

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 20-cv-977

THOMAS CARRANZA;
JESUS MARTINEZ;
RICHARD BARNUM;
THOMAS LEWIS;
MICHAEL WARD;
COLBY PROPPES; and
CHAD HUNTER,

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

**MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION, AND EXPEDITED HEARING**

Plaintiffs, by and through undersigned counsel, respectfully move for a temporary restraining order and preliminary injunction to ensure that they are adequately protected from the tremendous risk of contracting COVID-19 within the Weld County Jail.

Plaintiffs also request an expedited evidentiary hearing. In support, Plaintiffs state:

1. INTRODUCTION

“These are extraordinary times.”¹ COVID-19 poses an unprecedented threat to the country, our state, the Weld County community, and citizens housed in the Weld County Jail. COVID-19 has been declared a national pandemic, President Trump has declared a

¹ This is how federal judges have described the current COVID-19 outbreak. *See Matter of Extradition of Toledo Manrique*, No. 19-MJ-71055 (TSH), 2020 WL 1307109, at *1 (N.D. Cal. Mar. 19, 2020).

national emergency, and the Governor has issued a proclamation declaring a disaster in the State of Colorado. More than 823,000 people across the globe have been infected and the disease has caused more than 40,500 deaths.

Approximately 575 people, at least forty-four of whom are over the age of fifty-five, are incarcerated in Weld County living in close quarters where all aspects of daily life, including healthcare and food service, take place in the same small space. Correctional settings pose a particular risk of spreading the virus, with catastrophic consequences not just to the detainees and staff, but also to their communities and the hospitals that serve them. Each day, dozens of staff must come and go from the Weld County Jail, potentially carrying with them the novel coronavirus for days, even weeks, without ever showing symptoms. There have already been at least eight confirmed cases of COVID-19 among inmates at the Weld County Jail and Weld County Jail staff. Those who are incarcerated and displaying obvious symptoms of COVID-19 are not being tested. The risk of rapid and pervasive infection is high.² And Plaintiffs, the men and women in Weld County Jail custody who have underlying serious medical conditions and individuals over 55 years of age, face an even greater risk of severe illness and death from the ongoing outbreak.

² The speed and breadth of this problem for incarcerated people is stark. At the peak of the outbreak in Wuhan, China — the province where COVID-19 originated — over half of all reported COVID-19 cases were incarcerated people. On Rikers Island, the rate of infection among incarcerated people is over seven times the rate of infection in New York City generally, and 25 times higher than the rate in Wuhan, China. This crisis recalls the 1918 flu pandemic, in which a cluster of infections at San Quentin Prison in California became “one of the primary foci” of a worldwide epidemic that killed between 20 million and 100 million people. See Niyi Awofeso, *Prisons Show Prophylaxis for Close Contacts May Indeed Help in Next Flu Pandemic*, 329 BMJ 173, 173 (2004); Gina Kolata, *Flu: The Story Of The Great Influenza Pandemic of 1918 And The Search For The Virus That Caused It* 5 (2011).

Defendant Sheriff Steven Reams is the person with the constitutional responsibility to ensure that inmates at the Weld County Jail are safe. But instead of proactively taking steps to prevent a crisis in his facility, Defendant has been a COVID-19-denier from the outset of the crisis in direct contravention of science, data, and common sense.³ Not only has Defendant refused to lead any efforts to ensure physical distancing within the Weld County Jail, he also discouraged local district attorneys and judges from making efforts to decrease the Weld County jail population and assured them he has things under control in his jail and was ready to manage COVID-19. Not only are things not under control at the Weld County Jail, they are spiraling out of control. The number of infected inmates and staff is rising precipitously. There are reports that one recently released inmate, who contracted COVID-19 in the facility, has died. The situation is dire.

The Weld County Jail has been an outlier in its lax and inadequate response to the COVID-19 pandemic. While other jails throughout Colorado have depopulated their jails by 50% or more to allow for adequate physical distancing among inmates, Weld County is still housing inmates in cells with up to nine inmates within a few feet of one another. Until just days ago, inmates ate and recreated shoulder-to-shoulder, with no efforts at physical distancing, even as several inmates showed symptoms consistent with COVID-19. Now, with confirmed cases, inmates are on lockdown twenty-three hours per day with some non-symptomatic inmates locked in cells with sick inmates. Only those who are very sick are quarantined. The rest are left in packed cells to spread the virus amongst

³ @SteveReamsForWeldCountySheriff, Facebook (Mar. 24, 2020 1:49 PM), <https://www.facebook.com/SteveReamsForWeldCountySheriff/posts/1524469844396739>
? tn =-R

themselves and to others. Inmates still share common toilets and do not have regular access to hand soap, which has allowed the disease to be pollinated from a single vector to every single cell in the jail (where, again, multiple individuals are confined for twenty-three hours a day within feet of one another). Defendant has refused to provide basic hygiene products to inmates and has actively denied them from protecting themselves, and others, by wearing masks.

“The best way to prevent illness is to avoid being exposed to [COVID-19].”⁴ The clear medical consensus is that to avoid exposure certain steps must be taken: physical distancing, wearing a facemask, testing for the virus, and ensuring that surfaces are adequately sanitized. Defendant has the mechanisms available to ensure that inmates at the Weld County Jail are not exposed to the virus. But he has instead chosen to actively reject the risk to inmates at the outset and has only recently taken mild action in response to a full-blown crisis.

Every day, more and more courts are holding that COVID-19 presents serious health risks to inmates, guards, and the community at large. *See, e.g., Jimenez v. Wolf*, No. 18-10225-MLW (D. Mass. Mar. 26, 2020) (ordering release of immigrant detainee in the midst of the COVID-19 pandemic and noting that “being in a jail enhances risk” and that in jail “social distancing is difficult or impossible”); *United States v. Stephens*, No. 15-cr-95-AJN, 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020) (ordering the release of inmate in Federal Bureau of Prisons custody due, in part, to risk posed by COVID-19

⁴ Coronavirus Disease 2019 (COVID-19): How to Protect Yourself, CDC, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fprevention.html (last visited Apr. 3, 2020).

in the facility); *In the Matter of the Extradition of Alejandro Toledo Manrique*, No. 19-mj-71055, 2020 WL 1307109, at *1 (N. D. Cal. March 19, 2020) (ordering change to conditions of bail for an individual to postpone incarceration, in part, in light of risk of vulnerability to the coronavirus); *United States v. Barkman*, No. 3:19-cr-0052-RCJ-WGC, 2020 U.S. Dist. LEXIS 45628 (D. Nev. Mar. 17, 2020); *Coronel v. Decker*, No. 20-cv-2472 (AJN) (S.D.N.Y. Mar. 27, 2020) (finding “likelihood of success on the[] claim the Government’s actions constitute deliberate indifference to Petitioners’ medical needs”); *Basank v. Decker*, No. 20-cv-2518 (AN) (S.D.N.Y. Mar. 27, 2020) (finding likelihood of success, granting TRO, and ordering immediate release on recognizance of petitioners); *Thakker, et al. v. Doll, et al.*, No. 20 C 0480, Dkt. 47 (M.D. Pa. Mar. 31, 2020) (same); *Hope, et al. v. Doll*, No. 1:20-cv-00562-JEJ, Dkt. 11 (M.D. Pa. Apr. 7, 2020) (same). This growing drumbeat in the federal courts makes clear that this pandemic is the paradigmatic situation in which decisive emergency relief from our third branch of government is necessary and just.

To ensure that these vulnerable prisoners are not forced to die because of Defendant’s inaction, Plaintiffs respectfully request that this Court provisionally certify Plaintiffs’ proposed class, grant Plaintiffs’ request for a temporary restraining order, and order the below-outlined relief. The public interest in avoiding devastation in Weld County, along with the protections afforded to detainees by the United States Constitution, demands these actions be taken swiftly in these unprecedented times.

2. REQUEST FOR RELIEF

Plaintiffs ask that this Court order Defendant to implement a plan that will rectify the violation of Plaintiffs’ constitutional rights and save their lives. This plan must ensure

that Plaintiffs are protected from the threat of COVID-19 exposure by compliance with public health guidelines. Important parts of this plan should include the following:

1. Defendant should be required to physically distance all inmates from one another and staff within the Weld County Jail, which necessitates at least six feet of distance between individuals at all times;
2. Defendant should be required to, on a daily basis, thoroughly and professionally disinfect and sanitize the Weld County Jail.
3. Defendant must provide hygiene supplies, including supplies to wash hands and disinfect common areas, to inmates at all times and free of charge;
4. Defendant must provide personal protection equipment, including but not limited to masks, to all staff members and inmates;
5. Defendant must take particularly heightened precautions with respect to food handling and delivery, such as ensuring that people who come into contact with food are not displaying any potential symptoms of COVID-19, have not recently been in contact with people displaying potential symptoms of COVID-19, and people who come into contact with food wear appropriate personal protective at all times when in contact with food (including but not limited to appropriate masks and gloves);
6. Defendant must implement appropriate policies and protocols to identify inmates who are possibly carrying COVID-19 and quarantine those inmates from other individuals; and
7. Defendant must provide accurate, up-to-date educational and informational materials regarding sanitation and prevention of COVID-19, the status of how COVID-19 is

affecting the facility including the number of infected inmates and staff, and daily access to news reports regarding COVID-19.

Should Defendant not be able to ensure that Plaintiffs are protected from COVID-19 exposure through physical distancing, Plaintiffs alternatively ask this Court to order the transfer of a sufficient number of inmates to electronic home monitoring to allow for appropriate physical distancing within the Weld County Jail.

3. **FACTUAL BACKGROUND**

3.1 **The COVID-19 outbreak has created a global health emergency.**

We are living in the midst of an extreme worldwide health emergency caused by the rapid spread of COVID-19. The World Health Organization has declared COVID-19 to be a global pandemic.⁵ On March 10, 2020, Governor Jared Polis issued a proclamation declaring a disaster in the State of Colorado.⁶ On March 13, 2020, President Trump declared a national emergency.⁷

The number of known COVID-19 infections is increasing daily. As of April 6, 2020, there were more than 1,210,956 reported COVID-19 cases throughout the world

⁵ Coronavirus disease (COVID-2019) situation reports, World Health Organization, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports> (last visited Apr. 5, 2020).

⁶ Executive Order Declaring Emergency Due to the Presence of Coronavirus Disease 2019 in Colorado (March 10, 2020), available at <https://drive.google.com/file/d/1szJfU9WF36-lCVgRhXMAAnJdlQyTSG83e/view>.

⁷ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), available at <https://www.whitehouse.gov/presidentialactions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last visited Apr. 3, 2020).

with more than 67,500 deaths from the virus.⁸ In the United States alone, there are over 186,000 confirmed cases and over 3,600 deaths.⁹

The number of COVID-19 cases in the United States and Colorado is expected to continue its exponential growth. The Centers for Disease Control and Prevention (“CDC”) projects that without swift and effective public health interventions, over 200 million people in the U.S. could be infected with COVID-19 over the course of the epidemic, with as many as 1.7 million deaths.¹⁰

Colorado is considered a new hot spot for spread of the disease, with over 5,000 confirmed cases in Colorado, nearly 1,000 hospitalizations and 150 confirmed deaths.¹¹ As of April 2, it was reported that Colorado’s COVID-19 death rate was rising faster than any other state.¹² Governor Polis believes that the actual number of cases is likely four to ten times higher than reported because of a lack of widespread testing.¹³

⁸ Coronavirus disease 2019 (COVID-19) Situation Report – 72, World Health Organization (April 3, 2020), available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200401-sitrep-72-covid-19.pdf?sfvrsn=3dd8971b_2 (last visited Apr. 3, 2020).

⁹ Coronavirus Disease 2019 (COVID-19): Cases in U.S., Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcasesin-us.html (last visited Apr. 3, 2020).

¹⁰ Sheri Fink, Worst-Case Estimates for U.S. Coronavirus Deaths, The New York Times, (Mar. 13, 2020), available at <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html> (last visited Apr. 3, 2020).

¹¹ See *COVID-19 Case Data*, COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT, <https://covid19.colorado.gov/case-data> (last visited Apr. 7, 2020).

¹² See Toby Keith, *Governor says Colorado’s COVID-19 death rate is rising faster than any other state, asks for help from vice president*, KKTV 11, <https://www.kktv.com/content/news/Governor-says-Colorados--569337551.html>.

¹³ Sam Tabachnik, *Between 13,000 and 33,000 Coloradans could have coronavirus right now, health officials estimate*, DENVER POST, <https://www.denverpost.com/2020/04/02/coronavirus-colorado-covid-cases-surge-polis/>.

COVID-19 is a particularly contagious disease. A recent study showed that the virus can survive for up to three hours in the air, four hours on a copper surface, up to twenty-four hours on cardboard, and up to two to three days on plastic and stainless steel.¹⁴ Indeed, a new study of an early cluster of COVID-19 cases in Wuhan, China revealed the dangers of indirect transmission resulting from infected people contaminating common surfaces—in the study, it was a communal mall bathroom.¹⁵ Controlling the spread of COVID-19 is made even more difficult because of the prominence of asymptomatic transmission—people who are contagious but who exhibit no symptoms, rendering ineffective any screening tools dependent on identifying disease symptoms.¹⁶

There is no known vaccine or cure for COVID-19. No one is immune. Common symptoms of COVID-19 include fever, cough, and shortness of breath.¹⁷ Other symptoms include congestion, sneezing, fatigue, or diarrhea.¹⁸ Many individuals who become infected with COVID-19 may have mild or moderate symptoms; some may experience no symptoms at all. Other patients may experience severe symptoms requiring intensive

¹⁴ *Novel Coronavirus Can live on Some Surfaces for Up to 3 Days, New Tests Show*, TIME, available at <https://time.com/5801278/coronavirus-stays-on-surfaces-days-tests/> (last visited Apr. 3, 2020).

¹⁵ Cai J, Sun W, Huang J, Gamber M, Wu J, He G. Indirect virus transmission in cluster of COVID-19 Cases, Wenzhou, China, 2020. *Emerg Infect Dis.* 2020 Jun., available at https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article (last visited Apr. 3, 2020).

¹⁶ Johnny Milano, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, NEW YORK TIMES, <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html> (last visited Apr. 3, 2020).

¹⁷ Coronavirus Disease 2019 (COVID-19), Symptoms of Coronavirus, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited Apr. 3, 2020).

¹⁸ Q&A on Coronaviruses (COVID-19), World Health Organization, <https://www.who.int/newsroom/q-a-detail/q-a-coronaviruses> (last visited Apr. 3, 2020).

medical intervention.¹⁹ However, even with hospitalization and intensive treatment, thousands of individuals have died as a result of this infection. Regardless of the type of severity of symptoms, all infected persons are contagious and can rapidly transmit the virus from person to person without proper public health interventions.²⁰ The virus is known to spread from person to person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects.²¹

The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 infection than from other viruses, including common influenza.²² According to recent estimates, the fatality rate of people infected with COVID-19 is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective health care systems. For people in the highest risk populations, the fatality rate of COVID-19 infection is about fifteen percent.

People over the age of fifty-five face substantially increased risk of serious illness or death from COVID-19. In a February 29, 2020 WHO-China Joint Mission Report, the preliminary mortality rate analyses showed that individuals age 70-79 had an overall 8% mortality rate, individuals age 60-69 had a 3.6% mortality rate, and individuals age 50-59

¹⁹ *Id.*

²⁰ Coronavirus Disease 2019 (COVID-19): How It Spreads, CDC, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covidspreads.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Ftransmission.html (last visited Apr. 3, 2020).

²¹ *Id.*

²² Betsy McKay, *Coronavirus vs. Flu Which Virus is Deadlier*, WALL ST. J. (Mar. 10, 2020, 12:49 PM), <https://cutt.ly/itEmi8j>.

had a 1.3% mortality rate.²³ People of any age who suffer from certain underlying medical conditions are also at elevated risk, including people with respiratory conditions including chronic lung disease or moderate to severe asthma; people with heart disease or other heart conditions; people who are immunocompromised as a result of cancer, HIV/AIDS, or any other condition or related to treatment for a medical condition; people with chronic liver or kidney disease or renal failure (including hepatitis and dialysis patients); people with diabetes, epilepsy, hypertension, blood disorders (including sickle cell disease), inherited metabolic disorders; and people who have had or are at risk of stroke.²⁴ The WHO-China Joint Mission Report indicates that the mortality rate for those with cardiovascular disease was 13.2%, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer.²⁵

For these vulnerable populations, the symptoms of COVID-19, particularly shortness of breath, can be severe and complications can manifest at an alarming pace. Most people in higher risk categories who develop serious illness will need advanced

²³ Age, Sex, Existing Conditions of COVID-19 Cases and Deaths Chart, <https://www.worldometers.info/coronavirus/coronavirus-age-sex-demographics/> (date analysis based on WHO-China Joint Mission Report)

²⁴ Coronavirus Disease 2019 (COVID-19): People Who Need Extra Precautions, CDC, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higherrisk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fhigh-risk-complications.html (last visited Apr. 3, 2020).

