706 (1997) (“The District Court has broad discretion to stay
13 proceedings as an incident to its power to control its own docket.”); *Landis v. N. Am. Co.*,
14 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power
15 inherent in every court to control the disposition of the causes on its docket with economy
16 of time and effort for itself, for counsel, and for litigants. . . . [t]his calls for the exercise of
17 judgment, which must weigh competing interests and maintain an even balance.”).

18 6. Moreover, the Supreme Court has made clear that, where a court lacks subject
19 matter jurisdiction to hear a case, the action must be dismissed pursuant to Rule 12(b)(1)
20 before it considers the merits of the plaintiffs’ claims. *See Steel Co. v. Citizens for a Better*
21 *Environment*, 523 U.S. 83, 94 (1998) (rejecting the contention that the merits of the case
22 can be decided before jurisdiction is resolved, and observing that “such an approach . . .
23 carries the courts beyond the bounds of authorized judicial action and thus offends
24 principles of separation of powers.”). Indeed, the validity of any ultimate order by a federal
25 court depends upon that court’s having had jurisdiction over the subject matter alleged, not
26 just over the parties. *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S.
27 694, 701 (1982). If this Court determines that it lacks jurisdiction over this matter, it must
28 immediately stop all proceedings and dismiss the suit. Fed. R. Civ. P. 12(h)(3).

1 7. Here, granting the requested stay, and resolving Respondent’s motion to deny
2 before further briefing on and adjudication of Petitioners’ Class Motion, is warranted
3 because it will conserve judicial resources and prevent a ruling on a matter over which this
4 Court may lack jurisdiction. Respondent’s anticipated motion to deny will raise serious
5 questions regarding this Court’s jurisdiction, and whether this case presents the appropriate
6 avenue for the relief Petitioners seek. If the Court were to make a favorable ruling on
7 Respondent’s motion to deny, in whole or in part, that ruling may obviate the need to
8 address class certification issues at all, may define the scope for analyzing class
9 certification issues, or may otherwise assist in the resolution of class certification issues.

10 8. Respondent therefore respectfully requests a stay of the briefing and
11 adjudication of Petitioners’ Class Motion, and any hearing related thereto, until after the
12 Court resolves Respondent’s anticipated motion to deny. In the alternative, Respondent
13 would request a two-week extension of time to file its response to Petitioners’ Class
14 Motion. This extension of time will allow for a more comprehensive discussion, both
15 legally and factually, of class certification issues and will aid the Court in the resolution of
16 those issues.

17 In light of the foregoing facts and legal authorities, Respondent respectfully asks the
18 Court to grant this motion to stay briefing and consideration of class certification pending
19 resolution of Respondent’s anticipated motion to deny or, in the alternative, grant a two-
20 week extension of time – until and including May 15, 2020 – for Respondent to file its
21 response to Petitioners’ Class Motion.

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1 DATED: April 29, 2020

Respectfully submitted,

2 ROBERT S. BREWER, JR.
3 United States Attorney

4 *s/ Brett Norris*
5 BRETT NORRIS
6 Deputy Chief, Civil Division

7 *s/ Douglas Keehn*
8 DOUGLAS KEEHN
9 Assistant U.S. Attorney

10 *s/ Paul Starita*
11 PAUL STARITA
12 Assistant U.S. Attorney

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