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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Maria Guadalupe Lucero-Gonzalez; Claudia
Romero-Lorenzo; Tracy Ann Peuplie; James
Tyler Ciecierski; and Marvin Lee Enos; each
individually and on behalf of all others
similarly situated,

Plaintiffs–Petitioners,

v.

Kris Kline, Warden of the Central Arizona
Florence Correctional Complex; David
Gonzales, U.S. Marshal for the District of
Arizona; Donald W. Washington, Director of
the U.S. Marshals Service; Michael Carvajal,
Director of the Federal Bureau of Prisons, in
their official capacities,

Defendants-Respondents.

No. _____

MOTION FOR CLASS
CERTIFICATION
AND
MEMORANDUM IN SUPPORT

**(Oral Argument and Immediate
Consideration Requested)**

MOTION FOR CLASS CERTIFICATION

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Petitioners–Plaintiffs (“Plaintiffs”) respectfully move the Court to certify the following proposed classes and appoint Plaintiffs’ counsel as class counsel:

- **Pretrial Class:** All current and future persons held by Defendants Kline, Gonzales, and Washington in pretrial detention at Central Arizona Florence Correctional Complex (“CoreCivic”)¹;
- **Post-Conviction Class:** All current and future persons held by Defendants Kline and Carvajal in post-conviction detention at CoreCivic.²

This Motion is based on the below Memorandum in Support; Plaintiffs’ Class-Action Complaint for Injunctive and Declaratory Relief and Petition for Writs of Habeas Corpus (“Complaint”) and its supporting documents and exhibits; Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum in Support (“Motion for TRO”) and its supporting documents and exhibits; the attached Declarations of Chase Strangio, Victoria Lopez, and Jean-Jacques Cabou; and other evidence and arguments as may be presented. For the reasons therein, Plaintiffs respectfully request that this Court certify the proposed classes, including provisional certification if necessary, and appoint Plaintiffs’ counsel as class counsel.

¹ Plaintiffs Claudia Romero-Lorenzo, Tracy Ann Peuplie, James Tyler Ciecierski, and Marvin Lee Enos are members of, and seek to represent, the Pretrial Class.

² Plaintiff Maria Guadalupe Lucero-Gonzalez is a member of, and seeks to represent, the Post-Conviction Class.

MEMORANDUM IN SUPPORT

This class action challenges Defendants’ unconstitutional treatment of all detainees in federal custody at CoreCivic in the midst of the crisis surrounding the 2019 novel coronavirus that causes coronavirus disease 2019 (“COVID-19”). Both of Plaintiffs’ proposed classes, which collectively consist of hundreds of individuals, satisfy the requirements of Federal Rule of Civil Procedure (“Rule”) 23. Every class member faces a substantial and imminent risk of bodily harm as a result of their detention at CoreCivic, where Defendants have adopted facility-wide policies that utterly fail to protect class members from a rapidly escalating global pandemic. All class members share a core common factual issue and a core common legal issue: what actions or inactions are Defendants taking at CoreCivic to protect detainees from COVID-19, and do those actions and inactions fall below minimum constitutional standards? Plaintiffs propose two separate classes because of a sole legal issue that is distinct for the two classes: whether their claims are analyzed under the framework of the Fifth Amendment or the Eighth Amendment. These frameworks largely overlap, and in all other respects, the two classes share every material issue in common. The named Plaintiffs respectfully ask this Court to appoint them and their counsel to represent the cohesive and urgent interests of both classes.

I. BACKGROUND

Plaintiffs respectfully refer the Court to the facts as stated in detail in their Complaint, Motion for TRO, and respective supporting documents.

II. LAW AND DISCUSSION

A party “whose suit meets the specified criteria” of Rule 23(a) and Rule 23(b) has a “categorical” right “to pursue his claim as a class action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins., Co.*, 559 U.S. 393, 398 (2010). “Under Rule 23(a), a party seeking certification of a class or subclass must satisfy four requirements: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation.” *Parsons v. Ryan*, 754 F.3d 657, 674 (9th Cir. 2014). The party’s “proposed class or subclass must also satisfy the requirements of one of the sub-sections of Rule 23(b), which defines three different types

of classes.” *Id.* (internal quotation marks and citation omitted). Relevant here, Rule 23(b)(2) requires that “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

Plaintiffs’ proposed classes satisfy Rule 23(a) and Rule 23(b)(2). Plaintiffs are therefore entitled to pursue their claims as a class action.³

A. The Proposed Classes Satisfy Rule 23(a)(1)-(4).

1. Plaintiffs’ Proposed Classes Satisfy Numerosity.

Each of Plaintiffs’ proposed classes—which together contain hundreds of individuals, and which seek only class-wide injunctive relief—satisfies numerosity. Numerosity requires that “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). To be impracticable, joinder must be difficult or inconvenient but need not be impossible. *See Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) (noting that “impracticability does not mean impossibility, but only the difficulty or inconvenience of joining all members of the class”) (internal quotation marks and citation omitted). “In addition to class size, courts consider other indicia of impracticability, such as . . . the size of individual claims, the financial resources of class members, and the ability of claimants to institute individual suits.” *Torres v. Goddard*, 314 F.R.D. 644, 654 (D. Ariz. 2010); *see also Jordan v. County of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982) (noting that when a class is not large in numbers, “other factors such as the geographical diversity of class members, the ability of individual claimants to institute separate suits, and whether injunctive or declaratory relief is sought, should be considered in determining impracticability of joinder” (citing Newberg on Class Actions § 1105 (1977))).