²⁵ Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19), World Health Organization (Feb. 28, 2020), at 12, <https://www.who.int/docs/default-source/coronaviruse/whochina-joint-mission-on-covid-19-final-report.pdf>.

support. This level of supportive care requires expensive and specialized equipment, including ventilators, that are in limited supply.²⁶

Increasingly, and in the United States in particular, even some younger and healthier people who contract COVID-19 may require hospitalization for supportive care, including intravenous fluids and supplemental oxygen. Medical providers and medical facilities are in peril of becoming completely overwhelmed and beyond capacity to provide this type of intensive care as COVID-19 continues to spread.

Even for those who survive COVID-19, recent clinical evidence indicates that, in persons who suffer severe symptoms, the virus may also cause damage to organs such as the heart, the liver, and the kidneys, as well as to organ systems such as the blood and the immune system. This damage is so extensive and severe that it may be enduring. Among other things, patients who suffer severe symptoms from COVID-19 end up with damage to the walls and air sacs of their lungs, leaving debris in the lungs and causing the walls of lung capillaries to thicken so that they are less able to transfer oxygen going forward. Indeed studies of some recovered patients in China and Hong Kong indicate a declined lung function of 20% to 30% after recovery.²⁷

3.2 Incarcerated individuals are particularly vulnerable to infection from COVID-19.

²⁶ Sarah, Kliff, et al., *There Aren't Enough Ventilators to Cope With the Coronavirus*, THE NEW YORK TIMES (March 26, 2020), <https://www.nytimes.com/2020/03/18/business/coronavirus-ventilator-shortage.html>.

²⁷ Tianbing Wang, et al., *Comorbidities and Multi-Organ Injuries in the Treatment of COVID-19*, 395 Lancet 10228 (2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30558-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30558-4/fulltext); George Washington University Hospital, GW Hospital Uses Innovative VR Technology to Assess Its First COVID-19 Patient, <https://www.gwhospital.com/resources/podcasts/covid19-vr-technology> (last visited Apr. 3, 2020).

The overwhelming consensus of public health authorities and experts—including doctors contracted by the U.S. Department of Homeland Security—is that inmates have a particular vulnerability to COVID-19, and the same physical distancing being employed in the community is necessary to avert catastrophic consequences.²⁸ And, this is evident from real world examples. Some jails in other states have already experienced serious outbreaks. On March 23, 2020, at the Cook County jail in Chicago, there were two positive diagnoses.²⁹ One week later, 101 incarcerated people and a dozen sheriff’s deputies had tested positive.³⁰ At Rikers’ Island, for example, the infection rate is nearly eight times the rate of infection for New York City, and 73 times higher than the national infection rate.³¹

“Congregate settings such as jails and prisons allow for rapid spread of infectious diseases that are transmitted person to person, especially those passed by droplets through coughing and sneezing.” **Exhibit 1**, *Dr. Jaimie Meyer Expert Declaration*, p. 2. When people must share dining halls, bathrooms, showers, and other common areas, the

²⁸ Letter from Scott A. Allen, MD and Josiah Rich, MD, MPH to Congressional Committee Chairpersons, dated Mar. 19, 2020, available at <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Richto-Congress-Re.pdf> (stating that “the need to implement immediate social distancing to reduce the likelihood of exposure to detainees, facility personnel, and the general public, [requires the consideration of] **releasing all detainees who do not pose an immediate risk to public safety**.” (emphasis in original)).

²⁹ *Two Cook County Jail detainees test positive for coronavirus*, Chicago Sun Times (Mar. 23, 2020), <https://chicago.suntimes.com/2020/3/23/21191438/twocook-county-jail-detainees-test-positive-covid-19-coronavirus>

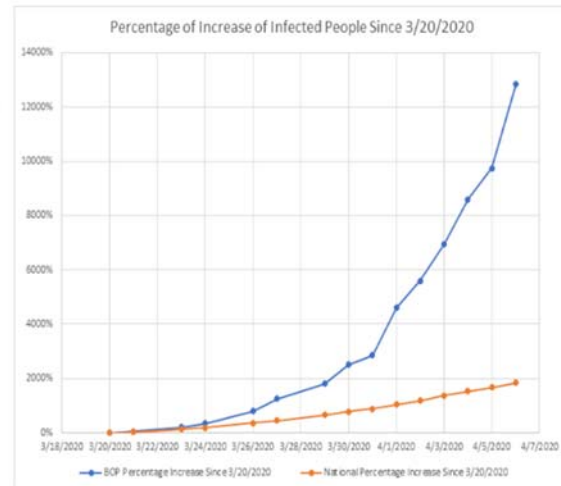
³⁰ *101 inmates at Cook County Jail confirmed positive for COVID-19*, Chicago Sun Times (Mar. 30, 2020), <https://chicago.suntimes.com/coronavirus/2020/3/29/21199171/cook-county-jail-coronavirus-positive-101-cases-covid-19>

³¹ See Legal Aid Society, *COVID-19 Infection Tracking in NYC Jails*, available at <https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (last visited Apr. 3, 2020).

opportunities for transmission are greater. infectious diseases, particularly airborne diseases, such as COVID-19, are more likely to spread rapidly between individuals in correctional facilities. *Id.*; see also **Exhibit 2**, *Expert Report of Carlos Franco-Paredes, M.D., M.P.H.*

People incarcerated in jails and prisons are more susceptible to acquiring and experiencing complications from infectious diseases than the population in the community.³² This is because people in jails are more likely than people in the community to have chronic underlying health conditions, including diabetes, heart disease, chronic lung disease, chronic liver disease, and lower immune systems from HIV. **Ex. 1**, p. 3. According to data released daily by the Bureau of prisons, COVID-19 is spreading nearly seven time faster inside BOP facilities than the exponential growth seen in the general public.³³

Date	Number of BOP Cases	BOP Percentage Increase Since 3/20/2020	National Percentage Increase Since 3/20/2020	Number of U.S. Cases
3/20/2020	2	0%	0%	18,747
3/21/2020	3	50%	31%	24,583
3/23/2020	6	200%	135%	44,183
3/24/2020	9	350%	190%	54,453
3/26/2020	18	800%	355%	85,356
3/27/2020	27	1250%	451%	103,321
3/29/2020	38	1800%	651%	140,904
3/30/2020	52	2500%	772%	163,539
3/31/2020	59	2850%	892%	186,101
4/1/2020	94	4600%	1036%	213,144
4/2/2020	114	5600%	1176%	239,279
4/3/2020	141	6950%	1379%	277,205
4/4/2020	174	8600%	1526%	304,826
4/5/2020	197	9750%	1665%	330,891
4/6/2020	259	12850%	1845%	364,723



³² *Active case finding for communicable diseases in prisons*, 391 *The Lancet* 2186 (2018), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31251-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31251-0/fulltext).

³³ BOP-Reported Positive Tests for COVID-19 Nationwide, Federal Defenders of NY (<https://federaldefendersny.org/>) (last visited Apr. 7, 2020).

Additionally, the Weld County Jail lacks an adequate medical care infrastructure to address the spread of infectious disease, like COVID-19, and to treat high-risk people in custody. Prison health units are not equipped with sufficient emergency medical equipment, such as oxygen tanks, nasal cannulae, and oxygen face masks, to respond to an outbreak of patients with respiratory distress. For these reasons, among others, experts have warned that, “widespread community transmission of COVID-19 within a correctional institution is likely to result in a disproportionately high COVID-19 mortality rate.”³⁴ Jails rely on outside community hospitals to provide more advanced and intensive medical care, and during an epidemic, this will not be possible, as those outside facilities will likely be at or over capacity themselves.

The Weld County Jail is not a closed environment. By necessity, members of the community, including correctional officers, medical personnel, and many others must enter and leave the Weld County Jail on a daily basis. Staff arrive and leave each facility three times a day in large numbers. As the COVID-19 virus spreads within the jail, staff as well as inmates are at heightened risk of contracting the virus and, in turn, spreading the virus to others with whom they come in contact in their own homes and neighborhoods.

3.3 Implementing physical distancing is the only meaningfully way to prevent the harm caused by COVID-19 in the Weld County Jail and its surrounding community.

³⁴ “COVID-19 in Correctional Settings: Unique Challenges and Proposed Responses” (March 23, 2020), <https://amend.us/wp-content/uploads/2020/03/COVID-in-Corrections-Challenges-and-Solutions1.pdf>; see also “Correctional Facilities In The Shadow Of COVID-19: Unique Challenges And Proposed Solutions,” Health Affairs Blog, March 26, 2020, available at <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/> (last visited Apr. 3, 2020).

The only way to prevent complications and the enormous risk of serious illness or death to medically vulnerable people is to prevent them from becoming infected.

Everyone is at risk of transmission of COVID-19. There is no available vaccine to protect against infection from COVID-19 and no medications approved to treat it.³⁵ The CDC and other public health agencies have universally prescribed physical distancing—every person should remain at a distance of at least six feet from every other person—and rigorous hygiene—including regular and thorough hand washing with soap and water, the use of alcohol-based hand sanitizer, proper sneeze and cough etiquette, and frequent cleaning of all surfaces—as the only ways to meaningfully mitigate the spread of this virus.³⁶ **Ex. 1**, p. 2 (stating that “[w]hen infectious diseases are transmitted from person to person by droplets, the best initial strategy is to practice social distancing.”).

The CDC has issued guidance that gatherings of more than 10 people must not occur.³⁷ People in congregate environments, which are places where far more than 10 people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in cruise ships and nursing homes. The CDC also warns of “community spread” where the virus spreads

³⁵ Coronavirus Disease 2019 (COVID-19): Situation Summary, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html> (lasted visited Mar. 29, 2020)

³⁶ Coronavirus Disease 2019 (COVID-19): How to Protect Yourself, CDC, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fprevention.html (last visited Apr. 3, 2020).

³⁷ Interim Guidance for Coronavirus Disease 2019 (COVID-19), Guidance as of 3/15/2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid19.html> (last visited Apr. 3, 2020).

easily and sustainably within a community where the source of the infection is unknown.³⁸

Proactive risk mitigation, including eliminating close contact in congregate environments, is the only effective way to prevent the spread of the COVID-19 infection.

Ex. 2. In fact, a study published in the Journal of Travel Medicine found that the number of COVID-19 cases on the Diamond Princess cruise ship would have been more than eight times lower if the ship had been evacuated in a timely manner, rather than requiring the passengers to quarantine within the close confines of the ship. **Ex. 2.**³⁹

Colorado officials have recognized COVID-19's unique threat to those cycled through the criminal justice system and have taken steps to reduce prison populations. Governor Polis has issued executive orders aimed at reducing the population of prisoners in the Colorado Department of Corrections to "facilitate the reduction of the population of incarcerated persons and parolees to prevent an outbreak in prisons,"⁴⁰ Governor Polis also issued guidance in which he stated that "reducing the numbers of those arrested or

³⁸ Coronavirus Disease 2019 (COVID-19): How Coronavirus Spreads, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Apr. 3, 2020).

³⁹ Sandoiu, supra (citing Rocklov J., Sjodin H., Wilder-Smith A., *COVID-19 Outbreak on the Diamond Princess Cruise Ship: Estimating the Epidemic Potential and Effectiveness of Public Health Countermeasures*, Journal of Travel Medicine (Feb. 28, 2020), <https://academic.oup.com/jtm/advancearticle/doi/10.1093/jtm/taaa030/5766334> (last visited Apr. 3, 2020).

⁴⁰ State of Colorado, Executive Order D 2020 016, March 25, 2020, at pg. 2, available at <https://drive.google.com/file/d/18o0yWHzZleHJ87hmgLuBmXwpM8R74Q5x/view> (last visited Apr. 3, 2020).

incarcerated is vital to our efforts to limit and prevent the spread of COVID-19 in our communities, detention centers, and prisons.”⁴¹

The need to address the COVID-19 problem in prisons has been recognized on a national level. The COVID-19 stimulus package passed by Congress specifically includes funding for federal prisons to purchase personal protective gear and tests kits for COVID-19 because of the “density of the inmate population, the high traffic, the high volume of inmates, [and] the high rate of turnover of inmates and personnel.”⁴² The bill authorizes the Attorney General to lengthen the maximum amount of time that a federal prisoner can be placed in home confinement during the pandemic.⁴³ On March 30, 2020, the United States House of Representatives Committee on the Judiciary recommended a similar plan of action, calling on the federal Bureau of Prisons to drastically increase its physical distancing efforts, including through release where viable, and through increased use of home detention.⁴⁴

Echoing the calls of advocates and medical professionals, a group of 35 elected prosecutors have called on leaders within the criminal legal system to implement physical distancing by “dramatically reduc[ing] the number of incarcerated individuals and the

⁴¹ State of Colorado, *Guidance To Counties, Municipalities, Law Enforcement Agencies, and Detention Centers*, March 24, 2020, p. 1, available at <https://drive.google.com/file/d/1q7wkqi-NeU5nmuFcBQwn-6CryTKdYJ5P/view> (last visited Apr. 3, 2020).

⁴² Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) H.R. 748, at 633 (2020), available at <https://assets.documentcloud.org/documents/6819239/FINAL-FINAL-CARES-ACT.pdf> (last visited Apr. 3, 2020).

⁴³ *Id.* at 634.

⁴⁴ March 30, 2020 letter, available at https://judiciary.house.gov/uploadedfiles/3.30.20_letter_to_ag_barr_re_covid19.pdf?utm_source=The+M+arshall+Project+Newsletter&utm_campaign=e6df8704ef-EMAIL_CAMPAIGN_2020_03_31_11_34&utm_medium=email&utm_term=0_5e02cda9de6df8704ef-174272961 (last visited Apr. 3, 2020)

threat of disastrous outbreaks.”⁴⁵ Days later, over 400 former United States Attorneys, Department of Justice leaders and attorneys, and judges urged that federal prisons implement physical distancing through the release vulnerable individuals from custody to avoid the inevitable deadly outbreak of COVID-19.⁴⁶

Across the country, several counties with significant jail populations have undertaken measures to ensure physical distancing of their inmates. Jail populations were reduced within a matter of weeks, or sometimes days. Cleveland, Ohio drastically reduced the Cuyahoga County jail’s population by 35 percent by releasing over 700 people from detention.⁴⁷ In Minnesota, the Hennepin County jail released 26 percent of the individuals detained.⁴⁸ In Arkansas, the jail population in Washington County is likely to reduce by over 40 percent: from more than 800 a few months ago to below 450.⁴⁹

⁴⁵ Fair and Just Prosecution, *Joint Statement from Elected Prosecutors on COVID19 and Addressing the Rights and Needs of Those in Custody* (Mar. 2020), <https://fairandjustprosecution.org/wpcontent/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf> (last visited Apr. 3, 2020)

⁴⁶ Fair and Just Prosecution, *Over 400 Former US Attorneys, DOJ Leaders and Attorneys, and Judges Urge President Trump to Release Vulnerable Individuals from Federal Custody to Avoid Deadly Outbreak of COVID-19* (Mar. 2020), <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Trump-COVID19-Press-Release-Final.pdf>.

⁴⁷ *Officials taking steps to reduce county jail populations in Ohio*, AP, WBNS (Mar. 21, 2020), available at <https://www.10tv.com/article/officials-taking-steps-reduce-county-jail-populations-ohio2020-mar> (last visited Apr. 3, 2020).

⁴⁸ *Coronavirus In Minnesota: Hennepin County Jail Population Cut By 26% After Release Of Low-Risk Inmates To Prevent COVID-19 Spread*, CBS MINNESOTA (Mar. 23, 2020), available at <https://minnesota.cbslocal.com/2020/03/23/coronavirus-in-minnesota-hennepin-county-jail-populationcut-by-26-after-release-of-low-risk-inmates-to-prevent-covid-19/> (last visited Apr. 3, 2020).

⁴⁹ Tom Sissom, *Washington County jail plans for release of 81 more inmates*, NORTHWEST ARKANSAS DEMOCRAT-GAZETTE (Mar. 26, 2020), available at

Colorado counties have followed suit from Boulder to Jefferson⁵⁰ to Denver County.⁵¹ There have been a few holdouts, including Weld County, who continue to endanger the lives of those in their jails and communities. Weld County is amongst the worst offenders, led by Defendant Sheriff Reams.

3.4 Weld County is abjectly failing to take the necessary precautions to reduce the spread of COVID-19 within the jail and surrounding communities, placing people at a significantly increased risk of disease and death.

Weld County is a hot spot for the COVID-19 outbreak in Colorado, with the fourth highest number of COVID-19 infections in the state and the second highest number of deaths.⁵² With twenty-six COVID-19 related deaths as of April 6, 2020, Weld County has the second highest number of deaths compared to any other county in the state, surpassing Denver.⁵³

Jails are not hermetically sealed—quite the opposite. Jail populations shift significantly each day as people are arrested and released. The people who go in—from correctional and medical staff, to those detained prior to trial, to those serving short

<https://www.nwaonline.com/news/2020/mar/26/washington-county-jail-plans-release-81-more-inmat/> (last visited Apr. 3, 2020).

⁵⁰ Jefferson County Detention Center has reduced its population by 43%. See Elise Schmelzer, *Colorado's biggest jails drop population by a third as sheriffs combat spread of coronavirus*, THE DENVER POST, <https://www.denverpost.com/2020/04/01/colorado-jails-inmate-release-coronavirus-covid/>.

⁵¹ Denver County's Correctional Facilities have reduced their population by 37%. *Id.*

⁵² See *COVID-19 Case Data*, COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT, <https://covid19.colorado.gov/case-data> (last visited Apr. 7, 2020).

⁵³ *COVID-19 Case Data*, COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT, <https://covid19.colorado.gov/case-data> (last visited Apr. 7, 2020).

sentences—typically come out in very short order. In Weld County, on average 30 people are released from jail custody every day.⁵⁴

Failing to prevent and mitigate the spread of COVID-19 endangers not only those within the institution, but the entire community. Hence, immediate and aggressive action is an essential mitigation effort that the Weld County Jail must undertake to comport with public health guidance and to prevent a catastrophic outbreak at the facility. Yet, it has failed to do so.

Defendant has demonstrated throughout this crisis an unwillingness or inability to safely care for people in his custody. For weeks, Defendant cavalierly refused to take any apparent precautions whatsoever within the facility. Defendant did not test for COVID-19, even after inmates began showing symptoms consistent with the virus. He implemented no physical distancing. And inadequate sanitation was widespread in his jail. Defendant has scoffed at Gubernatorial guidance and actions by the Department of Corrections to depopulate the jails in order to allow for physical distancing.⁵⁵ He has even posted on social media a “Get out of Jail Free Card” from the child’s board game Monopoly to underscore his disagreement with actions to depopulate jails in order to

⁵⁴ *HB 19-1297: Jail Data*, Colorado Division of Criminal Justice, https://cdpsdocs.state.co.us/ors/Data/Data_Instruments/HB1297/Dashboard/HB19-1297.html.

⁵⁵ *See, e.g., Erik Maulbetsch, Weld Sheriff: I’d Rather Take My Risk With the Virus Than Socialism*, (Mar. 25, 2020) <https://coloradotimesrecorder.com/2020/03/weld-sheriff-id-rather-take-my-risk-with-the-virus-than-socialism/22199/>.

allow physical distancing.⁵⁶ Defendant has further boasted that, despite all public health recommendations to the contrary, he can manage the virus without releasing inmates.⁵⁷

Weld County is the sixth most populous jail in Colorado. Of the ten most populous Colorado jails, Weld County Jail stands out as having the lowest depopulation rate since the start of the COVID-19 crisis and the highest jail occupancy rate.⁵⁸ Unlike many other Colorado sheriffs, Defendant has refused to take the public health risk or data seriously.

As a result of these failures, at least one inmate and two staff tested positive for COVID-19 by no later than April 1, 2020. The infected inmate had been at the jail for over a year, so it is very likely that there is internal spread within the jail. More recent reports indicate that multiple inmates and deputies have tested positive with dozens more inmates showing symptoms consistent with COVID-19. **Exhibit 3**, *Declaration of Michael Ward*; **Exhibit 4**, *Declaration of Thomas Carranza*.⁵⁹ The infection is now almost certainly widespread in the Weld County Jail.

⁵⁶ See @SteveReamsForWeldCountySheriff, Facebook (Mar. 24, 2020 1:49 PM), https://www.facebook.com/SteveReamsForWeldCountySheriff/posts/1524469844396739?_tn=-R

⁵⁷ *Id.* (“I haven’t closed the Weld County Jail nor have I started releasing prisoners because of the Covid 19 virus; and I don’t intend to do so. The Weld County Jail has very competent and effective medical staff to handle this crisis and we will work closely with the Weld County Health Department to get through these tough times if the need arises.”).

⁵⁸ This data was collected by the ACLU of Colorado through daily phone calls to Colorado’s ten most populous jails since March 24, 2020.

⁵⁹ These declarations are submitted with electronic signatures because of the unique challenges that COVID-19 has presented to Plaintiffs’ attorneys being in the same room as Plaintiffs. Plaintiffs’ counsel has received permission from Mr. Ward and Mr. Carranza to file the attached declarations with their electronic signatures.

Inmates at the Weld County Jail are housed in a pod with at least forty and up to sixty other people. **Ex. 3**, p. 1; **Ex. 4**, p. 1. There are up to nine people per cell and many cells have six inmates housed in them. *Id.* Even when inmates are not housed in a cell with nine other inmates, they are confined with multiple other inmates. *Id.* Inmates share a small space and sleep on triple bunk beds. Inmates sleep right on top of each other, within a couple feet. The cells are small and it's impossible for inmates to stay six feet away from other people within the cells. **Ex. 3**, p. 2. For cells housing six inmates, three inmates will share a bunk with three beds stacked on top of each other, while the other three share the same. **Ex. 4**, p. 2. Three bunked inmates sleep within two to four feet of each other. *Id.* The cells are about twelve feet by ten feet. *Id.* Even when only one other person is in the cell, if the inmates move at all it is still impossible to stay six feet away from one other. *Id.*

Each pod has four toilets, and for males four urinals, shared by all of the inmates in the pod. **Ex. 3**, p. 1; **Ex. 4**, p. 1. The toilets and urinals are located in common spaces. The cells in the jail are "dry" and have no toilets or urinals. *Id.* To use the bathroom, inmates must leave their cells and go to the shared toilets. *Id.* There is no drinking water in the cells either, and all inmates share two water fountains. **Ex. 3**, p. 2. Inmates must ask the deputy to leave our cell to use the water fountains.

Many inmates in the Weld County Jail are sick or have been sick. **Ex. 4**, p. 2.; **Ex. 3**, p. 2. Inmates have symptoms like coughing, fevers, being tired and achy, sore throat, and shortness of breath. Most of the inmates who have reported symptoms haven't been tested for COVID-19. **Ex. 3**, p. 2.

Some inmates do not have symptoms and are not sick, but all inmates are housed together in the same pods and cells. **Ex. 4**, p. 2. Sick inmates are housed in the same pod, sharing the same common spaces, toilets, urinals, and other facilities, as those who do not have symptoms. *Id.*

Several days ago, the jail started a twenty-three-hour lockdown. **Ex. 4**, p. 2; **Ex. 3**, p. 2-3. Still, guards open two cells for an hour at a time; so about twelve to eighteen of the inmates are out at any given time and in close proximity at the same time. *Id.* Guards also let inmates on lockdown come and go to use the toilet because the cells are dry, or for other reasons (for example, to use the phone), so there are times that there are twenty or more inmates in the common area in close proximity to one another. *Id.* Even with the lockdown in place, inmates are still housed in groups with as many as nine per cell and it is still impossible for inmates to stay six feet away from others. **Ex. 4**, p. 3; **Ex. 3**, p. 3

Even after the lockdown was implemented, inmates still share common spaces, use the same toilets, urinals, and restroom facilities, touch the same surfaces, use the same chairs and tables in the common areas, use the same phones, and come into contact with one another when they leave their cells. **Ex. 4**, p. 2-3; **Ex. 3**, p. 3. Inmates are also allowed to exchange food and can go from room to room. **Ex. 4**, p. 2-3. There have been reports of at least one inmate urinating in a drinking cup because they wouldn't let him out of his cell to use the toilet during a lockdown period. **Ex. 3**, p. 3.

The jail does not sanitize or disinfect the common areas in between usages, including the toilet, restroom, and other common areas. **Ex. 3**, p. 3; **Ex. 4**, p. 3. Occasionally Weld County personnel will sanitize certain areas or a trustee will do a quick wipe-down, but not completely and jail personnel do not sanitize or clean all areas.

Id. Many areas, including the water fountain, toilet stall areas, railings, shower areas, and other surfaces almost never get wiped down or sanitized, and definitely not in between every usage. *Id.*

The jail isn't removing sick inmates from the pods unless they have at least four symptoms of COVID-19. **Ex. 4**, p. 3; **Ex. 3**, p. 3. Weld County Jail personnel have posted a sign stating that an inmate must have at least **four** symptoms to be quarantined. *Id.* Inmates who have actually been quarantined for potential COVID-19 have displayed symptoms for weeks before being quarantined (and had tested negative for the flu and strep throat during those weeks). **Ex. 3**, p. 2

Inmates that have been sick are still allowed to work in the kitchen and handle food. **Ex. 4**, p. 3. Given that the jail feeds at least five hundred inmates on a daily basis, sick kitchen workers handling food and distributing trays means the entire facility may be exposed and infected.

The Weld County Jail still refuses to provide masks to inmates. **Ex. 4**, p. 3. Even when inmates request masks, they are denied. *Id.*, p. 3. At least one inmate has been told that he could not wear a homemade mask and other inmates have been told that they are "inciting" the inmates by wearing a mask. *Id.*, p. 3.

Multiple people within the Weld County Jail have tested positive for the coronavirus, including both staff and inmates. **Ex. 3**, p. 2. Despite this, Weld County has not tested numerous inmates displaying symptoms of COVID-19. *Id.*

When inmates file grievances about the jail's failure to provide adequate care and safety due to COVID-19 inmates get a standard response stating that the grievance was

rejected due to a memo dated March 17, 2020, which stated that issues regarding COVID-19 precautions are not grievable. **Ex. 3**, p. 4.

Simply put, as Defendant is currently operating the Weld County Jail, it is dangerously under-equipped and ill-prepared to manage the current COVID-19 outbreak within the jail.

3.5 Plaintiffs are vulnerable inmates who, if exposed to COVID-19, would likely suffer severe illness or death.

Plaintiffs are all individuals who have been diagnosed with a medical condition that significantly increases the risk of a serious infection of COVID-19⁶⁰ and/or of such an advanced age as to make them undoubtedly more vulnerable to COVID-19 and its symptoms. People who are considered at high risk of severe illness and death should they be infected with the coronavirus include the following:

- People age 55 or older;
- Anyone diagnosed with cancer, autoimmune disease (including lupus, rheumatoid arthritis, psoriasis, Sjogren's, Crohn's), chronic lung disease (including asthma, COPD, bronchiectasis, idiopathic pulmonary fibrosis), history of cardiovascular disease (MI), chronic arthritis (rheumatoid, psoriatic), chronic liver or kidney disease, diabetes, hypertension, heart failure, HIV, on chronic steroids or other immunosuppressant medications for chronic conditions;
- People with a history of smoking or other substance use disorders;
- People who are pregnant.

See **Ex. 2**, p. 2.

The current conditions at the Weld County Jail do not allow Plaintiffs to adequately physically distance and expose them to a significant risk of serious harm. All Plaintiffs are housed, share communal toilets, and share dayrooms with other inmates. In

⁶⁰ Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission, CDC, (last visited Apr. 6, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>.

these spaces, Plaintiffs have been exposed to unhygienic surfaces and staff (and other inmates) who are not wearing appropriate personal protective gear.

Plaintiff Thomas Carranza is 55 years old and suffers from asthma.⁶¹ He has been hospitalized for acute asthmatic bronchitis. In the past, he was a smoker, making his respiratory condition more vulnerable. Mr. Carranza has been advised by medical providers that he has high blood pressure but has not been properly diagnosed with that condition. Mr. Carranza is also currently suffering from an undiagnosed intestinal condition causing internal bleeding and blood in his stool. Medical staff in the jail have not provided a diagnosis or treatment for this condition.

Plaintiff Jesus Martinez is thirty-three years old and suffers from multiple chronic medical conditions. He is diabetic, has asthma, experiences shortness of breath, has high blood pressure, and is overweight. Mr. Martinez also had a corneal transplant in one eye and is currently experiencing discomfort and potential complications relating to this condition.

Plaintiff Richard Barnum is disabled. He, receives social security disability benefits, and is eligible for Medicare. Mr. Barnum has untreated Hepatitis C. Prior to his arrest, Mr. Barnum was eligible for and working to obtain treatment for Hepatitis C. Additionally, approximately five years ago, Mr. Barnum suffered major kidney failure due to stage three kidney disease. He spent one month in the hospital, which included

⁶¹ The factual recitation contained in the following paragraphs is based on Plaintiffs' communications to counsel. Counsel is working to obtain declarations from Plaintiffs attesting to these facts but logistical issues regarding in-person access to inmates in the Weld County Jail have made this task exceedingly difficult and cumbersome. Currently, counsel is only allowed to call Plaintiffs and speak to them by phone. Counsel intends to work with the Court and its staff on a method to present Plaintiffs' testimony remotely at the requested evidentiary hearing on this Motion.

dialysis treatment. He continues to regularly see a doctor to monitor his kidney issues.

Mr. Barnum is a smoker who also has hypertension, Post-Traumatic Stress Disorder, and depression.

Plaintiff Thomas Lewis is 60 years old. Mr. Lewis suffers from vitiligo, which is an immune deficiency disease. As a result of his age and medical condition, Mr. Lewis is particularly vulnerable to suffering severe effects from COVID. Physical distancing is critical for him.

Plaintiff Michael Ward suffers from high blood pressure, arthritis, fibromyalgia, and a compromised immune system from having previously contracted West Nile virus.

Plaintiff Colby Propes is forty-four years old and has a long history of smoking. He also has been diagnosed with substance abuse disorders. Both of these facts make him vulnerable to disastrous health consequences should he contract COVID-19.

Plaintiff Chad Hunter is hypoglycemic, he has a long history as a smoker, and he has a history of a substance abuse disorder

In sum, each Plaintiff is at a significant risk of dying should he contract COVID-19.

4. NOTICE TO DEFENDANT

On April 7, 2020, counsel for Plaintiffs gave notice of their intent to file this action to the counsel for Defendant in compliance with Fed.R.Civ.P. 65 and D.C.COLO.LCivR 65.1. In accordance with D.C.COLO.LCivR 7.1, counsel for Defendant indicated that Defendant opposes the relief sought herein.

5. ARGUMENT

Plaintiffs are inmates in the custody of the Weld County Jail who are especially vulnerable to COVID-19 because of their advanced age or underlying medical conditions. Although the larger world has taken radical steps to contain this disease, Plaintiffs are powerless to adopt even simple protective measures. Under current conditions, it is overwhelmingly likely that hundreds of inmates will contract a lethal virus with no cure. Without urgent action, countless inmates will become seriously ill or die within a matter of weeks or months. Plaintiffs are at high-risk for death should they contract COVID-19. Plaintiffs therefore request that the Court grant injunctive relief that will protect them from threatened exposure to COVID-19 and, consequently, a death sentence.

Courts are empowered to grant temporary restraining orders and preliminary injunctions in class actions, the same as in other actions. *See* William W. Schwarzer, A. Wallace Tashima & James M. Wagstaffe, § 10:773 (nat'l ed. 2009); *accord Price v. City of Stockton*, 390 F.3d 1105, 1117-18 (9th Cir. 2004) (preliminary injunction may extend beyond named plaintiffs). This is so regardless of whether the class has yet been certified. *Simer v. Rios*, 661 F.2d 655, 658 (7th Cir. 1981) (granting temporary restraining order within days of action's filing); *see also Yue v. Conseco Life Ins. Co.*, 282 F.R.D. 469, 475 (C.D. Cal. 2012) (holding that, even if a party simultaneously moves for class certification and preliminary injunction, there is no requirement to show irreparable injury and success on merits to prevail on class certification).