Generally, courts find numerosity satisfied “when a class includes at least 40

³ Alternatively, Plaintiffs’ proposed classes also satisfy Rule 23(b)(1) because requiring hundreds of individual class members to prosecute separate actions on the same claims would create a significant risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants.

members.” *Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010). Where the exact number of class members is unknown, the court may find that numerosity is met if “general knowledge and common sense indicate that joinder would be impracticable.” *Knapper v. Cox Commc’ns, Inc.*, 329 F.R.D. 238, 241 (D. Ariz. 2019).

Here, the exact numbers and identities of members in each class are unknown—because this information is exclusively within Defendants’ control. However, it is exceedingly likely that both classes consist of far more than the 40-member threshold. CoreCivic is designed to house over 4,000 inmates.⁴ And there are “hundreds” of individuals in the combined Pretrial and Post-Conviction Classes who have open cases with the Office of the Federal Public Defender for the District of Arizona (“FPD”) alone. [Compl. Ex. 1, ¶ 3 (Declaration of Christina M. Woehr (“Woehr Decl.”))] Moreover, the number of individuals in the Post-Conviction Class is currently higher than normal because of a decrease in transfers due to the pandemic. [*Id.*]

Finally, even setting aside the numbers, other factors make joinder impracticable in this case. First, because of the extremely time-sensitive nature of the relief requested in this case, joining all class members is impracticable. COVID-19 spreads rapidly, and multiple cases have already been confirmed at CoreCivic. [See generally Compl. ¶¶ 28–61] There is simply no time to identify every person in the facility and join them to this action. Second, both classes are inherently transitory and include unidentifiable future members. Third, all

⁴ See CoreCivic-Central Arizona Florence Correctional Complex-East PREA Audit Report (July 14, 2017), <https://www.corecivic.com/hubfs/files/PREA/Facilities/CoreCivic-Central%20Arizona%20Florence%20Correctional%20Complex-East%20%20final%20PREA%20Report.pdf> (noting that CoreCivic East is designed for a capacity of 1,824), and CoreCivic-Central Arizona Florence Correctional Complex-West PREA Audit Report (July 11, 2017), <https://www.corecivic.com/hubfs/files/PREA/Facilities/CoreCivic-Central%20Arizona%20Florence%20Correctional%20Complex-West%20%20final%20PREA%20Report.pdf> (noting that CoreCivic West is designed for a capacity of 2,555).

See also *About 400 Inmates Quarantined at CoreCivic Prison in Florence, After 13 Test Positive for COVID-19*, AZ CENTRAL (May 8, 2020 7:00 a.m.), <https://www.azcentral.com/story/news/local/arizona-health/2020/05/08/coronavirus-cases-multiple-inmates-test-positive-corecivic-prison-covid-19/3093348001/> (noting that “most of the 4,000 inmates at the [CoreCivic] facility are in federal custody, awaiting trial”).

1 class members are incarcerated, and many are indigent, rendering their ability to seek
 2 counsel and file individually limited, at best. Any limited potential for individuals to seek
 3 counsel is further complicated by recent measures implemented in light of COVID-19. For
 4 example, in-person legal visits are no longer possible, and time slots for legal calls with
 5 incarcerated clients at CoreCivic are backlogged. [Woehr Decl. ¶¶ 12, 14] Quarantined
 6 detainees—who may be most in need of access to legal assistance—may be barred from
 7 taking legal calls entirely. [*Id.*] Lastly, where, as here, the relief sought is “only injunctive
 8 or declaratory,” the numerosity requirement is somewhat relaxed. *See Sueoka v. United*
 9 *States*, 101 F. App’x 649, 653 (9th Cir. 2004).

10 Because Plaintiffs reliably estimate that there are hundreds of individuals in their
 11 proposed classes, and because joinder is nearly impossible under the circumstances,
 12 numerosity is satisfied for the Pretrial Class and the Post-Conviction Class.

13 **2. Plaintiffs’ Proposed Classes Satisfy Commonality.**

14 Commonality requires plaintiffs to show that “there are questions of law or fact
 15 common to the class.” Fed. R. Civ. P. 23(a)(2). “A clear line of precedent . . . firmly
 16 establishes that when inmates provide sufficient evidence of systemic and centralized
 17 policies or practices in a prison system that allegedly expose all inmates in that system to a
 18 substantial risk of serious future harm, Rule 23(a)(2) is satisfied.” *Parsons*, 754 F.3d at 684.
 19 That is precisely the case here. Defendants’ policies and practices fail to protect the class
 20 members from COVID-19 exposure and infection. These failings expose *all* inmates at
 21 CoreCivic to a substantial risk of serious, immediate harm.

22 Commonality requires plaintiffs to assert claims that “depend upon a common
 23 contention . . . capable of classwide resolution—which means that determination of its truth
 24 or falsity will resolve an issue that is central to the validity of each one of the claims in one
 25 stroke.” *Dukes v. Wal-Mart Stores, Inc.*, 564 U.S. 338, 350 (2011). Under the *Dukes*
 26 standard, “numerous courts have concluded that the commonality requirement can be
 27 satisfied by proof of the existence of systemic policies and practices that allegedly expose
 28 inmates to a substantial risk of harm.” *Parsons*, 754 F.3d at 681 (collecting cases); *see also*

1 *Unknown Parties v. Johnson*, 163 F. Supp. 3d 630, 635 (D. Ariz. 2016) (“In the civil rights
 2 context, commonality is satisfied ‘where the lawsuit challenges a system-wide practice or
 3 policy that affects all of the putative class members.’” (quoting *Armstrong v. Davis*, 275
 4 F.3d 849, 868 (9th Cir. 2001))). Moreover, commonality “does not . . . mean that every
 5 question of law or fact must be common to the class.” *Abdullah v. U.S. Sec. Assocs., Inc.*,
 6 731 F.3d 952, 957 (9th Cir. 2013). In fact, “even a single common question” may satisfy
 7 Rule 23(a)(2). *Parsons*, 754 F.3d at 675.

8 All members of the proposed Pretrial and Post-Conviction Classes share a common
 9 core of facts: all are (or will be) confined at CoreCivic. And all are subject to the same
 10 practices: Defendants are unwilling to implement facility-wide measures regarding social
 11 distancing and other hygienic practices consistent with the CDC’s and other public health
 12 officials’ guidance on preventing the spread of COVID-19 at CoreCivic and protecting
 13 detained persons against serious illness or death. *See Unknown Parties*, 163 F. Supp. 3d at
 14 640 (holding that “claims involving overall conditions that affect the rights of all putative
 15 class members are sufficient to satisfy commonality” and that “[w]hether such conditions
 16 result from Defendants’ stated policies or from their alleged failure to create or adhere to
 17 those policies does not change the commonality analysis”); *cf. Parsons*, 754 F.3d at 678
 18 (finding commonality where “all members of the putative class and subclass have in
 19 common . . . their alleged exposure, as a result of specified statewide ADC policies and
 20 practices . . . , to a substantial risk of serious future harm to which the defendants are
 21 allegedly deliberately indifferent”). Thus, the question of law and fact shared by all class
 22 members is whether Defendants’ policies subject them to a heightened risk of serious illness
 23 and death in violation of their Fifth Amendment due process rights and/or Eighth
 24 Amendment rights against cruel and unusual punishment. The commonality requirement is
 25 satisfied here for both classes—consisting of individuals detained at the same facility under
 26 the same conditions with respect to COVID-19.

27 Federal courts in this Circuit have provisionally certified classes of persons in
 28 immigration detention in constitutional challenges arising out of similar detention

1 conditions in the face of the COVID-19 pandemic, where petitioners are seeking similar
 2 relief as Plaintiffs here. See Provisional Class Certification Order, *Hernandez Roman v.*
 3 *Wolf*, No. 20-00768 TJH (PVCx) (C.D. Cal. Apr. 23, 2020), ECF No. 52. There, the court
 4 reasoned that “[t]he specific reason *why* each Petitioner and putative class member is being
 5 detained is immaterial.” *Id.* at 4. “The issue before the Court is whether *the manner* of their
 6 detention—the conditions of their confinement—violates their Fifth Amendment
 7 substantive due process rights.” *Id.* So too here.

8 Similarly, in *Frailhat v. U.S. Immigration and Customs Enforcement*, the court
 9 observed that “[d]espite Plaintiffs’ admitted differences, each putative class member finds
 10 herself in similar situation.” -- F. Supp. 3d --, 2020 WL 1932570, at *18 (C.D. Cal. Apr.
 11 20, 2020). “Indeed, the variety of facility COVID-19 countermeasures tends to support
 12 Plaintiffs’ contention that ICE has failed to institute the well-ordered, mandatory relief
 13 effort to which they claim entitlement.” *Id.* Acknowledging the varying problems with
 14 ICE’s COVID-19 countermeasures from facility to facility and the different reasons
 15 COVID-19 might be especially deadly from person to person, the court stressed that
 16 “[y]et[,] across all facilities and individuals, the question remains: is ICE required to adopt
 17 a global response, and is that response adequate?” *Id.* The court concluded, “[a]s a result,
 18 the factual differences are not the sort that likely affect entitlement to relief or that are likely
 19 to change the outcome of the legal analysis.” *Id.*

20 As evident from these recent cases, whether Defendants’ inadequate policies in
 21 response to COVID-19 violate Plaintiffs’ constitutional rights depends “upon a common
 22 contention . . . capable of classwide resolution.” *Dukes*, 564 U.S. at 350. And the
 23 “determination of its truth or falsity will resolve an issue that is central to the validity of
 24 each one of the claims in one stroke.” *Id.* The commonality requirement therefore is
 25 satisfied here.

26 **3. Plaintiffs’ Proposed Classes Satisfy Typicality.**

27 The named Plaintiffs in this case each assert claims that are typical of their respective
 28 proposed classes. Plaintiffs Claudia Romero-Lorenzo, Tracy Ann Peuplie, James Tyler

1 Ciecierski, and Marvin Lee Enos assert claims under the Fifth Amendment on behalf of the
2 Pretrial Class, and Plaintiff Maria Guadalupe Lucero-Gonzalez asserts claims under the
3 Eighth Amendment on behalf of the Post-Conviction Class.

4 Typicality exists if “the claims or defenses of the representative parties are typical
5 of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “[T]he typicality
6 requirement is permissive and requires only that the representative’s claims are reasonably
7 coextensive with those of absent class members; they need not be substantially identical.”
8 *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (internal quotation marks and
9 citation omitted). “The test of typicality is ‘whether other members [of the class] have the
10 same or similar injury, whether the action is based on conduct which is not unique to the
11 named plaintiffs, and whether other class members have been injured by the same course
12 of conduct.’” *Parsons*, 754 F.3d at 685 (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d
13 497, 508 (9th Cir. 1992)). Typicality is “satisfied when each class member’s claim arises
14 from the same course of events, and each class member makes similar legal arguments to
15 prove the defendant’s liability.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)
16 (citation omitted). Variations among individual plaintiffs’ circumstances, or the extent of
17 their injuries, will not defeat typicality as long as the named plaintiffs’ injuries arise “from
18 the same event or practice or course of conduct that [gives] rise to the claims of other class
19 members,” and the named plaintiffs’ claims are “based on the same legal theory” as the
20 class’s claims. *Ramirez v. TransUnion LLC*, 951 F.3d 1008, 1033 (9th Cir. 2020) (citations
21 omitted).