A plaintiff seeking interim injunctive relief “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also*

Planned Parenthood Ass’n of Utah v. Herbert, 828 F.3d 1245, 1252 (10th Cir. 2016).

“[W]here the moving party has established that the three ‘harm’ factors tip decidedly in its favor, the ‘probability of success’ requirement is relaxed[.]” *Star Fuel Marts, LLC v. Sam’s East, Inc.*, 362 F.3d 639, 652-53 (10th Cir. 2004).

Once a plaintiff demonstrates entitlement to interim relief, courts have broad power to fashion equitable remedies to address constitutional violations in prisons. *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978). And although courts must “be sensitive to the State’s interest[s]” in imprisonment, courts “must not shrink from their obligation to enforce the constitutional rights of all persons, including prisoners [and] . . . may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration.” *Brown v. Plata*, 563 U.S. 493, 511 (2011); *Plata v. Brown*, 2013 WL 3200587, *8 (N.D. Cal., June 24, 2013) (directing removal of prisoners at risk of contracting Valley Fever from prisons where the risk of contracting it was high).

Immediate and unequivocal action by this Court is necessary. There is no vaccine or cure for COVID-19. Treatment of high-risk persons like the Plaintiffs is costly and resources are limited. Even those successfully treated have life-long damage to their lungs. As such, the only way to protect against the imminent risk of substantial harm and possible death of inmates who are most vulnerable to the virus—people with serious underlying medical conditions, and people over the age of 55—is to immediately require physical distancing of ALL inmates before they contract the virus.

Injunctive relief is necessary because the danger here, vulnerable people condemned to prolonged illness and potential death, is the quintessential irreparable

harm. *Edmisten v. Werholtz*, 287 F. App'x 728, 732-35 (10th Cir. 2008) (holding that evidence that health will “deteriorate irreparably” absent relief is sufficient to support issuance of injunctive relief); *see also Jones'El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wisc. 2001) (“[P]ain, suffering and the risk of death constitute ‘irreparable harm’ sufficient to support a preliminary injunction in prison cases.”). There is also an overwhelming public interest in limiting the spread of COVID-19, both to minimize further infections and to reduce strain on overwhelmed health systems. And, in light of the global COVID-19 pandemic, the balance of equities weighs heavily in favor of the vulnerable inmates, who must be allowed to physically distance, and against Defendant’s interest in indefinitely confining the Plaintiffs in life-threatening conditions. This Court should order that physical distancing be implemented at the Weld County Jail.

5.1 Plaintiffs Are Likely to Succeed on the Merits.

Plaintiffs are likely to establish that their conditions of confinement place them at substantial risk of harm from COVID-19, in violation of their Eighth and Fourteenth Amendment rights, and that Defendant is being deliberately indifferent to their obvious and serious medical needs.

5.1(a) Plaintiffs are being held under unconstitutional conditions of confinement at the Weld County Jail.

Plaintiffs are likely to establish that their conditions of confinement within the Weld County Jail custody render them at substantial risk of contracting COVID-19 and suffering prolonged injury and possible death. The Supreme Court has long held that when state officials “strip [inmates] of virtually every means of self-protection and foreclose[] their access to outside aid, [they] are not free to let the state of nature take its course.” *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). State officials instead have a

responsibility under the Eighth Amendment⁶² to “take reasonable measures to guarantee the safety of the inmates.” *Id.* at 832.

⁶² “[T]here does not exist a single ‘deliberate indifference’ standard applicable to all § 1983 claims, whether pretrial detainees or convicted prisoners bring the claim.” *Abila v. Funk*, 220 F. Supp. 3d 1121, 1181 (D.N.M. 2016). Prior to *Kingsley v. Hendrickson*, 135 S.Ct. 2466 (2015), the Tenth Circuit held that, pursuant to the Fourteenth Amendment’s due process clause, pretrial detainees are entitled to the same degree of medical care as convicted inmates are under the Eighth Amendment. *Craig v. Eberly*, 154 F.3d 490, 495 (10th Cir. 1998). *Kingsley*, however, abrogated the Tenth Circuit’s holding in *Craig*, concluding that Eighth Amendment culpable state of mind rules arising out of the prohibition of “wanton” punishment cannot be extended to pretrial detainees, who have a Fourteenth Amendment right to be free from all punishment. 135 S.Ct. at 2475. “The language of the two Clauses differs,” the Court reasoned, “and the nature of the claims often differs. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all . . .” *Id.* Because there is no requirement that a pretrial detainee demonstrate the wanton infliction of pain, “a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose.” *Id.* at 2473-74 (emphasis added). Thus, “the appropriate standard for a pretrial detainee’s excessive force claim is solely an objective one.” *Id.* at 2473.

The implications of *Kingsley* are by no means limited to excessive force claims. *See id.* at 2473 (“The *Bell* Court applied [an] objective standard to evaluate a variety of prison conditions In doing so, it did not consider the prison officials’ subjective beliefs about the policy.”) (citing *Bell v. Wolfish*, 441 U.S. 520, 541-43 (1977)); *Id.* at 2478 (Roberts, C.J., dissenting) (confirming the *Bell v. Wolfish* standard for pretrial detainees making inhumane conditions of confinement claims). And the objective deliberate indifference standard has repeatedly been applied to conditions of confinement and inadequate medical care claims. *See Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018) (extending *Kingsley* to medical care claims); *Miranda v. Cty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018) (“We thus conclude, along with the Ninth and Second Circuits, that medical-care claims brought by pretrial detainees under the Fourteenth Amendment are subject only to the objective unreasonableness inquiry identified in *Kingsley*”); *Bruno v. City of Schenectady*, 727 Fed. Appx. 717, 2018 WL 1357377, at *2-*3 (2d Cir. 2018) (unpublished) (expressly applying an objective standard to a claim of deliberate indifference to a serious medical condition); *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017) (extending *Kingsley* to conditions of confinement claims by pretrial detainees pursuant to the Fourteenth Amendment and overruling its previous decisions applying the subjective standard to an inadequate medical care claim by a pretrial detainee); *see also Richmond v. Huq*, 885 F.3d 928, 938 n.3 (6th Cir. 2018) (not applying *Kingsley*, which neither party raised, but recognizing the “shift in Fourteenth Amendment deliberate indifference jurisprudence [that] calls into serious doubt whether [the plaintiff]

In *Helling v. McKinney*, 509 U.S. 25 (1993), the Supreme Court held that the Eighth Amendment forbids deliberate indifference to conditions that “pose an unreasonable risk of serious damage to . . . future health.” *Id.* at 35. *Helling* addressed exposure to secondhand smoke, but in doing so recognized that “deliberate indifference to the exposure of inmates to a serious, communicable disease” would similarly violate the Eighth Amendment, even if a prisoner currently shows no serious symptoms. *Id.* at 33. To amount to the infliction of cruel and unusual punishment: (1) prison conditions must pose “an unreasonable risk,” (2) the risk must be of serious harm, and (3) prison officials must have acted with deliberate indifference to that risk of serious harm. *Id.* at 33–35. Plaintiffs easily satisfy all prongs.

5.1(a)(1) Plaintiffs have shown a significant likelihood that they will suffer an unreasonable risk of harm from COVID-19 if their current conditions of confinement are not abated.

Plaintiffs in this case are being detained in conditions that dramatically and unjustifiably increase the likelihood that they will contract COVID-19 and fall seriously ill.

Notably, Plaintiffs do not need to show that they are currently infected or suffering “serious health problems” to show that they face a “substantial risk” of harm.

Helling, 509 U.S. at 34. The Supreme Court squarely rejected that proposition,

need even show that the individual defendant-officials were subjectively aware of her serious medical conditions and nonetheless wantonly disregarded them”); *cf. Castro v. Cnty. of L.A.*, 833 F.3d 1060, 1070 (9th Cir. 2016) (en banc) (extending *Kingsley* to failure to protect claims by pretrial detainees pursuant to the Fourteenth Amendment). In any event, as herein, pretrial Plaintiffs and proposed class members face no hurdle in establishing that Defendant knew of the risk of COVID-19 and that he recklessly disregarded that risk. By meeting their burden under the Eighth Amendment, pretrial Plaintiffs and proposed class members have, by definition, met their burden under the Fourteenth Amendment, which governs their claims.

concluding that “[w]e have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate’s current health problems but may ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year.” *Id.* at 33. The Court went on: “Nor can we hold that prison officials may be deliberately indifferent to the exposure of inmates to a serious, communicable disease on the ground that the complaining inmate shows no serious current symptoms.” *Id.*

Inmates simply cannot maintain proper physical distancing as they are currently confined in the Weld County Jail, whether housed with large numbers of people, in a small cell with fewer people in close proximity, or even in a two-person cell. *Malam v. Adducci*, No. 20-10829, 2020 U.S. Dist. LEXIS 59407, at *26 (E.D. Mich. Apr. 5, 2020) (“In the face of a deadly pandemic with no vaccine, no cure, limited testing capacity, and the ability to spread quickly through asymptomatic human vectors, a ‘generalized risk’ is a ‘substantial risk’ of catching the COVID-19 virus for any group of human beings in highly confined conditions[.]”). Inmates share their dayrooms, showers, and toilets, and must rely on multiple staff to prepare and deliver their meals and medications. *Comm. for Pub. Counsel Servs. v. Chief Justice of the Trial Court*, No. SJC-12926, 2020 Mass. LEXIS 191, at *19 (Apr. 3, 2020) (“The district attorneys of the northern, northwestern, Suffolk, and Berkshire districts agree with the petitioners that the risk of this pandemic is an unprecedented, deadly threat to incarcerated individuals, correctional officers, and civilian staff, and that extraordinary action is needed to address this rapidly-growing public health emergency expeditiously.”). Plaintiffs are at the mercy of security

and medical staff, who may carry the virus without showing symptoms, and who often are not able to take even simple precautions like wearing disposable gloves.

Plaintiffs are themselves at an especially high risk of harm from the virus due to the high rates of chronic, and other, health conditions. Elderly inmates and those with underlying medical conditions typically experience COVID-19 symptoms more severely and are far more likely to develop complications as a result of the virus. Inmates over the age of 55 without any underlying medical conditions face a 1.3–8% mortality rate. And as noted above, vulnerable inmates who suffer from cardiovascular disease face a 13.2% mortality rate, hypertensive inmates face an 8.4% mortality rate, and inmates with chronic respiratory disease face an 8.0% mortality rate. Additionally, individuals with certain conditions, such as those that affect the immune system, are also more likely to contract the disease and, also, more likely to die if exposed. And history teaches that when an epidemic occurs nationally, people in custody experience a disproportionately high number of cases. At least according to data from the BOP, history is repeating itself (or worse) with this virus.

COVID-19 is already in the Weld County Jail. Other district courts have granted TROs requiring the implementation of physical distancing requirements *before positive COVID-19 tests in the respective facilities*. Central District of California Judge Hatter granted a TRO on March 27, 2020, explaining that:

As the Court writes this order, the number of confirmed COVID-19 cases in the United States has already exceeded the number of confirmed cases in every other country on this planet. Indeed, all of the experts and political leaders agree that the number of confirmed cases in the United States will only increase in the days and weeks ahead. The number of cases in the United States has yet to peak.

Temporary Restraining Order and Order to Show Cause at 10, Docket No. 32, *Castillo v. Barr*, No. 20-cv-605 (TJH) (C.D. Cal. March 27, 2020). Just a day earlier, on March 26, 2020, Southern District of New York Judge Torres recognized that “[t]he spread of COVID-19 is measured in a matter of a single day — not weeks, months, or years” and granted a TRO requiring the immediate release of ten people to ensure that they could adequately physically distance. *See Basank*, 2020 WL 1481503, at *5; *see also* Order at 1–2, *United States v. Harris*, Docket No. 35, No. 19-cr-356 (RDM) (D.D.C. March 26, 2020) (granting motion for emergency release from custody in light of the risks of COVID-19); Minute Order, *United States v. Jaffee*, 19-cr-88 (RDM) (D.D.C. March 26, 2020) (same). On March 23, 2020, a panel of Ninth Circuit judges granted emergency relief and ordered a detained person released “[i]n light of the rapidly escalating public health crisis.” *Xochihua-Jaimes v. Barr*, 18-71460, Doc. No. 53 (9th Cir. Mar. 23, 2020) (unpublished).

Since these earlier⁶³ cases, federal courts across the country have granted temporary restraining orders brought on behalf of vulnerable individuals in custody. *See, e.g., Thakker*, No. 20 C 0480, Dkt. 47; *Flores, et al. v. Barr, et al.*, No. 85 C 4544, Dkt. 740 (Mar. 28, 2020); *Coronel*, No. 20 C 2472, Dkt. 26. In *Thakker*, the district court recognized that “the status quo of a mere few weeks ago no longer applies. Our world has been altered with lightning speed, and the results are both unprecedented and ghastly The choice we now make must reflect this new reality.” *Thakker*, No. 20 C 0480, Dkt. 47 at 24. The district court found that even though the conditions in the local federal

⁶³ In the context of the spread of COVID-19, “earlier” is mere days. This demonstrates the infectiousness of the disease and imminent danger of mass infection.

detention facilities were not insufficient because of intent or malice, “should we fail to afford relief” to medically vulnerable inmates “we will be a party to an unconscionable and possibly barbaric result.” *Id.*; *see also id.* (“Our Constitution and laws apply equally to the most vulnerable among us, particularly when matters of public health are at issue.”). The district court accordingly granted a temporary restraining order that aimed at ensuring appropriate physical distancing by requiring the immediate release of 11 prisoners in federal custody who suffer from chronic medical conditions and, therefore, face a serious threat of injury or death if exposed to COVID-19. *Id.* at 2, 24-25.

In sum, the record evidence shows that Plaintiffs and proposed class members face a “substantial risk” of contracting COVID-19. Plaintiffs need not show, or even allege, that “the likely harm would occur immediately” or that the possible infection would “affect all of those exposed.” *Helling*, 509 U.S. at 33 (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)). Plaintiffs have shown that they are likely to succeed on the merits of showing their “substantial” or “significant” risk of contracting COVID-19.

5.1(a)(2) Plaintiffs have demonstrated that the risk of harm to them is serious.

Plaintiffs have also substantially demonstrated that the risk of harm to them is serious. Put differently, the Supreme Court explained, this Court should ask “whether society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk.” *Helling*, 509 U.S. at 36.

To conclude that COVID-19 poses a risk of serious harm, the Court need look no further than the drastic way society has been reshaped in a matter of months. Businesses

and schools are closed.⁶⁴ Travel is restricted. Even this Court’s own operations have been dramatically changed by COVID-19 in response to the well-known fact that “gatherings of people pose a threat to public health and safety[.]” Court Operations Under The Exigent Circumstances Created By COVID-19, *District Court General Order 2020-3*.

Moreover, applying the Supreme Court’s reference to whether “society considers the risk . . . to be so grave[.]” *Helling*, 509 U.S. at 36, likewise results in the inexorable conclusion that COVID-19 poses a serious risk of harm to Plaintiffs. The declarations of emergency from nearly every level of government is strong evidence COVID-19 is a risk that society considers to be grave. In declaring a national emergency on March 13, 2020, President Trump proclaimed that “[t]he spread of COVID-19 within our Nation’s communities threatens to strain our Nation’s healthcare systems.”⁶⁵ Governor Polis issued an Executive Order stating in explicit terms the serious danger: “The potential spread of COVID-19 in facilities and prisons poses a significant threat to prisoners and staff who work in facilities and prisons[.]”⁶⁶

Plaintiffs are particularly vulnerable given their COVID-19 co-morbidities. COVID-19 poses a significantly heightened risk of harm to those with underlying health conditions and those over 55 years old. All Plaintiffs fall into one of these categories, and

⁶⁴ Rage Against the Machine, *Ashes In The Fall* (Epic Records 1999) (“Ain’t it funny how the factory doors close? ‘Round the time that the school doors close? ‘Round the time that a hundred thousand jail cells open up to greet you just like the reaper?”).

⁶⁵ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), available at <https://www.whitehouse.gov/presidentialactions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last visited Apr. 3, 2020).