22 Here, the proposed classes meet the typicality requirement because the named
23 Plaintiffs and proposed class members are detained in the same facility under the same
24 overall conditions. Their claims all arise from the same failure to adequately implement
25 social distancing and other appropriate health and safety measures in response to COVID-
26 19. [See, e.g., Compl. ¶¶ 80–103] They bring the exact same claims, based on the exact
27 same legal theories—the Fifth Amendment for the Pretrial Class and the Eighth
28 Amendment for the Post-Conviction Class. And they all suffer the same or similar risk of

1 imminent harm: the significant yet avoidable risk of serious illness and death from
 2 contracting COVID-19. *See Unknown Parties*, 163 F. Supp. 3d at 641 (finding typicality
 3 satisfied where the named plaintiffs suffered the same harm because they “experienced the
 4 same overall conditions of confinement”).

5 **4. Plaintiffs’ Proposed Classes Satisfy Adequacy.**

6 The named Plaintiffs and their counsel will adequately represent the interests of both
 7 classes, which are aligned and intertwined. Adequacy is satisfied when “the representative
 8 parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4).
 9 “Whether the class representatives satisfy the adequacy requirement depends on ‘the
 10 qualifications of counsel for the representatives, an absence of antagonism, a sharing of
 11 interests between representatives and absentees, and the unlikelihood that the suit is
 12 collusive.’” *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) (quoting *Crawford v.*
 13 *Honig*, 37 F.3d 485, 487 (9th Cir. 1994)). The adequacy requirement “tend[s] to merge with
 14 the commonality and typicality criteria of Rule 23(a).” *Amchem Prods., Inc. v. Windsor*,
 15 521 U.S. 591, 626 n.20 (1997) (alteration in original) (citation and quotation marks
 16 omitted). The adequacy requirement is met here.

17 Class counsel are “qualified” when they can establish their experience in previous
 18 class actions and cases involving the same area of law. *Lynch v. Rank*, 604 F. Supp. 30, 37
 19 (N.D. Cal. 1984), *aff’d*, 747 F.2d 528 (9th Cir. 1984). Here, class counsel are attorneys from
 20 the American Civil Liberties Union Foundation (“ACLU”), the ACLU of Arizona, and
 21 Perkins Coie LLP who, collectively, have extensive relevant experience to litigate this
 22 matter to completion. [See Declaration of Chase Strangio, attached as Ex. 1; Declaration of
 23 Victoria Lopez, attached as Ex. 2; Declaration of Jean-Jacques Cabou, attached as Ex. 3]
 24 Collectively, these attorneys have participated as class counsel in numerous civil-rights
 25 related cases before this Court and others, including in other cases related to COVID-19 in
 26 the detention context. [*Id.*] Counsel know of no conflicts among proposed class members
 27 or between counsel and proposed class members, and counsel will vigorously represent the
 28 proposed classes.

1 The named Plaintiffs have the requisite personal interest in the outcome of this case
 2 and will fairly and adequately protect the interests of the proposed classes. The named
 3 Plaintiffs and other class members have the same injury and seek the same relief—namely,
 4 declaratory and injunctive relief requiring Defendants to protect all class member. *See*
 5 Complaint; *Unknown Parties*, 163 F. Supp. 3d at 642 (holding adequacy satisfied despite
 6 “a lack of individual medical ailments while in [government] custody” among the named
 7 plaintiffs, where the named plaintiffs generally “suffered harms typical of the class” under
 8 the conditions of confinement).

9 Named Plaintiffs’ aim is to secure relief that will protect both themselves and all
 10 members of the classes they represent from Defendants’ unconstitutional policies and
 11 practices and to enjoin the Defendants from further violations of class members’ rights.
 12 This case therefore satisfies Rule 23(a)(4)’s adequacy requirement.

13 **B. The Proposed Classes Meet the Requirements of Rule 23(b)(2).**

14 Plaintiffs’ proposed classes are prototypical Rule 23(b)(2) classes. “Rule 23(b)(2)
 15 permits class actions for declaratory or injunctive relief where ‘the party opposing the class
 16 has acted or refused to act on grounds generally applicable to the class.’” *Amchem*, 521 U.S.
 17 at 614 (quoting Fed. R. Civ. P. 23(b)(2)). “[T]he primary role of this provision has always
 18 been the certification of civil rights class actions.” *Parsons*, 754 F.3d at 686. “Civil rights
 19 cases against parties charged with unlawful, class-based discrimination are prime examples
 20 [of Rule 23(b)(2) actions].” *Amchem*, 521 U.S. at 614; *see also Walters*, 145 F.3d at 1047
 21 (Rule 23(b)(2) “was adopted in order to permit the prosecution of civil rights actions.”).
 22 Thus, “courts have repeatedly invoked [Rule 23(b)(2)] to certify classes of inmates seeking
 23 declaratory and injunctive relief for alleged widespread Eighth Amendment violations in
 24 prison systems.” *Parsons*, 754 F.3d at 686; *cf. Carrillo v. Schneider Logistics, Inc.*, No. CV
 25 11-8557 CAS (DTBx), 2012 WL 556309, at *9 (C.D. Cal. Jan. 31, 2012), *aff’d*, 501 F.
 26 App’x 713 (9th Cir. 2012) (noting that courts “routinely grant provisional class certification
 27 for purposes of entering injunctive relief”).