⁶⁶ State of Colorado, Executive Order D 2020 016, March 25, 2020, at pg. 1, available at <https://drive.google.com/file/d/18o0yWHzZleHJ87hmgLuBmXwpM8R74Q5x/view> (last visited Apr. 3, 2020).

a large number fall into both. Simply put, to them, COVID-19 poses a threat of death.

Plata v. Brown, No. C01-1351 TEH, 2013 U.S. Dist. LEXIS 90669, 2013 WL 3200587, at *10 (N.D. Cal. June 24, 2013) (holding that "it would be impossible to conclude that a disease that, in its severe form, could lead to death does not present a risk of serious harm.").

For these and other reasons, courts roundly agree that COVID-19 poses a risk of serious harm. The Court in *Basank* pointed to “[a] number of courts in this district and elsewhere [that] have recognized the threat that COVID-19 poses to individuals held in jails and other detention facilities.” 2020 WL 1481503, *3 (citing *Stephens*, 2020 WL 1295155, at *2; *United States v. Garlock*, No. 18-cr-418 (VC), 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020)). The New Jersey Supreme Court, in approving an order resulting in the release of around 1,000 people from New Jersey jails to allow for proper physical distancing within the facility, described “the profound risk posed to people in correctional facilities arising from the spread of COVID19.” *In the Matter of the Request to Commute or Suspend County Jail Sentences*, Case No. 84230 (N.J. March 22, 2020).

Finally, this Court also need look no further than the consensus among federal courts that exposure to tuberculosis — a less severe disease, at least in terms of mortality rate⁶⁷ — is a “serious harm” for Eighth Amendment purposes. *See, e.g., Jeffries v. Block*, 940 F. Supp. 1509, 1514 (C.D. Cal. 1996) (citing the determination of the California Legislature that “tuberculosis is a serious contagious disease, which presents a serious risk to inmate health”); *cf. Brown v. District of Columbia*, 514 F.3d 1279, 1285 (D.C. Cir.

⁶⁷ Studies suggest “a TB-related mortality rate of 2.1% [in the United States], which was comparable to studies in Canada.” Chou-Han Lin, Tuberculosis Mortality: Patient Characteristics and Causes, 14 BMC INFECTIOUS DISEASES (2014).

2008) (concluding, under the slightly different deliberate indifference to “serious medical needs” test, that gallstones were “easily” in the “category of serious medical needs,” a point conceded by the District of Columbia). Taken together, the evidence in the record, and evidence of which the Court can and should take judicial notice, supports the conclusion that COVID-19 is a serious harm.

5.1(a)(3) Defendant knows of, and has disregarded, a significant risk to Plaintiffs health and safety.

To succeed on the second prong of the Eighth Amendment test, Plaintiffs and proposed class members must show that Defendant acted with deliberate indifference to the risk posed. *See Helling*, 509 U.S. at 33-35. Plaintiffs may do so by showing that the identified risk was “longstanding, pervasive, well-documented, or expressly noted by prison officials in the past.” *Farmer*, 511 U.S. at 842. Plaintiffs must show both that (1) the defendant “knows of” the identified risk, and (2) the defendant “disregards an excessive risk to inmate health or safety.” Both prongs are satisfied here.

There is overwhelming evidence that Defendant “knew of a substantial risk” posed by COVID-19. Defendant has posted on social media that “it wasn’t a matter of ‘if’ members of the Sheriff’s Office would potentially contract the virus but instead, ‘when.’”⁶⁸ The ACLU of Colorado sent a letter to Defendant over a week ago

⁶⁸ @SteveReamsForWeldCountySheriff, Facebook (Apr. 1, 2020 1:49 PM), https://www.facebook.com/SteveReamsForWeldCountySheriff/photos/a.162406763936394/1531739390336451/?type=3&_xts=%5B0%5D=68.ARBZ4io1hdRZJoR8kRHrYm1gd48VFAE11q5vApXPwdEbwFJuO_Xnb3c6C0xf_K7l9-EtahdydbF0SDNsmquaCqmIx8X2VejTEk3vTgqxJiR3bbS6bXNYU2rq2lgQoL6stJqQ3FnMt46gehk67JDRU7FqiPQ8H3vAbofmwIURGyH_7cqbmlT6OcltdlluyJ8DrwA-8G4lMRRW7_fj2j6rJZSt5CjZw7S4rb8o_AIz-580nZbBsbgp3Q63WSQkOpqPUne2prkqWjepsWhp9a9K8UgK4BxhqYYJ3t78twjsXpdQsmGwEh0nFUrjLKu9zFQvZMuPlOqqot1Ly-6jhTZSc2nfHw&_tn=-R

demonstrating the extreme risk that COVID-19 posed to the vulnerable inmates in his jail.⁶⁹

Additionally, Governor Polis issued an Executive Order a week ago that put Defendant on notice of the risk posed: “The potential spread of COVID-19 in facilities and prisons poses a significant threat to prisoners and staff who work in facilities and prisons[.]”⁷⁰ Defendant certainly read this order, as he posted about it on social media (while also stating that he had not “closed the Weld County Jail nor have I started releasing prisoners because of the Covid 19 virus; and I don’t intend to do so”).⁷¹ Defendant can hardly make a credible claim that he is unaware of the risk posed by COVID-19 to correctional facilities when the Governor of this state directly outlined it.

Moreover, courts have held that medical guidelines, and specifically CDC⁷² guidance, are persuasive authority of deliberate indifference. The CDC has released guidance⁷³ outlining specific steps that Defendant has steadfastly refused to take. For

⁶⁹ Letter To Colorado Sheriffs Regarding COVID-19, ACLU OF COLORADO (March 26, 2020), <https://acluco-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/COVID-19-Sheriff-Letter-3-26-2020.pdf>

⁷⁰ State of Colorado, Executive Order D 2020 016, March 25, 2020, at pg. 1, available at <https://drive.google.com/file/d/18o0yWHzZleHJ87hmgLuBmXwpM8R74Q5x/view> (last visited Apr. 3, 2020).

⁷¹ @SteveReamsForWeldCountySheriff, Facebook (Mar. 24, 2020 1:49 PM), <https://www.facebook.com/SteveReamsForWeldCountySheriff/posts/1524469844396739?tn=-R>

⁷² The Court can, and should, take judicial notice of the CDC guidance regarding COVID-19. *See Wright v. Hayden*, No. 5:08CV-179-R, 2009 U.S. Dist. LEXIS 26399, at *7 n.1 (W.D. Ky. Mar. 31, 2009) (taking judicial notice of the CDC guidelines for the transmission of HIV); *Seddens v. McGinnis*, No. 91-1500, 1992 U.S. App. LEXIS 17945 (7th Cir. July 24, 1992) (taking judicial notice of “recent federal publications stating that AIDS cannot be transmitted through non-sexual social contact”).

⁷³ Coronavirus Disease 2019 (COVID-19), Social Distancing, Quarantine, and Isolation, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social->

example, in *Ferguson v. Bd. of Cty. Comm'rs*, the court relied on CDC information that “MRSA is contagious, spread by having contact with individuals or objects touched by infected individuals, and is ‘most likely to be spread where people are in close contact with others’” in holding that plaintiffs properly alleged claims for unconstitutional conditions of confinement when they stated they were held in a cell with high levels of MRSA. No. CV 11-1001 WPL/CG, 2013 U.S. Dist. LEXIS 202824, at *54 (D.N.M. Apr. 2, 2013).⁷⁴ And, the Tenth Circuit, *Mata v. Saiz*, held that “[w]hile published requirements for health care do not create constitutional rights, such protocols certainly provide circumstantial evidence that a prison health care [worker] knew of a substantial risk of serious harm.” 427 F.3d 745, 757-59 (10th Cir. 2005) (citing *Howell v. Evans*, 922 F.2d 712, 719 (11th Cir. 1991) (stating that “contemporary standards and opinions of the medical profession also are highly relevant in determining what constitutes deliberate indifference to medical care.”). The Tenth Circuit relied on established medical guidelines in holding that plaintiff had demonstrated evidence of deliberate indifference to his serious medical needs. *Id.* at 758-59.

Moreover, in *Hernandez v. Cty. of Monterey*, the Court relied on CDC guidelines in granting a preliminary injunction based on a jail’s failure to adequately stop the spread of tuberculosis in its facility. 110 F. Supp. 3d 929, 943 (N.D. Cal. 2015). In so holding, the Court stated that “known noncompliance with generally accepted guidelines for

[distancing.html](#) (last visited Apr. 6, 2020) (stating that “[l]imiting face-to-face contact with other is the best way to reduce the spread of coronavirus disease 2019 (COVID-19)”).

⁷⁴ The court cited to: *MRSA Infections: Causes of MRSA Infections*, CENTERS FOR DISEASE CONTROL AND PREVENTION (August 9, 2010), <http://www.cdc.gov/mrsa/causes/index.html>.

inmate health” such as the CDC guidelines related to tuberculosis, “strongly indicates deliberate indifference to a substantial risk of serious harm” and, therefore, “[a]t least since the CDC released its guidelines.... Defendants’ policies and practices fell below the constitutional standard of care [because] Defendants have known about the risks of harm but have not changed their practices.” *Id.*

Further, the same acts underlying Defendant’s failure to act here have been found to constitute deliberate indifference in similar cases. Again, in *Ferguson*, the court held that the plaintiffs properly alleged that the jail officials knew of the presence of MRSA (and plaintiffs complained about it) and the jail officials took no actions to limit the plaintiffs’ exposure, showing deliberate indifference to a serious medical need. 2013 U.S. Dist. LEXIS 202824, at *20-21. In doing so, the court concluded that “the right to be free from confinement in a cell with other inmates known to be carrying contagious, harmful diseases” was clearly established. *Id.* at *54-55. Additionally, in *Feliciano v. Gonzales*, 13 F. Supp. 2d 151 (D.P.R. 1998), the Court found that the defendant’s “inability . . . to properly isolate cases of active tuberculosis,” the “insufficient medical dormitory beds,” the failure to “fully screen incoming inmates,” and the failure to “provide for a sick call system that ensures access to care and that is capable of effectively handling emergencies” constituted deliberate indifference. *Id.* at 208–09.

In other cases, the defendant’s inability to “adequately quarantine or remove inmates and support staff known to have active tuberculosis” was found to constitute deliberate indifference. See *Shimon v. Dep’t of Corr. Servs. for N.Y.*, No. 93-cv-3144 (DC), 1996 WL 15688, at *1 (S.D.N.Y. Jan. 17, 1996); see also *Hernandez*, 110 F. Supp. 3d at 943. And in *Joy v. Healthcare CMS*, the Court found that the plaintiffs stated a

claim under the Eighth Amendment where the warden “was aware that inmates were not thoroughly screened for disease before going into general population and that Correctional Medical Services does not have a policy in place to examine inmates before placing them into general population.” 534 F. Supp. 2d 485 (D. Del. 2008). As discussed above, the record is replete with Defendant’s deficient performance in all of these categories, including a failed quarantine policy, rampant medical delays, and ineffective screening procedures.

Furthermore, Defendant is not spared liability by claiming that he is not aware of the risk of COVID-19 to specific individual residents. The Supreme Court held in *Farmer*, that it “does not matter,” under the deliberate indifference prong, “whether a prisoner faces an excessive risk of attack for reasons personal to him or because all prisoners in his situation face such a risk.” 511 U.S. at 843. For that proposition, the Supreme Court relied upon *Helling*’s observation “that the Eighth Amendment requires a remedy for exposure of inmates to ‘infectious maladies’ such as hepatitis and venereal disease ‘even though the possible infection might not affect all of those exposed.’” *Id.* at 844 (quoting *Helling*, 509 U.S. at 33).

The record evidence thus shows that Defendant knew, and knows, of the risk of COVID19, but has recklessly disregarded that risk. He has have done so by failing to follow established guidelines for preventing the spread and severity of COVID-19 and by adopting policies, and failing to adopt others, that would mitigate the risk and harm of the virus.

Ultimately, Plaintiffs are sitting in their crowded cells awaiting a death sentence. Defendant is aware of this fact, and he is also aware that the only way to protect the

vulnerable inmates from serious harm is to require physical distancing be implemented in the Weld County Jail. Such a failure to meaningfully act in the face of an unprecedented pandemic that is killing thousands is clear indifference that leaves Plaintiffs—and particularly the vulnerable Plaintiffs for whom emergency relief is sought—at imminent risk of serious harm and death.

5.1(b) The current conditions of the pretrial-detainee Plaintiffs’ confinement amounts to punishment in violation of their Fourteenth Amendment rights.

Plaintiffs and class members who are detained pretrial have due process protections against punishment under the Fourteenth Amendment. Pretrial detainees are presumed innocent, and they are thus “entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.” *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982). “Due process requires that a pretrial detainee not be punished.” *Bell*, 441 U.S. at 535 n.16. Therefore, the Fourteenth Amendment requires the government to do more than provide the “minimal civilized measure of life’s necessities,” *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981), to non-convicted detainees. To assess the constitutionality of pretrial detention conditions that are not alleged to violate any express constitutional guarantee, a district court must determine whether those conditions amount to punishment of the detainee. *Bell*, 441 U.S. at 535; *Pierce*, 526 F.3d at 1205; *Demery*, 378 F.3d at 1029. “[T]he determination of whether a particular condition or restriction imposes punishment in the constitutional sense will generally turn on whether an alternate purpose is reasonably assignable.” *Pierce*, 526 F.3d at 1205. If a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court

permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees. *Bell*, 441 U.S. at 539 (quoting *Kennedy v. Mendoza—Martinez*, 372 U.S. 144 (1963)).

Plaintiffs’ conditions of confinement are not reasonably related to a legitimate, nonpunitive governmental objective. Although ordinarily detention at the Weld County Jail would be reasonably related to the government objective of ensuring their attendance at court dates, “the present conditions of confinement are markedly different. At this point, Petitioners are confined in facilities where they are particularly vulnerable to COVID-19 because of the lack of ability to maintain distance from others[.]” *Coreas v. Bounds*, Civil Action No. TDC-20-0780, 2020 U.S. Dist. LEXIS 59211, at *42 (D. Md. Apr. 3, 2020). “Such conditions imposing a palpable risk of death or serious harm inflict far more serious consequences on them than are justified by the need to hold them[.]” *Id.* Therefore, this Court should hold, just as the Court in *Coreas* held, that “such conditions would bear no reasonable relationship to the purpose for which persons are committed and [] violate due process.” *Id.* (citing *Thakker*, No. 20 C 0480, Dkt. 47).

5.1(c) Plaintiffs are likely to suffer irreparable harm absent the temporary restraining order.⁷⁵

⁷⁵ Plaintiffs do not make hay of the fact that “[w]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary,” *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2948.1 (2d ed. 1995)), because that is such a well-established principle that it does not necessitate significant briefing. *Elrod v. Burns*, 427 U.S. 347); *see also* *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012); *see also* *Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) (holding that “[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm” while affirming grant of preliminary injunction in prison conditions case).

Plaintiffs have moved for emergency interim injunctive relief because they are the most vulnerable inmates in the jail, for whom the difference of even just a few days is a matter of life and death. Cases of COVID-19 have increased exponentially in a matter of weeks. And the virus has already spread to the Weld County Jail. Given the deadliness of the disease and the state's already over-taxed medical system, there is a substantial possibility that, absent immediate relief from the Court, vulnerable inmates within the Weld County Jail will be infected with COVID-19. And these vulnerable Plaintiffs are older adults or people with pre-existing medical conditions that increase the likelihood of severe illness or death if they contract COVID-19. For some of these vulnerable inmates, if they contract "coronavirus they have up to a 20 percent chance of death, greater than the odds of losing a game of Russian roulette." *Coreas*, 2020 U.S. Dist. LEXIS 59211, at *42.

Courts have expressed no hesitation in finding that risk of contracting COVID-19 constitutes irreparable harm where plaintiffs are housed in facilities with a confirmed case of COVID-19. In *Basank*, 2020 WL 1481503, the Court observed that because "[e]ach of the jails where a Petitioner is being housed has reported confirmed cases of COVID-19," the "risk that Petitioners will face a severe, and quite possibly fatal, infection if they remain in . . . detention constitutes irreparable harm warranting a TRO." *Id.* at *4. There are already multiple confirmed cases of COVID-19 among the population at the Weld County Jail, with more sure to come. The Tenth Circuit has held that these life-and-death stakes (where injury is "both certain and great," "serious or substantial[,] of the sort that "cannot be adequately atoned for in money[,] and one that "the district court cannot remedy following a final determination on the merits") are

sufficient to establish a likelihood of irreparable harm in support of injunctive relief.