28 In the Ninth Circuit, “[i]t is sufficient to meet the requirements of Rule 23(b)(2)

[when] class members complain of a pattern or practice that is generally applicable to the class as a whole.” *Rodriguez*, 591 F.3d at 1125-26 (internal quotation marks and citation omitted) (finding certification under Rule 23(b)(2) proper where “proposed members of the class each challenge Respondents’ practice of prolonged detention of detainees without providing a bond hearing and seek as relief a bond hearing with the burden placed on the government”). Thus, the critical inquiry is “whether class members seek uniform relief from a practice applicable to all of them.” *Id.* at 1125.

That is the case here. First, Defendants are acting on grounds that are generally applicable to the proposed classes because Defendants have subjected all proposed class members to the same policies or practices that expose Plaintiffs to an unreasonable risk of serious harm in violation of the Due Process Clause or the Eighth Amendment. Second, the injunctive relief requested by Plaintiffs is appropriate for each class as a whole. Each class requests uniform relief in the form of certain declarations and an injunction. [See Compl. Prayer for Relief] In order to comply with the requested injunction, Defendants would have to implement facility-wide changes applicable to, and for the benefit of, all class members. This requested relief—“a single injunction [and] declaratory judgment”—“would provide relief to each” class member, without any need for “individualized” determinations by the Court. *Dukes*, 564 U.S. at 360–61. Thus, Rule 23(b)(2) is satisfied.⁵

C. Provisional Certification Is Urgently Needed for the Plaintiffs Due to the Imminent Risks Posed by COVID-19.

Because COVID-19 has already begun spreading at CoreCivic, placing *all* class members at risk, urgent action is needed on a class-wide basis. This Court therefore should grant provisional certification and issue a temporary restraining order, preliminary injunction, and/or writs of habeas corpus directed at Defendants to protect class members from the imminent threat of serious illness or death.

⁵ Alternatively, Plaintiffs’ proposed classes also satisfy Rule 23(b)(1) because requiring hundreds of individual class members to prosecute separate actions on the same claims would create a significant risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants.

1 “Courts in the Ninth Circuit ‘routinely grant provisional class certification for
2 purposes of entering injunctive relief’” under Rule 23(b)(2) when the plaintiffs establish
3 that the four prerequisites in Rule 23(a) are also met. *Frailhat*, -- F. Supp. 3d --, 2020 WL
4 1932570, at *15 (citation omitted). Indeed, in two recent COVID-19-related cases, the U.S.
5 District Court for the Central District of California provisionally certified classes of persons
6 in immigration detention facilities seeking similar relief as Plaintiffs here. *See id.* at *29;
7 Provisional Class Certification Order, *Hernandez Roman v. Wolf*, No. 20-00768 TJH
8 (PVCx), (C.D. Cal. Apr. 23, 2020), ECF No. 52; *see also Meyer v. Portfolio Recovery*
9 *Assocs., LLC*, 707 F.3d 1036, 1041 (9th Cir. 2012) (finding district court did not abuse its
10 discretion by provisionally certifying class for purpose of entering preliminary injunction).

11 Provisional certification—in addition to immediate injunctive relief—is urgently
12 needed here to remedy the ongoing constitutional violations at CoreCivic and protect
13 Plaintiffs, class members, and the local community from the spread of COVID-19. With
14 multiple confirmed cases now at CoreCivic, and staff and others entering the facility every
15 day and potentially taking the virus back to the community every night, there is no time to
16 spare.

17 **III. CONCLUSION**

18 For the reasons stated in this Motion, Plaintiffs respectfully request that the Court
19 certify their proposed Pretrial Class and Post-Conviction Class, including provisional
20 certification, and appoint Plaintiffs’ counsel as counsel for both classes pursuant to Rule
21 23(g).

Dated: May 8, 2020

PERKINS COIE LLP

By: /s/ Matthew Koerner

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**Applications for pro hac vice forthcoming.*

CERTIFICATE OF SERVICE

☒ I hereby certify that on May 8, 2020, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of same to:

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**INDEX OF EXHIBITS TO
MOTION FOR CLASS CERTIFICATION**

Exhibit	Document
1	Declaration of Chase Strangio (May 8, 2020)
2	Declaration of Victoria Lopez (May 8, 2020)
3	Declaration of Jean-Jacques Cabou (May 8, 2020)

EXHIBIT 1

DECLARATION OF CHASE STRANGIO

I, Chase Strangio, declare as follows:

1. I am over 18 years of age and competent to make this declaration. I, along with my colleagues and co-counsel, Somil Trivedi, Emma Andersson, Alejandro Ortiz, and Taylor Brown, seek to be appointed class counsel for the Pretrial Class and the Post-Conviction Class, as defined in the above-captioned litigation.

2. I am Deputy Director for Transgender Justice for the LGBT & HIV Project at the American Civil Liberties Union Foundation (“ACLU”). In this capacity, I litigate civil rights and civil liberties cases at trial and appellate levels, in state and federal court. I specialize in representing people who are living with HIV or who are lesbian, gay, bisexual, or transgender (LGBT). I have appeared before the U.S. Supreme Court as counsel in *R.G. & G.R. Harris Funeral Homes v. EEOC*, *Gloucester County School Board v. G.G.*, and *Obergefell v. Hodges*. I have also appeared before the Sixth Circuit, the Fourth Circuit, and the Seventh Circuit. I was previously an Equal Justice Works Fellow and Director of Prisoner Justice at the Sylvia Rivera Law Project, where I litigated at federal, state, and administrative levels primarily on behalf of incarcerated people in civil rights cases.

3. I am a 2010 graduate of Northeastern University School of Law, where I was a Public Interest Law Scholar. I was admitted to practice law in New York in 2011. I previously served on the Corrections Committee of the New York City Bar Association and currently serve on a New York City Council appointed task force overseeing conditions in custody for transgender individuals in New York City jails. I have given dozens of invited talks at schools and conferences such as Harvard School of Law, NYU School of Law, Washington University School of Law in St. Louis, UCLA School of Law, Prisoners’ Advocates Conference, Lavender Law and the American Bar Association Annual Meeting.

4. My co-counsel Somil Trivedi is a Senior Staff Attorney at the ACLU’s Criminal Law Reform Project. In this capacity, he litigates civil rights and civil liberties cases at the trial and appellate levels in state and federal courts, including the U.S. Supreme Court. He specializes in cases against jailers, prosecutors, and other law enforcement

1 officials and is currently lead or co-counsel on several cases similar to this one, seeking
2 redress for detainees in light of the grave risk of COVID-19. He was previously a Trial
3 Attorney at the United States Department of Justice, a white-collar criminal and regulatory
4 attorney at an international law firm, and a law clerk at the Center for Constitutional Rights.

5 5. Mr. Trivedi is a 2009 graduate of Boston University School of Law and was
6 admitted to practice in New York in 2010. He is an adjunct professor at George Mason Law
7 School, where he teaches Public Interest Litigation, and has guest lectured at the law schools
8 at Columbia, Georgetown, and Howard Universities. This year he will publish academic
9 papers on criminal law reform in the *Stanford Review of Civil Rights and Civil Liberties*
10 and the *Boston University Law Review*. He is also on the board of the Innocence Project of
11 Texas and has previously held advisory board positions to the Center for Constitutional
12 Rights and Brooklyn Defender Services.

13 6. My co-counsel Emma Andersson is a Senior Staff Attorney in the Criminal
14 Law Reform Project at the ACLU. In this capacity, she litigates civil rights and civil liberties
15 cases at trial and appellate levels, in state and federal court. She specializes in litigation
16 relating to the criminal legal system including police practices, indigent defense, and
17 sentencing. Ms. Andersson is appointed class counsel in *Davis v. Nevada*, No. 170C02271B
18 (1st Jud. Dist. Nev. June 14, 2019) (order certifying class of indigent defendants).

19 7. Ms. Andersson is a 2008 graduate of Yale Law School. She is admitted to
20 practice in California, the United States Court of Appeals for the Ninth Circuit, and the
21 United States Supreme Court. She was previously a law clerk to the Honorable Richard
22 Paez of the United States Court of Appeals for the Ninth Circuit.

23 8. My co-counsel Alejandro Ortiz is a Senior Staff Attorney with the Racial
24 Justice Program at the ACLU. In this capacity, he litigates civil rights cases at trial and
25 appellate levels in federal court. He specializes in representing workers and people of color.
26 He has appeared in cases before the First Circuit Court of Appeals, U.S. district courts in
27 New York, California, Virginia, Minnesota, and Puerto Rico and a state court in Colorado.
28 He was previously a law clerk for three federal judges and a Senior Field Attorney with the

1 National Labor Relations Board (NLRB), where he co-led the longest trial in its history,
2 including over 90 days of witness testimony, in *McDonald's USA, LLC*, No. 02-CA-
3 093893, *et al.*, 368 N.L.R.B. 134 (2019).

4 9. Mr. Ortiz is a 2008 graduate of the University of Colorado Law School,
5 where, among other activities, he represented indigent clients in a criminal defense clinic.
6 He was admitted to practice in Colorado in 2009 and in New York in 2019.

7 10. My co-counsel Taylor Brown is a Staff Attorney with the LGBT & HIV
8 Project at the ACLU. In this capacity, Ms. Brown advocates for the civil rights and freedoms
9 of LGBT people and people living with HIV. Ms. Brown has appeared as counsel in the
10 Eleventh Circuit in *Adams v. the School Board of St. John's County, Florida*. Ms. Brown
11 has also appeared as counsel in federal district courts in Alaska, Indiana, and North
12 Carolina, litigating cases involving sex discrimination against transgender people in health
13 care and public education. Previously, Ms. Brown was an attorney with Lambda Legal
14 Defense and Education Fund and was also the Tyron Garner Memorial Law Fellow at
15 Lambda Legal, conducting civil rights litigation and advocacy on behalf of black and brown
16 LGBT people and black and brown people living with HIV.

17 11. Ms. Brown graduated from the Benjamin N. Cardozo School of Law in 2017,
18 where she was a Nathaniel E. Gates Scholar. She was admitted to the New York Bar in
19 2019. Ms. Brown has given numerous speeches, presentations, and CLE courses on LGBT
20 and HIV legal issues at leading business, law firms, law schools, conferences, and
21 government agencies. Ms. Brown is also a board member of the National Trans Bar
22 Association.