Prairie Band of Potawatomi Indians v. Pierce, 253 F.3d 1234, 1250 (10th Cir. 2001) (quotations and alterations omitted); *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003) (holding that there is a showing of irreparable harm when the “harm cannot be compensated after the fact by monetary damages”); *see also Padilla v. U.S. Immigration & Customs Enforcement*, 387 F. Supp. 3d 1219, 1231 (W.D. Wash. 2019) (recognizing that “substandard physical conditions, [and] low standards of medical care” in immigration detention constitute irreparable harm justifying injunctive relief); *Indep. Living Cent. of S. California, Inc. v. Shewry*, 543 F.3d 1047, 1050 (9th Cir. 2008) (recognizing that Medi-Cal beneficiaries would suffer irreparable harm where new policy would limit beneficiaries’ access to “much-needed pharmaceuticals”).

Moreover, the Weld County Jail is abjectly failing to test inmates for COVID-19 that present less than all four symptoms of the disease and even the failure to test for a disease has been sufficient to support a finding of irreparable harm. *See Boone v. Brown*, 2005 WL 2006997, at *14 (D.N.J. Aug. 22, 2005) (holding that allegation of refusal to provide adequate testing for highly contagious infectious disease sufficient to demonstrate irreparable harm); *Austin v. Pa. Dep’t of Corr.*, 1992 WL 277511, at *7 (E.D. Pa. Sept. 29, 1992) (granting preliminary injunction for prison to develop testing and protocol for Tuberculosis); *see also Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996) (holding that state officials have an affirmative obligation to protect prisoners from infectious disease). And, the risks here are even more extreme than testing. Weld County’s ongoing failure to provide conditions that allow people in its custody to perform the CDC-mandated protective measures, including physical distancing, not only

risks irreparable harm to Plaintiffs, but nearly guarantees it. *Jones’El*, 164 F. Supp. 2d at 1123 (“[P]ain, suffering and the risk of death constitute irreparable harm sufficient to support a preliminary injunction in prison cases.” (internal quotation marks omitted)). Even for those who survive infection, there may be a prolonged recovery, including the need for extensive rehabilitation, neurological damage, and the loss of respiratory capacity. *Cole v. Collier*, No. 4:14-CV-1698, 2017 U.S. Dist. LEXIS 112095, at *141-42 (S.D. Tex. July 19, 2017) (holding plaintiffs had demonstrated irreparable injury where there was evidence that “[t]hose who experience heat stroke [from a lack of air conditioning in their prison cell] but do not die are at risk of being permanently disabled”).

The Constitution does not require that the vulnerable Plaintiffs wait until they have contracted or been exposed to COVID-19 before obtaining injunctive relief. *Thakker*, No. 20 C 0480, Dkt. 47, at 8 (“Petitioners face the inexorable progression of a global pandemic creeping across our nation—a pandemic to which they are particularly vulnerable to due to age and underlying medical conditions. At this point, it is not a matter of if COVID-19 will enter Pennsylvania prisoners, but when it is finally detected therein.”); *Coronel*, at *5 (“Due to their serious underlying medical conditions, all Petitioners face a risk of severe, irreparable harm if they contract COVID-19.”). Simply put, Plaintiffs’ lives are on the line and the harm they face is clearly irreparable.

5.1(d) The balance of equities favors immediately stopping the spread of COVID-19 among Plaintiffs, and the community.

The balance of equities weighs in favor of ordering that all Weld County inmates be physically distanced from one another, not just the members of the Plaintiff class, until the pressing danger posted by this pandemic has passed. In evaluating this factor, the

Court must “balance the competing claims of injury, which involves considering the effect on each party of the granting or withholding of the requested relief.” *Shvartser v. Lekser*, 308 F. Supp. 3d 260, 267 (D.D.C. 2018). Here, a temporary restraining order and preliminary injunction will not “substantially injure other interested parties.” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). To the contrary, given the nature of COVID-19, not issuing preliminary relief in this case would cause injury to parties beyond the plaintiffs, including Defendant, his staff, and the public at large. As the Central District of California explained in granting a TRO in a similar case:

The balance of the equities tip sharply in favor of the Petitioners. The Petitioners face[] irreparable harm to their constitutional rights and health. Indeed, there is no harm to the Government when a court prevents the Government from engaging in unlawful practices.

Temporary Restraining Order and Order to Show Cause at 10, *Castillo*, No. 20-cv-605. Here too, other than the relatively minimal administrative burden, there is no identifiable “harm” to Defendant. This burden is far outweighed by what is at stake to Plaintiffs and the public if no TRO is issued.

As the district court in *Thakker* noted, “the status quo of a mere few weeks ago no longer applies.” No. 20 C 0480, Dkt. 47, at 24. For the vulnerable inmates seeking relief—inmates with underlying medical conditions who face a particular risk of severe illness and death from exposure to COVID-19, and those who are medically vulnerable because of their age—Plaintiffs’ request is a matter of life and death. The balance of the equities in this case favors life.

5.1(e) There is a strong public interest in stopping the spread of COVID-19, both within the Weld County Jail and the community.

Where, as here, Plaintiffs demonstrate that their constitutional rights have been violated, it follows that granting injunctive relief is in the public interest. ““It is always in the public interest to prevent the violation of a party’s constitutional rights.” *Awad*, 670 F.3d at 1131. That interest alone is sufficient to weigh in favor of injunctive relief.

Here, however, the public has an additional independent and overwhelming interest in preliminary relief that would require Defendant to take action to minimize the spread of COVID19. It is well established that “public health” is a “significant public interest.” *See Grand River Enters. Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 169 (2d Cir. 2005). The public interest in minimizing the spread of COVID-19 is overwhelming and nearly impossible to overstate.

As noted above, COVID-19 is highly contagious and has substantially higher mortality rates than any other disease with its rate of transmission. The disease has no vaccine or cure, meaning that each new infection may result in several more individuals becoming infected. Public health experts have thus unanimously agreed that the most critical actions that can be taken are preventive measures like self-isolating, maintaining a distance of six feet from all other individuals, and frequent disinfection. *See, e.g., Exs. 1 & 2.*

Inmates are thus destined to become vectors of disease, and will inevitably infect several other inmates, Weld County employees, medical staff, and eventually, healthcare workers in the community when critically infected inmates are sent to nearby hospitals to be treated. “The impact of [a temporary restraining order] reaches beyond the parties, carrying with it a potential for public consequences.” *Hernandez*, 872 F.3d at 996 (quotations omitted). An outbreak of COVID-19 could put significant pressure on or

exceed the capacity of local health infrastructure. **Ex. 2.** Ensuring that inmates in the Weld County Jail are physically distanced significantly reduces the health and economic burden on the local community and health infrastructure at large. *Hernandez*, 872 F.3d at 996-97 (“[T]he general public’s interest in efficient allocation of the government’s fiscal resources favors granting [relief]”). Absent swift action by this Court, the results will be devastating for Weld County. Physically distancing inmates within the Weld County Jail is essential to public safety.

5.2 The Court should not require Plaintiffs to provide security prior to issuing a temporary restraining order.

Under Rule 65(c) of the Federal Rules of Civil Procedure, district courts have discretion to determine the amount of the bond accompanying a preliminary injunction, and this includes the authority to set a nominal bond. In this case, the Court should waive bond because Plaintiffs are indigent, the requested interim relief is in the public interest, and the injunction is necessary to vindicate constitutional rights. *See Davis v. Mineta*, 302 F.3d 1104, 1126 (10th Cir. 2002) (“minimal bond amount should be considered” in public interest case); *Pocklington v. O’Leary*, 1986 WL 5748, at *2 (N.D. Ill. May 6, 1986) (“[B]ecause of [a prisoner’s] indigent status, no bond under Rule 65(c) is required.”); *Complete Angler, L.L.C. v. City of Clearwater*, 607 F.Supp.2d 1326, 1335 (M.D. Fla. 2009) (“Waiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right.”).

6. CONCLUSION

For the foregoing reasons, Plaintiffs’ motion for emergency interim relief should be granted in its entirety.

Dated: April 7, 2020

Respectfully submitted,

s/ Andy McNulty

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EXHIBIT 1

Declaration of Dr. Jaimie Meyer

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

I. Background and Qualifications

1. I am Dr. Jaimie Meyer, an Assistant Professor of Medicine at Yale School of Medicine and Assistant Clinical Professor of Nursing at Yale School of Nursing in New Haven, Connecticut. I am board certified in Internal Medicine, Infectious Diseases and Addiction Medicine. I completed my residency in Internal Medicine at NY Presbyterian Hospital at Columbia, New York, in 2008. I completed a fellowship in clinical Infectious Diseases at Yale School of Medicine in 2011 and a fellowship in Interdisciplinary HIV Prevention at the Center for Interdisciplinary Research on AIDS in 2012. I hold a Master of Science in Biostatistics and Epidemiology from Yale School of Public Health.
2. I have worked for over a decade on infectious diseases in the context of jails and prisons. From 2008-2016, I served as the Infectious Disease physician for York Correctional Institution in Niantic, Connecticut, which is the only state jail and prison for women in Connecticut. In that capacity, I was responsible for the management of HIV, Hepatitis C, tuberculosis, and other infectious diseases in the facility. Since then, I have maintained a dedicated HIV clinic in the community for patients returning home from prison and jail. For over a decade, I have been continuously funded by the NIH, industry, and foundations for clinical research on HIV prevention and treatment for people involved in the criminal justice system, including those incarcerated in closed settings (jails and prisons) and in the community under supervision (probation and parole). I have served as an expert consultant on infectious diseases and women's health in jails and prisons for the UN Office on Drugs and Crimes, the Federal Bureau of Prisons, and others. I also served as an expert health witness for the US Commission on Civil Rights Special Briefing on Women in Prison.
3. I have written and published extensively on the topics of infectious diseases among people involved in the criminal justice system including book chapters and articles in leading peer-reviewed journals (including Lancet HIV, JAMA Internal Medicine, American Journal of Public Health, International Journal of Drug Policy) on issues of prevention, diagnosis, and management of HIV, Hepatitis C, and other infectious diseases among people involved in the criminal justice system. In making the following statements, I am not commenting on the particular issues posed this case. Rather, I am making general statements about the realities of persons in detention facilities, jails and prisons.
4. My C.V. includes a full list of my honors, experience, and publications, and it is attached as Exhibit A.
5. I was paid \$1,000 for my time drafting an earlier version of this report filed in another case. I subsequently prepared this version of the report without receiving payment for my services.

6. I have not testified as an expert at trial or by deposition in the past four years.

II. Heightened Risk of Epidemics in Jails and Prisons

7. The risk posed by infectious diseases in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected. There are several reasons this is the case, as delineated further below.
8. Globally, outbreaks of contagious diseases are all too common in closed detention settings and are more common than in the community at large. Prisons and jails are not isolated from communities. Staff, visitors, contractors, and vendors pass between communities and facilities and can bring infectious diseases into facilities. Moreover, rapid turnover of jail and prison populations means that people often cycle between facilities and communities. People often need to be transported to and from facilities to attend court and move between facilities. Prison health is public health.
9. Reduced prevention opportunities: Congregate settings such as jails and prisons allow for rapid spread of infectious diseases that are transmitted person to person, especially those passed by droplets through coughing and sneezing. When people must share dining halls, bathrooms, showers, and other common areas, the opportunities for transmission are greater. When infectious diseases are transmitted from person to person by droplets, the best initial strategy is to practice social distancing. When jailed or imprisoned, people have much less of an opportunity to protect themselves by social distancing than they would in the community. Spaces within jails and prisons are often also poorly ventilated, which promotes highly efficient spread of diseases through droplets. Placing someone in such a setting therefore dramatically reduces their ability to protect themselves from being exposed to and acquiring infectious diseases.
10. Disciplinary segregation or solitary confinement is not an effective disease containment strategy. Beyond the known detrimental mental health effects of solitary confinement, isolation of people who are ill in solitary confinement results in decreased medical attention and increased risk of death. Isolation of people who are ill using solitary confinement also is an ineffective way to prevent transmission of the virus through droplets to others because, except in specialized negative pressure rooms (rarely in medical units if available at all), air continues to flow outward from rooms to the rest of the facility. Risk of exposure is thus increased to other people in prison and staff.
11. Reduced prevention opportunities: During an infectious disease outbreak, people can protect themselves by washing hands. Jails and prisons do not provide adequate opportunities to exercise necessary hygiene measures, such as frequent handwashing or use of alcohol-based sanitizers when handwashing is unavailable. Jails and prisons are often under-resourced and ill-equipped with sufficient hand soap and alcohol-based sanitizers for people detained in and working in these settings. High-touch surfaces (doorknobs, light switches, etc.) should also be cleaned and disinfected regularly with bleach to prevent virus spread, but this is often not done in jails and prisons because of a

lack of cleaning supplies and lack of people available to perform necessary cleaning procedures.

12. Reduced prevention opportunities: During an infectious disease outbreak, a containment strategy requires people who are ill with symptoms to be isolated and that caregivers have access to personal protective equipment, including gloves, masks, gowns, and eye shields. Jails and prisons are often under-resourced and ill-equipped to provide sufficient personal protective equipment for people who are incarcerated and caregiving staff, increasing the risk for everyone in the facility of a widespread outbreak.
13. Increased susceptibility: People incarcerated in jails and prisons are more susceptible to acquiring and experiencing complications from infectious diseases than the population in the community.¹ This is because people in jails and prisons are more likely than people in the community to have chronic underlying health conditions, including diabetes, heart disease, chronic lung disease, chronic liver disease, and lower immune systems from HIV.
14. Jails and prisons are often poorly equipped to diagnose and manage infectious disease outbreaks. Some jails and prisons lack onsite medical facilities or 24-hour medical care. The medical facilities at jails and prisons are almost never sufficiently equipped to handle large outbreaks of infectious diseases. To prevent transmission of droplet-borne infectious diseases, people who are infected and ill need to be isolated in specialized airborne negative pressure rooms. Most jails and prisons have few negative pressure rooms if any, and these may be already in use by people with other conditions (including tuberculosis or influenza). Resources will become exhausted rapidly and any beds available will soon be at capacity. This makes both containing the illness and caring for those who have become infected much more difficult.
15. Jails and prisons lack access to vital community resources to diagnose and manage infectious diseases. Jails and prisons do not have access to community health resources that can be crucial in identifying and managing widespread outbreaks of infectious diseases. This includes access to testing equipment, laboratories, and medications.
16. Jails and prisons often need to rely on outside facilities (hospitals, emergency departments) to provide intensive medical care given that the level of care they can provide in the facility itself is typically relatively limited. During an epidemic, this will not be possible, as those outside facilities will likely be at or over capacity themselves.
17. Health safety: As an outbreak spreads through jails, prisons, and communities, medical personnel become sick and do not show up to work. Absenteeism means that facilities can become dangerously understaffed with healthcare providers. This increases a number of risks and can dramatically reduce the level of care provided. As health systems inside facilities are taxed, people with chronic underlying physical and mental health conditions and serious medical needs may not be able to receive the care they need for these

¹ *Active case finding for communicable diseases in prisons*, 391 The Lancet 2186 (2018), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31251-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31251-0/fulltext).

conditions. As supply chains become disrupted during a global pandemic, the availability of medicines and food may be limited.

18. Safety and security: As an outbreak spreads through jails, prisons, and communities, correctional officers and other security personnel become sick and do not show up to work. Absenteeism poses substantial safety and security risk to both the people inside the facilities and the public.
19. These risks have all been borne out during past epidemics of influenza in jails and prisons. For example, in 2012, the CDC reported an outbreak of influenza in 2 facilities in Maine, resulting in two inmate deaths.² Subsequent CDC investigation of 995 inmates and 235 staff members across the 2 facilities discovered insufficient supplies of influenza vaccine and antiviral drugs for treatment of people who were ill and prophylaxis for people who were exposed. During the H1N1-strain flu outbreak in 2009 (known as the “swine flu”), jails and prisons experienced a disproportionately high number of cases.³ Even facilities on “quarantine” continued to accept new intakes, rendering the quarantine incomplete. These scenarios occurred in the “best case” of influenza, a viral infection for which there was an effective and available vaccine and antiviral medications, unlike COVID-19, for which there is currently neither.