23 12. Founded in 1920, the American Civil Liberties Union Foundation is a non-
24 partisan 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge
25 to individuals and organizations in civil rights and civil liberties cases and educates the
26 public about civil rights and civil liberties issues across the country. With more than 1.5
27 million members and nearly 300 staff attorneys, the ACLU is the nation's largest public
28 interest law firm, with a 50-state network of staffed, autonomous affiliate offices. The

1 ACLU appears before the United States Supreme Court more than any other organization
2 except the U.S. Department of Justice. About 100 ACLU staff attorneys collaborate with
3 about 2,000 volunteer attorneys in handling close to 2,000 cases annually. The ACLU has
4 nearly five decades of experience in complex prisoner rights class actions and has
5 represented prisoners in five cases before the U.S. Supreme Court. Since its founding, the
6 ACLU has litigated challenges to conditions of confinement in almost every state, as well
7 as the District of Columbia.

8 13. I and my co-counsel have reviewed current clients, former clients, and other
9 matters we are handling and have handled in the past to determine whether we may have
10 any professional conflict of interest or potential conflict of interest that might inhibit our
11 ability to represent a class of federal Pretrial and Post-conviction Detainees incarcerated at
12 Central Arizona Florence Correctional Complex (as further defined in the
13 Petition/Complaint). We have also considered the information that we are aware of,
14 including confidential and privileged information, concerning the named
15 petitioners/plaintiffs and proposed class representatives of that class to determine whether
16 there may be a conflict of interest or potential conflict of interest between class
17 representatives or between any class representative and any absent class member. We have
18 not identified any potential conflict of interest that we believe would prevent us, or the
19 ACLU generally, from fairly and adequately representing the class, or that would prevent
20 the proposed class representatives from serving as class representatives for the absent class
21 members.

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

23
24 Executed this 8th day of May, 2020.

25 /s/ Chase Strangio
26 CHASE STRANGIO
27 (*pro hac vice* application forthcoming)
28

EXHIBIT 2

DECLARATION OF VICTORIA LOPEZ

I, Victoria Lopez, declare as follows:

1. This declaration is submitted in support of Plaintiffs' Motion for Class Certification. The facts set forth herein are within my personal knowledge or knowledge gained from review of the pertinent documents. If called upon, I could and would testify competently thereto.

2. I am the Advocacy and Legal Director of the American Civil Liberties Union Foundation of Arizona ("ACLU of Arizona"), a nonprofit organization with 501(c)(3) tax-exempt status.

3. In addition to myself, ACLU of Arizona attorneys Jared Keenan and Christine K. Wee as well as paralegal Gloria Torres are working on this case.

4. I am a member in good standing of the State Bar of Arizona and State Bar of Illinois. I received my Juris Doctor degree from the University of Pennsylvania in 2001. From 2001- 2007, I was an attorney and executive director of the Florence Immigrant and Refugee Rights Project in Arizona. I joined the ACLU of Arizona in 2009 as a staff attorney and later served as Policy and Advocacy Director and Legal Director. From March 2017 through April 2019, I was a senior staff attorney at the ACLU National Prison Project. Since August 2019, I serve as the Advocacy and Legal Director at the ACLU of Arizona where I oversee the litigation program and serve as counsel in ACLU of Arizona matters.

5. In my time as an attorney with the ACLU, I have served as counsel in a number of matters involving jail and prison conditions, the First Amendment and immigration enforcement issues. I have served as class counsel in the following cases: *Parsons v. Ryan*, No. CV-12-00601-PHX-ROS (D. Ariz.); *Doe v. Nielsen*, No. CV-15-00250-TUC-DCB (D. Ariz.); and *Teneng v. Trump*, No. 5:18-CV-01609-JGB-KK (C.D. Cal.).

6. My colleague Jared Keenan is the Criminal Justice Staff Attorney at the ACLU of Arizona since November 2017. He is a member in good standing of the Arizona

1 bar. He is a 2008 graduate of Boston University School of Law. Before joining the ACLU
2 of Arizona, he worked as a public defender for eight years in Boston, Massachusetts and
3 in Mohave and Yavapai counties in Arizona. He is counsel in the following class action
4 cases at the ACLU of Arizona, *Parsons v. Ryan*, No. CV-12-00601-PHX-ROS (D. Ariz.);
5 *Puente v. City of Phoenix*, No. CV-18-02778-PHX-JJT (D. Ariz.).

6 7. My colleague Christine K. Wee is Senior Staff Attorney at the ACLU of
7 Arizona since January 2020. She is a 2001 graduate of Northeastern University School of
8 Law in Boston, Massachusetts, and has civil rights litigation experience as a former public
9 defender in both Massachusetts and New Jersey. Most recently, she was an Assistant
10 Corporation Counsel representing the City of Chicago in complex federal civil rights cases
11 before the U.S. District Court for the Northern District of Illinois, Eastern Division. She
12 is also counsel in the case *Doe v. Nielsen*, No. CV-15-00250-TUC-DCB (D. Ariz.).

13 8. ACLU of Arizona paralegal Gloria Torres has been with the organization
14 since 2010. She is involved in all currently pending class action cases in our office and
15 has been involved in several other class action cases that have since concluded.

16 9. I have no conflicts of interest with any members of the class nor, to my
17 knowledge, do any of the other of Plaintiffs' counsel.

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

19
20 Executed this 8th day of May, 2020.