III. Profile of COVID-19 as an Infectious Disease⁴

20. The novel coronavirus, officially known as SARS-CoV-2, causes a disease known as COVID-19. The virus is thought to pass from person to person primarily through respiratory droplets (by coughing or sneezing) but may also survive on inanimate surfaces. People seem to be most able to transmit the virus to others when they are sickest but it is possible that people can transmit the virus before they start to show symptoms or for weeks after their symptoms resolve. In China, where COVID-19 originated, the average infected person passed the virus on to 2-3 other people; transmission occurred at a distance of 3-6 feet. Not only is the virus very efficient at being transmitted through droplets, everyone is at risk of infection because our immune systems have never been exposed to or developed protective responses against this virus. A vaccine is currently in development but will likely not be able for another year to the

² *Influenza Outbreaks at Two Correctional Facilities — Maine, March 2011*, Centers for Disease Control and Prevention (2012),

<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6113a3.htm>.

³ David M. Reutter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, Prison Legal News (Feb. 15, 2010), <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>.

⁴ This whole section draws from Brooks J. Global Epidemiology and Prevention of COVID19, COVID-19 Symposium, Conference on Retroviruses and Opportunistic Infections (CROI), virtual (March 10, 2020); *Coronavirus (COVID-19)*, Centers for Disease Control, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>; Brent Gibson, *COVID-19 (Coronavirus): What You Need to Know in Corrections*, National Commission on Correctional Health Care (February 28, 2020), <https://www.ncchc.org/blog/covid-19-coronavirus-what-you-need-to-know-in-corrections>.

general public. Antiviral medications are currently in testing but not yet FDA-approved, so only available for compassionate use from the manufacturer. People in prison and jail will likely have even less access to these novel health strategies as they become available.

21. Most people (80%) who become infected with COVID-19 will develop a mild upper respiratory infection but emerging data from China suggests serious illness occurs in up to 16% of cases, including death.⁵ Serious illness and death is most common among people with underlying chronic health conditions, like heart disease, lung disease, liver disease, and diabetes, and older age.⁶ Death in COVID-19 infection is usually due to pneumonia and sepsis. The emergence of COVID-19 during influenza season means that people are also at risk from serious illness and death due to influenza, especially when they have not received the influenza vaccine or the pneumonia vaccine.
22. The care of people who are infected with COVID-19 depends on how seriously they are ill.⁷ People with mild symptoms may not require hospitalization but may continue to be closely monitored at home. People with moderate symptoms may require hospitalization for supportive care, including intravenous fluids and supplemental oxygen. People with severe symptoms may require ventilation and intravenous antibiotics. Public health officials anticipate that hospital settings will likely be overwhelmed and beyond capacity to provide this type of intensive care as COVID-19 becomes more widespread in communities.
23. COVID-19 prevention strategies include containment and mitigation. Containment requires intensive hand washing practices, decontamination and aggressive cleaning of surfaces, and identifying and isolating people who are ill or who have had contact with people who are ill, including the use of personal protective equipment. Jails and prisons are totally under-resourced to meet the demand for any of these strategies. As infectious diseases spread in the community, public health demands mitigation strategies, which involves social distancing and closing other communal spaces (schools, workplaces, etc.) to protect those most vulnerable to disease. Jails and prisons are unable to adequately provide social distancing or meet mitigation recommendations as described above.
24. The time to act is now. Data from other settings demonstrate what happens when jails and prisons are unprepared for COVID-19. News outlets reported that Iran temporarily

⁵ *Coronavirus Disease 2019 (COVID-19): Situation Summary*, Centers for Disease Control and Prevention (March 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

⁶ *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*. The Lancet (published online March 11, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext)

⁷ *Coronavirus Disease 2019 (COVID-19): Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease*, Centers for Disease Control and Prevention (March 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

released 70,000 prisoners when COVID-19 started to sweep its facilities.⁸ To date, few state or federal prison systems have adequate (or any) pandemic preparedness plans in place.⁹ Systems are challenged to respond to COVID-19 guidelines that are modified on a near-daily basis. It may be impossible to adequately respond to the COVID-19 pandemic, while also respecting the rights and dignity of people who are incarcerated.

IV. Possible Risks of COVID-19 in ICE Detention Facilities

25. Based on my experience working on public health in jails and prisons, I can make the following general statements about how the COVID-19 outbreak will interact with and exacerbate conditions that may exist in some detention centers.
26. Any delays in access to care that already exist in normal circumstances will only become worse during an outbreak, making it especially difficult for the facilities to contain any infections and to treat those who are infected.
27. Failure to provide individuals with continuation of the treatment they were receiving in the community, or even just interruption of treatment, for chronic underlying health conditions will result in increased risk of morbidity and mortality related to these chronic conditions.
28. Failure to provide individuals adequate medical care for their underlying chronic health conditions results in increased risk of COVID-19 infection and increased risk of infection-related morbidity and mortality if they do become infected.
29. People with underlying chronic mental health conditions need adequate access to treatment for these conditions throughout their period of detention. Failure to provide adequate mental health care, as may happen when health systems in jails and prisons are taxed by COVID-19 outbreaks, may result in poor health outcomes. Moreover, mental health conditions may be exacerbated by the stress of incarceration during the COVID-19 pandemic, including isolation and lack of visitation.
30. Failure to keep accurate and sufficient medical records will make it more difficult for facilities to identify vulnerable individuals in order to both monitor their health and protect them from infection. Inadequate screening and testing procedures in facilities increase the widespread COVID-19 transmission.
31. Language barriers will similarly prevent the effective identification of individuals who are particularly vulnerable or may have symptoms of COVID-19. Similarly, the failure to

⁸ *Iran temporarily releases 70,000 prisoners as coronavirus cases surge*, Reuters (March 9, 2020), <https://www.reuters.com/article/us-health-coronavirus-iran/iran-temporarily-releases-70000-prisoners-as-coronavirus-cases-surge-idUSKBN20W1E5>.

⁹ Luke Barr & Christina Carrega, *State prisons prepare for coronavirus but federal prisons not providing significant guidance, sources say*, ABC News (March 11, 2020), <https://abcnews.go.com/US/state-prisons-prepare-coronavirus-federal-prisons-providing-significant/story?id=69433690>.

provide necessary aids to individuals who have auditory or visual disabilities could also limit the ability to identify and monitor symptoms of COVID-19.

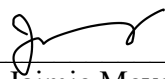
32. Facilities with a track record of neglecting individuals with acute pain and serious health needs under ordinary circumstances are more likely to be ill-equipped to identify, monitor, and treat a COVID-19 epidemic.
33. Similarly, facilities with a track record of failing to adequately manage single individuals in need of emergency care are more likely to be seriously ill-equipped and under-prepared when a number of people will need urgent care simultaneously, as would occur during a COVID-19 epidemic.
34. For individuals in facilities that have experienced these problems in the past, the experience of an epidemic and the lack of care while effectively trapped can itself be traumatizing, compounding the trauma of incarceration.

V. Conclusion and Recommendations

35. Reducing the size of the population in jails and prisons can be crucially important to reducing the level of risk both for those within those facilities and for the community at large. As such, from a public health perspective, it is my recommendation that individuals who can safely and appropriately remain in the community not be placed in ICE detention facilities at this time. I also recommend that individuals who are already in these facilities should be evaluated for release.
36. This is more important still for individuals with preexisting conditions (e.g., heart disease, chronic lung disease, chronic liver disease, suppressed immune system, diabetes) or who are over the age of 65.
37. Health in jails and prisons is community health. Protecting the health of individuals who are detained in and work in these facilities is vital to protecting the health of the wider community.

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

March 23, 2020
New Haven, Connecticut



Dr. Jaimie Meyer

EXHIBIT 2



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Anschutz Medical Campus

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April 7, 2020

To Judicial Officer overseeing COVID-19 Litigation against Weld County:

The Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) is a newly emerging zoonotic agent initially identified in December 2019 that causes the Coronavirus Disease 2019 (COVID-19), formerly known as the 2019 novel Coronavirus (2019nCoV). Infection with COVID-19 is associated with significant morbidity and mortality, especially in patients with chronic medical conditions and those 55 years of age and older. Based on a recently published systematic review of the literature, of which I am a co-author, at least one-fifth of infected cases required supportive care in medical intensive care units. Equally concerning is the fact that despite the implementation of optimal supportive interventions, case fatality rate among hospitalized patients is higher than 10 percent.

As an infectious disease clinician with a public health degree in the dynamics of infectious disease epidemics and pandemics, I am concerned about the inevitable spread of COVID-19 in jails, prisons, community corrections facilities, and juvenile detention centers. The conditions in these facilities do not allow for appropriate infection control protocols and will make the current COVID-19 pandemic worse. Incarcerated populations have higher rates of underlying illness and, by extension, will have a higher case fatality rate. It is now clear that asymptomatic individuals can spread this infection. With staff traveling between their homes and the facilities, and newly arrested individuals brought in as others are released, containment of the virus is not possible. This epidemic has the potential to become the Coming Prison Plague.

Experience

Over my 20 years of experience as an infectious disease clinician, I have provided care at outpatient clinics and during inpatient consultation services in infectious diseases to a large number of patients residing in jail and prison populations. I have witnessed firsthand the impact of COVID-19 at my institution providing direct care to at least 40 patients with this infection, with many requiring intensive care management and often developing respiratory failure necessitating mechanical ventilator support.

Based on my conversations with patients, my own observations, and information that exists regarding the resources available within jail, prison, community corrections, and juvenile

detention facilities, it is my professional opinion that the medical care available cannot properly accommodate the needs of patients should there be an outbreak of COVID-19 in these facilities.

People who are considered at high risk of severe illness and death should they be infected with the coronavirus include the following:

- People age 55 or older
- Anyone diagnosed with cancer, autoimmune disease (including lupus, rheumatoid arthritis, psoriasis, Sjogren's, Crohn's), chronic lung disease (including asthma, COPD, bronchiectasis, idiopathic pulmonary fibrosis), history of cardiovascular disease (MI), chronic arthritis (rheumatoid, psoriatic), chronic liver or kidney disease, diabetes, hypertension, heart failure, HIV, on chronic steroids or other immunosuppressant medications for chronic conditions
- People with a history of smoking or other substance use disorders
- Pregnant women

I can also certify that incarcerated individuals have a higher prevalence of chronic medical conditions that place them at high risk of developing severe coronavirus disease and potentially dying from this infection. Some of these medical conditions include HIV/AIDS, uncontrolled diabetes mellitus, chronic obstructive pulmonary disease, and other conditions.

Increasing Number of COVID-19 Cases and Deaths in the U.S.

Every U.S. state is dealing with COVID-19 cases and the number of deaths continue to pile up. Since March 16, 2020, the epidemiologic curve demonstrates a logarithmic increase in the number of cases with many major epicenters of transmission as it has occurred in the Pacific Northwest, New York, New Jersey, Florida, California, and Louisiana. As of today, there are approximately 170,000 cases and 3,200 deaths demonstrating that community-based transmission clearly continues to occurⁱ.

False Negative Rate in COVID-19 Testing

There is currently an enormous emphasis on testing symptomatic individuals for COVID-19 (despite knowing that most transmission during this pandemic occurs among undetected infection including many infected and shedding the virus but not having any symptoms). This is appropriate, but there is a lack of attention to the sensitivity and specificity of these tests, which is variable based on the type of test itself (private lab, university, WHO, etc.). Sensitivity of the RT-PCR tests is estimated to be anywhere from ~70-85% ⁱⁱ. As an example,

this means that out of 100 people who do have COVID-19, anywhere from 15 to 30 people will have a negative (or normal) test. Reliance on the testing results alone will therefore miss many infected and contagious patients.

R₀ is higher in Colorado than the National Rate

National data suggests the R₀ (“R-naught”), or number of people each infected person will also infect, of COVID-19 to be 2.3. Data from Colorado shows the state R₀ to be higher, at 3-4ⁱⁱⁱ. This means that for every individual in the state that is infected with COVID-19, they will infect 3-4 other people. This R₀ is responsible for the exponential rise of infection both in Colorado and nationally.

There is reason to believe that the R₀ within a jail, prison, community corrections, or juvenile detention center will be higher than in the general community given the congregate nature of these facilities and inability to maintain social distancing and hygiene protocols. A recent study of COVID-19 on a cruise ship (which provided private rooms and bathrooms, delivered meals, and less congregation than a carceral setting) modeled an R₀ of 14.8, without isolation and quarantine measures.^{iv}

Younger People Seriously Affected by COVID-19

CDPHE data through March 29, 2020, indicates that over one-third of cases are people under the age of 40 and over one-half of cases are people under the age of 50^v. According to the CDC, in the United States, about 38% of coronavirus patients sick enough to be hospitalized were ages 20 to 54^{vi}. As of March 30, 2020, UCHHealth reported that many of the people in its ICU are in their 40s and 50s, and the youngest is 19 years old. Many of these patients have no serious underlying health conditions^{vii}. On March 30, 2020, Colorado reported its first two (2) deaths of people in their 40s from COVID-19^{viii}.

Ongoing Concerns Regarding Hospital Capacity

There are ongoing concerns about the medical system’s ability to manage the expected surge of COVID-19 patients in the general community. As of March 27, 2020, Denver Health had 54 intensive care unit (ICU) beds, with the capacity to expand to over 150 ICU beds. It is reported that Denver Health already has over 50 patients with COVID-19 in its acute care ward and its ICU, with about a dozen individuals already on ventilators^{ix}. As of March 30, 2020, the UCHHealth ICU at the Anschutz campus has 72 patients with COVID-19, 37 of whom are critically ill and 33 of whom are on ventilators. This is more than double the number of patients typically in UCHHealth’s ICU^x. An outbreak of COVID-19 in a jail, prison, community

corrections, or juvenile detention facility would be catastrophic and further burden hospitals already likely to be overwhelmed and under-resourced.

Therefore, a large outbreak in a jail or prison facility would put a tremendous strain on the medical system in Colorado to the detriment of patients across the region. It is reasonable to anticipate that there will be the loss of additional lives that could have otherwise been saved.

Risk Factors Present in Jails, Prisons, and Juvenile Detention Centers

Detention and incarceration of any kind requires large groups of people to be held together in a confined space and creates the worst type of setting for curbing the spread of a highly contagious infection such as COVID-19. To contain the spread of the disease, infection prevention protocols must be meticulously followed. These infection prevention protocols include “social distancing” measures, where individuals maintain a distance of at least six feet from each other, and frequent hand-washing and other good hygiene practices. These protocols apply to both incarcerated and non-incarcerated individuals. In a carceral setting, these protocols would require, for example, that individuals sleep one person per cell, rather than in bunk beds. These protocols are necessary to prevent spread of COVID-19 among otherwise healthy people, and are imperative for high-risk individuals.

The number of private rooms in a typical jail, prison, or juvenile detention facility is insufficient to comply with the recommended airborne/droplet isolation guidelines. Another important consideration that complicates disinfection and decontamination practices is the ability of this novel coronavirus to survive for extended periods of time on materials that are highly prevalent in secure settings, such as metals and other non-porous surfaces. Current outbreak protocols require frequent disinfection and decontamination of all surfaces of the facility, which is exceedingly difficult given the large number of incarcerated individuals, frequent interactions between incarcerated individuals and staff, and regularity with which staff move in and out of each facility. Again, it is critical to understand that even asymptomatic individuals can spread virus to others. Therefore, merely screening those with symptoms is inadequate to keep COVID-19 out of jail and prison facilities.

Responding to this outbreak calls for highly trained staff to correctly institute and enforce isolation and quarantine procedures and have training on the appropriate utilization of personal protective equipment. It is essential that nursing and medical staff be trained in infection control practices, implementing triage protocols, and the medical management of suspected, probable and confirmed cases of coronavirus infection. These same personnel would have to initiate the management of those with severe disease. Since these are closed facilities, the number of exposed, infected, and ill individuals may rapidly overwhelm staff and resources. As a result, many patients would need transfer to hospitals near these

facilities, likely overwhelming the surrounding healthcare systems, which are already functioning at full capacity caring for the general non-incarcerated community.

Likely Outcome if COVID-19 Spreads in Jails, Prisons, and Juvenile Detention

Given the high population density of jails, prisons, and juvenile detention centers, and the ease of transmission of this viral pathogen, the infection rate will be exponential if even a single person, with or without symptoms, that is shedding the virus enters a facility. For every person with the virus, they will infect more than 2 other people – whether they be incarcerated individuals or staff. Of those infected, one-fifth will get so ill that they require hospital admission, and about 10% will develop severe disease requiring treatment only available in the intensive care unit. To illustrate the magnitude of this threat, a jail or prison that holds 1500 individuals can anticipate that 500-650 individuals may acquire the infection. Of these, 100 to 150 individuals may develop severe disease requiring admission to the hospital, potentially to an intensive care unit. Of these, 10-15 individuals may die from respiratory failure. The cost of care in the intensive care unit is on the order of \$5,000 to \$8,000 dollars per day, and often more for those requiring mechanical ventilation.

The current outbreak of the novel coronavirus (SARS-Co-2) at Cook County jail highlights the ease of transmission of COVID-19 behind walls of prisons, jails, and juvenile detention centers. There is sufficient experience with this pandemic demonstrating that congested living conditions facilitate the spread of this infection.

Risk Minimization through Release from Jails, Prisons, and Juvenile Detention

Reducing the number of incarcerated individuals is necessary for effective infection control and sanitization practices that could dramatically reduce the burden COVID-19 will inevitably place on our health system. Urgent action is needed given the predicted shortage of medical supplies such as personal protective equipment, shortage of staff as medical personnel become ill themselves, and limited life-saving resources such as ventilators.

As COVID-19 spreads, it cannot be assumed that it would be a better public health strategy to keep individuals in jail rather than release them to home confinement because are likely already infected. First, for the reasons previously discussed, COVID-19 will spread faster in a carceral facility than if individuals were able to isolate or recuperate in a more private or residential setting. Second, any increase in incarcerated individuals with COVID-19 also increases the concern that a large number of staff will become infected. A study of COVID-19 healthcare workers in Italy found that 20% of responding healthcare workers became infected^{xi}. During the SARS outbreak, 21% of worldwide cases were among healthcare workers^{xii}. Third, attempts to prevent the spread of COVID-19 in a jail or prison setting through “lockdowns”, or extreme isolation of all incarcerated individuals, raises other public health concerns, including exacerbation of mental illness. Restrictions on movement or a

reduction in opportunities for interaction with visitors or recreation, for example, can be expected to have a deleterious effect on individuals' mental and physical well-being. Additionally, incarcerated individuals may fail to report COVID-19 symptoms for fear of being further isolated or confined.

Conclusion

I have been informed that the Weld County jail has at least four detention employees and one inmate with confirmed positive tests for COVID-19, as well as a number of other inmates quarantined with symptoms. Correctional facilities and detention centers are not designed to contain the spread of a highly contagious disease or to treat those with significant illness. It is likely that there will be high numbers of ill incarcerated individuals, as well as the staff critical to these facilities. The broader health system does not have the capacity to handle a wave of critically ill patients coming from jails and prisons in addition to the expected community outbreak.

Outbreaks of highly transmissible pathogens thrive in large crowds. The prompt transfer of individuals with medical conditions at risk of severe disease and death due to coronavirus infection, and prompt reduction in incarcerated populations overall, is necessary to reduce the impact of this outbreak.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Franco-Paredes", enclosed within a circular stamp or seal.

Carlos Franco-Paredes, MD, MPH, DTMH (Gorgas)
Associate Professor of Medicine
Division of Infectious Diseases
Department of Medicine
Division of infectious Diseases
Program Director Infectious Disease Fellowship
Training Program, University of Colorado

ⁱ <https://coronavirus.jhu.edu/map.html> [accessed March 31, 2020]

ⁱⁱ <https://www.washingtonpost.com/science/2020/03/26/negative-coronavirus-test-result-doesnt-always-mean-you-arent-infected/>

iii <https://drive.google.com/file/d/1HyMnlikxmjoR8mpCD7OwXMMVwYUSuzxp/view> [accessed March 30, 2020]

iv J. Rocklöv et al., "COVID-19 outbreak on the Diamond Princess cruise ship: estimating the epidemic potential and effectiveness of public health countermeasures," *Journal of Travel Medicine* (accepted manuscript published online Feb. 28, 2020), available at <https://academic.oup.com/jtm/advance-article/doi/10.1093/jtm/taaa030/5766334>.

v <https://covid19.colorado.gov/case-data> [accessed March 30, 2020]

vi <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm> [accessed March 30, 2020]

vii <https://www.thedenverchannel.com/news/coronavirus/its-real-and-its-scary-uchealth-doctor-describes-covid-19-effects-inside-hospitals-on-patients> [accessed March 30, 2020]

viii <https://www.denverpost.com/2020/03/30/colorado-coronavirus-death-under-40/> [accessed March 31, 2020]

ix <https://www.cpr.org/2020/03/27/denver-healths-lead-coronavirus-doctor-wants-your-help-to-slow-the-pandemic/> [accessed March 30, 2020]

x <https://www.thedenverchannel.com/news/coronavirus/its-real-and-its-scary-uchealth-doctor-describes-covid-19-effects-inside-hospitals-on-patients> [accessed March 30, 2020]

xi Editorial, "COVID-19: protecting health-care workers," *The Lancet* (Mar. 21, 2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30644-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30644-9/fulltext) ("Protecting health-care workers").

xii David Koh, "Occupational health aspects of emerging infections - sars outbreak affecting healthcare workers," 75 *Occupational & Environmental Medicine* Suppl 2, A14 (2018) available at https://oem.bmj.com/content/75/Suppl_2/A14.1.

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

THOMAS CARRANZA;
JESUS MARTINEZ;
RICHARD BARNUM;
THOMAS LEWIS;
MICHAEL WARD; and,
COLBY PROPEs,

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

DECLARATION OF THOMAS CARRANZA

I, Thomas Carranza, declare the following based on my personal knowledge:

1. My name is Thomas Carranza and I am currently incarcerated in Weld County jail. I am held pretrial on a \$1,000 bond I am unable to afford. I am 55 years old and suffer from asthma and have been hospitalized for acute asthmatic bronchitis. I have an undiagnosed condition that is causing internal bleeding in my stool. I have been informed that I have high blood pressure but still need to be diagnosed. I have a long history as a smoker.

2. I am incarcerated in a pod with at least 40-50 other people. There are up to 6 people per cell. I usually have been in a cell with 6 people total. Recently, several people were released and I now have one other cellmate. There are a number of cells in my pod that still have 6 other people in them. More inmates could be placed in my cell at any time. Each pod has 4 toilets, and for males 4 urinals, shared by all of us in the pod. The toilets and urinals are located

in common spaces. The cells in the jail are “dry” and have no toilets or urinals. To use the bathroom, we have to leave our cell and go to the toilets.

3. In the cells, we share a small space and sleep on triple bunk beds. For cells housing 6 inmates, three inmates will share a bunk with three beds stacked on top of each other, while the other three share the same. Three bunked inmates sleep within 2-4 feet of each other. Its impossible for us to stay 6 feet away from each other inside the cells. The cells are about 12 by 10 feet. Even when only one other person is in the cell, if we move at all it is still impossible to stay 6 feet away from each other. The other person in my cell right now sleeps in the same bunk as I do, so we are just a few feet apart.

4. Many people in my pod are sick or have been sick. People have symptoms like coughing, fevers, being tired and achy, sore throat, and shortness of breath. Most of the people sick haven’t been tested for the coronavirus.

5. Some people don’t have symptoms and aren’t sick, but everyone is housed together in the same pods and cells. Sick people are housed in the same pod, sharing the same common spaces, toilets, urinals, and other facilities, as those who do not have symptoms.

6. Several days ago, the jail started a 23-hour lockdown in our cells, so we get only 1 hour of time outside the cells. In my pod, they open two cells for an hour at a time, so about 12-18 of us are out at any given time. Guards also let people on lockdown come and go to use the toilet because the cells are dry, or for other reasons like to use the phone, so sometime its more like 20 people out in the common area.

7. Even after the lockdown, all of us on the pod still share common spaces, use the same toilets, urinals, and restroom facilities, touch the same surfaces, use the same chairs and

tables in the common areas, use the same phones, and come into contact with one another when we leave our cells. We also exchange food and can go from room to room.

8. Even after the lockdown, we are still housed in groups with as many as 6 per cell in my pod. I know that there are as many as 9 per cell in A pod. It is still impossible to stay 6 feet away from others.

9. The jail isn't removing sick inmates out of the pods unless they have at least four symptoms of COVID-19. In my pod, jail personnel wrote on a poster that you must have at least four symptoms to be pulled out of the pod and quarantined.

10. According to trustees working in the kitchen, people have been sick who work in the kitchen and handle food and may be spreading the virus to the rest of us in the jail.

11. The jail does not sanitize or disinfect the common areas in between usages, including the toilet, restroom, and other common areas.

12. The guards are now wearing masks as of a couple days ago. However, the jail refuses to provide masks to us. I have asked for a mask and been denied. I made a mask using a towel I wrapped around my face, and jail guards ordered me to remove it. Guards told me that I was inciting other inmates by wearing a mask. Another guy also tried to wear a homemade mask and they told him not to.

Executed this 7th day of April, 2020.

s/ Thomas Carranza

Thomas Carranza, *by and through*
counsel David G. Maxted

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

THOMAS CARRANZA;
JESUS MARTINEZ;
RICHARD BARNUM;
THOMAS LEWIS;
MICHAEL WARD; and,
COLBY PROPEs,

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

DECLARATION OF MICHAEL WARD

I, Michael Ward, declare the following based on my personal knowledge:

1. My name is Michael Ward and I am currently incarcerated in Weld County jail. I am held pretrial on a \$10,000 bond I am unable to afford. I am 31 years old and suffer from high blood pressure and arthritis. I have a weakened immunize system from getting sick from West Nile virus. As a result of this diminished immunity, I have also contracted shingles. I have a history as a smoker for about a decade.

2. I am in a pod with at least 40-60 other people. There are up to 9 people per cell. I usually have been in a cell with 3-6 people. Since the COVID-19 epidemic, I've shared a cell with 6 people, then it went down to 3, and then up to 6 total again. I currently have 2 cellmates, 3 of us total.

3. Each pod has 4 toilets, and for males 4 urinals, shared by all of us in the pod. The toilets and urinals are located in common spaces. The cells in the jail are “dry” and have no toilets or urinals. To use the bathroom, we have to leave our cell and go to the toilets.

4. There is no drinking water in the cells either, and we all share two water fountains. We have to ask the deputy to leave our cell to go fill up our drinking up at the water fountains.

5. In the cells, we share a small space and sleep on triple bunk beds. People sleep right on top of each other, within a couple feet. The cells are small and its impossible to stay 6 feet away from other people within our cells.

6. My most recent bunkmate got quarantined for potential COVID-19. He had those same symptoms for a solid two weeks in my cell. He tested negative for flu and strep throat, but they still failed to test him for COVID-19 or remove him for about a week or so.

7. Many people in my pod are sick or have been sick. About a third or more of the people on my pod are sick. People have symptoms like coughing, fevers, being tired and achy, sore throat, and shortness of breath. Most of the people sick haven’t been tested for the coronavirus. The jail has told us multiple people within the facility have tested positive for the coronavirus, both staff and inmates. But on my pod I don’t think a single person here has been tested for COVID-19 even though many of us are sick.

8. Some people don’t have symptoms and aren’t sick, but everyone is housed together in the same pods and cells. Sick people share the same common spaces, toilets, urinals, and other facilities, as those who do not have symptoms.

9. Several days ago, the jail started a 23-hour lockdown in our cells, so we get only 1 hour of time outside the cells. In my pod, they open two cells for an hour at a time, so as many as

10 or more of us are out at any given time, sometimes more for the cells that are full of 9 people. Guards also let people on lockdown come and go to use the toilet, or for other reasons like to use the phone, so sometime its more like 15-20 people out in the common area.

10. Even after the lockdown, all of us on the pod still share common spaces, use the same toilets, urinals, and restroom facilities, touch the same surfaces, use the same chairs and tables in the common areas, use the same phones, and come into contact with one another when we leave our cells.

11. One guy in a cell near me urinated in his drinking cup because they wouldn't let him out of his cell to use the toilet during a lockdown period.

12. Even after the lockdown, we are still housed in groups with as many as 9 per cell where staying 6 feet apart is impossible.

13. The jail isn't removing sick inmates out of the pods unless they have at least four symptoms of COVID-19. Jail staff wrote on a poster that you must have at least four symptoms to be pulled out of the pod and quarantined.

14. The jail does not sanitize or disinfect the common areas in between usages, including the toilet, restroom, and other common areas. Occasionally they will sanitize certain areas or a trustee will do a quick wipe-down, but not completely and they do not sanitize or clean all areas. Many areas, including the water fountain, toilet stall areas, railings, shower areas, and other surfaces almost never get wiped down or sanitized, definitely not in between every usage.

15. The guards are now wearing masks as of a couple days ago. However, the jail refuses to provide masks to us for general use in the pods. They give us masks when an inmate leaves the pod, but when we return to the pod they throw it away. We have no masks within the pod.

16. I filed a grievance about the jail's failure to provide adequate care and safety due to the coronavirus, and the response I got stated that the grievance was rejected due to a memo dated March 17, 2020, which stated that issues regarding COVID-19 precautions are not grievable. I was told I could not exhaust my administrative remedies any further, and not to file any other grievances or to pursue additional steps regarding this grievance.

Executed this 7th day of April, 2020.

s/ Michael Ward

Michael Ward, *by and through*
counsel David G. Maxted

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 20-cv-977

THOMAS CARRANZA;
JESUS MARTINEZ;
RICHARD BARNUM;
THOMAS LEWIS;
MICHAEL WARD;
COLBY PROPPES; and
CHAD HUNTER,

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

[PROPOSED] ORDER

Having considered the evidence and authority submitted by the parties in this matter, and in accordance with Fed.R.Civ.P. 65, the Court finds that entry of interim injunctive relief is appropriate in this case because: Plaintiffs are likely to succeed on the merits; there is a real threat of irreparable harm absent injunctive relief; the balance of harms favors entry of an injunction; and the issuance of injunctive relief is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Plaintiffs have demonstrated that they are being held under unconstitutional conditions of confinement at the Weld County Jail in violation of their Eighth and Fourteenth Amendment rights. *See Helling v. McKinney*, 509 U.S. 25 (1993). The conditions of confinement Plaintiffs are currently being held under are likely to cause them to suffer irreparable harm absent interim injunctive relief. *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234,

1250 (10th Cir. 2001). The balance of harms weighs in favor of granting interim injunctive relief because Plaintiffs' situation is life and death. *Edmisten v. Werholtz*, 287 F. App'x 728, 732-35 (10th Cir. 2008); *see also Thakker, et al. v. Doll, et al.*, No. 20 C 0480, Dkt. 47, at 24 (M.D. Pa. Mar. 31, 2020). Finally, the public interest favors stopping the spread of COVID-19, *Grand River Enters. Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 169 (2d Cir. 2005), and protecting Plaintiffs' constitutional rights. *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001).

Accordingly, this Court issues the following injunctive relief requiring that Defendant:

1. Physically distance all inmates from one another and staff within the Weld County Jail, which necessitates at least six feet of distance between individuals at all times;
2. On a daily basis, thoroughly and professionally disinfect and sanitize the Weld County Jail.
3. Provide hygiene supplies, including supplies to wash hands and disinfect common areas, to inmates at all times and free of charge;
4. Provide personal protection equipment, including but not limited to masks, to all staff members and inmates;
5. Take particularly heightened precautions with respect to food handling and delivery, such as ensuring that people who come into contact with food are not displaying any potential symptoms of COVID-19, have not recently been in contact with people displaying potential symptoms of COVID-19, and people who come into contact with food wear appropriate personal protective at all times when in contact with food (including but not limited to appropriate masks and gloves);

6. Implement appropriate policies and protocols to identify inmates who are possibly carrying COVID-19 and quarantine those inmates from other individuals; and
7. Provide accurate, up-to-date educational and informational materials regarding sanitation and prevention of COVID-19, the status of how COVID-19 is affecting the facility including the number of infected inmates and staff, and daily access to news reports regarding COVID-19.

Further, this Court holds that, in accordance with Fed.R.Civ.P. 65(c), bond is waived in this matter because the above-outlined interim relief is in the public interest. *See Davis v. Mineta*, 302 F.3d 1104, 1126 (10th Cir. 2002).

SO ORDERED, this ____ day of _____ 2020, at Denver, Colorado

United States District Judge