21 /s/ Victoria Lopez

22 (Bar No. 330042)

EXHIBIT 3

DECLARATION OF JEAN-JACQUES CABOU

I, Jean-Jacques Cabou, declare as follows:

1. I am over 18 years of age, and I have personal knowledge of the matters contained herein.

2. I am a partner with the law firm of Perkins Coie LLP (“Perkins Coie”).

3. I make this declaration in support of Plaintiffs’ Motion for Class Certification in the above-captioned matter.

4. Along with co-counsel from the ACLU and ACLU of Arizona, Perkins Coie seeks to be appointed as class counsel for the proposed Classes as defined in the above-captioned litigation.

5. I am a 2003 graduate of the University of Chicago Law School and have been practicing law for more than 15 years. I am a member of the bars of Arizona and New York, and I am admitted to practice in the U.S. District Court for the District of Arizona, the Supreme Court of the United States, and the U.S. Courts of Appeals for the Fifth, Ninth, and Tenth Circuits, among other courts. I have extensive experience in constitutional litigation and have litigated numerous complex actions in Arizona and federal courts. I also have extensive experience litigating cases on behalf of criminal defendants and inmates. I am a member of the American Law Institute, have received numerous professional recognitions for my advocacy and have engaged in substantial pro bono activities, including complex pro bono constitutional litigation on behalf of incarcerated individuals.

6. Perkins Coie was founded in 1912 and has more than 1,100 lawyers in offices across the United States and Asia. Perkins Coie has been consistently recognized for excellence nationally and locally in Arizona. Perkins Coie also has a long history of commitment to pro bono work, including in the Phoenix Office and including with co-counsel in this matter. For example, Perkins Coie was named ACLU of Arizona’s Outstanding Pro Bono Law Firm.

7. Collectively, the attorneys of Perkins Coie have extensive experience in all areas of litigation, including pro bono civil rights litigation, class action litigation, and

1 complex commercial litigation, including specifically before this Court. These cases
2 include, but are not limited to *Cox v. Voyles*, No. CV-15-01386-PHX-DJH, 2017 WL
3 11205981 (D. Ariz. Aug. 18, 2017) (constitutional challenge to Arizona's Forfeiture Act),
4 *Parsons v. Ryan*, No. CV-12-00601-PHX-ROS (D. Ariz.) (prisoner civil rights class action
5 litigation), and *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM) (D. Ariz.) (habeas
6 petition challenging constitutionality of immigration detention in light of COVID-19).

7 8. The attorneys of Perkins Coie are committed to the vigorous, effective, and
8 efficient prosecution of this case and will vigorously defend the interests of the proposed
9 Classes. Along with co-counsel, Perkins Coie has already devoted substantial time and
10 resources identifying and investigating the claims at issue in this case and drafting the initial
11 papers.

12 9. Perkins Coie also has sufficient resources to litigate this matter to completion.
13 We are providing, and will continue to provide, our services pro bono to the Classes.

14 10. Based on my collaboration with co-counsel thus far, and my prior, extensive
15 experience with them, it is my belief that the attorneys of the ACLU and ACLU Arizona
16 are likewise committed to the vigorous representation of the Classes in this matter.

17 11. Plaintiffs' counsel have agreed to act jointly as class counsel, if the Court so
18 appoints them.

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

20
21 Executed this 8th day of May, 2020.

22 /s/ Jean-Jacques Cabou

23 (Bar No. 022835)
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1
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5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Maria Guadalupe Lucero-Gonzalez, Claudia
10 Romero-Lorenzo; Tracy Ann Peuplie; James
11 Tyler Ciecierski; and Marvin Lee Enos; each
individually and on behalf of all others similarly
situated,

12
13 Plaintiffs–Petitioners,

14 v.

15 Kris Kline, Warden of the Central Arizona
16 Florence Correctional Complex; David
17 Gonzales, U.S. Marshal for the District of
18 Arizona; Donald W. Washington, Director of
the U.S. Marshals Service; Michael Carvajal,
Director of the Federal Bureau of Prisons, in
their official capacities,

19 Defendants–Respondents.

No. _____

**[PROPOSED] ORDER
GRANTING PLAINTIFFS–
PETITIONERS’ MOTION FOR
CLASS CERTIFICATION**

20 The Court having reviewed Plaintiffs–Petitioners’ (“Plaintiffs”) Motion for Class
21 Certification (Doc. __) and supporting documents, as well as Plaintiffs’ Class-Action
22 Complaint for Declaratory and Injunctive Relief and Petition for Writs of Habeas Corpus
23 (Doc. 1) and supporting documents, and Plaintiffs’ Motion for Temporary Restraining
24 Order and Preliminary Injunction (Doc. __) and supporting documents, and good cause
25 appearing in support thereof,

26 **IT IS ORDERED** that:

27 (1) Plaintiffs’ Motion for Class Certification is **GRANTED**.
28

1 (2) Pursuant to Federal Rule of Civil Procedure (“Rule”) 23, the Court hereby certifies
2 the following two classes, which each satisfy the requirements of Rule 23(a) and
3 23(b)(2):

4 (a) **The Pretrial Class**, defined as: All current and future persons held by
5 Defendants–Respondents Kline, Gonzales, and Washington in pretrial detention
6 at the Central Arizona Florence Correctional Complex.

7 (b) **The Post-Conviction Class**, defined as: All current and future persons held by
8 Defendants–Respondents Kline and Carvajal in post-conviction detention at the
9 Central Arizona Florence Correctional Complex.

10 (3) Pursuant to Rule 23(g), the Court hereby appoints Plaintiffs’ counsel—Perkins Coie
11 LLP, American Civil Liberties Union Foundation, and American Civil Liberties
12 Union Foundation of Arizona—as class counsel for the Pretrial Class and the Post-
13 Conviction Class.