

1 Terry W. Bird – Bar No. 49038
 tbird@birdmarella.com
 2 Dorothy Wolpert – Bar No. 73213
 dwolpert@birdmarella.com
 3 *Naeun Rim – Bar No. 263558
 nrin@birdmarella.com
 4 Shoshana E. Bannett – Bar No. 241977
 sbannett@birdmarella.com
 5 Christopher J. Lee – Bar No. 322140
 cleee@birdmarella.com
 6 Jimmy Threatt – Bar No. 325317
 jthreatt@birdmarella.com
 7 BIRD, MARELLA, BOXER,
 WOLPERT, NESSIM, DROOKS,
 8 LINCENBERG & RHOW, P.C.
 1875 Century Park East, 23rd Floor
 9 Los Angeles, California 90067-2561
 Telephone: (310) 201-2100
 10 Facsimile: (310) 201-2110

11 Peter J. Eliasberg – Bar No. 189110
 peliasberg@aclusocal.org
 12 Peter Bibring – Bar No. 223981
 pbibring@aclusocal.org
 13 ACLU FOUNDATION OF
 SOUTHERN CALIFORNIA
 14 1313 West 8th Street
 Los Angeles, CA 90017
 15 Telephone: (213) 977-9500
 Facsimile: (213) 977-5297

Donald Specter – Bar No. 83925
 dspecter@prisonlaw.com
 Sara Norman – Bar No. 189536
 snorman@prisonlaw.com
 PRISON LAW OFFICE
 1917 Fifth Street
 Berkeley, California 94710
 Telephone: (510) 280-2621
 Facsimile: (510) 280-2704

16 Attorneys for Plaintiff-Petitioners

17
 18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

20 LANCE AARON WILSON;
 MAURICE SMITH; EDGAR
 21 VASQUEZ, individually and on
 behalf of all others similarly situated,

22 Plaintiff-Petitioners,

23 vs.

24 FELICIA L. PONCE, in her capacity
 as Warden of Terminal Island; and
 25 MICHAEL CARVAJAL, in his
 capacity as Director of the Bureau of
 26 Prisons,

27 Defendant-Respondents.
 28

CASE NO. 2:20-cv-04451-MWF-MRWx

**PLAINTIFF-PETITIONERS’
 NOTICE OF EX PARTE
 APPLICATION AND EX PARTE
 APPLICATION FOR PROVISIONAL
 CLASS CERTIFICATION**

*[Filed concurrently with Declarations of
 Naeun Rim, Peter Eliasberg, and Donald
 Specter; [Proposed] Order]*

Assigned to Hon. Michael W. Fitzgerald
 Courtroom 5A

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that Plaintiff-Petitioners (“Petitioners”) Lance
3 Aaron Wilson, Maurice Smith, Edgar Vasquez, individually and on behalf of all
4 others similarly situated, apply, *ex parte*, for an order provisionally certifying
5 Petitioner’s claims as a class action, appointing Petitioners as Class Representatives,
6 and appointing Class Counsel, pursuant to Federal Rule of Civil Procedure 23(a),
7 23(b)(2) and any other applicable rule of civil procedure or law.

8 Petitioners propose the following class definition: All current and future
9 people in post-conviction custody at Terminal Island. If the Court disagrees with
10 the above-stated definition for the Proposed Class, Petitioners move for the Court to
11 redefine or modify that definition, as such determinations are within the Court’s
12 discretion. Fed. R. Civ. P. 23(d)(1). Petitioners also move for the appointment of
13 Petitioners Lance Aaron Wilson, Maurice Smith, Edgar Vasquez as representatives
14 of the Proposed Class. Petitioners further move for the ACLU of Southern
15 California, the Prison Law Office, and Bird Marella to be appointed as Class
16 Counsel under Fed. R. Civ. P. 23(g).

17 This *ex parte* application is based upon this Notice, the Memorandum of
18 Points and Authorities, the Declarations of Naeun Rim, Peter Eliasberg and Donald
19 Specter, the filings in this action, the Proposed Order, which is being lodged in
20 accordance with Local Rule 7-20, and any and all evidence, argument, or other
21 matters that may be presented at the hearing. On May 21, 2020, Naeun Rim,
22 counsel for Petitioners, met and conferred with Assistant United States Attorneys
23 Joanne Osinoff, David M. Harris, and Keith Staub by telephone and gave notice of
24 this application for provisional class certification. See Decl. of Naeun Rim ¶ 8.
25 Petitioners anticipate that Respondents will object.

1 *Local Rule 5-4.3.4(a)(2)(i) Compliance: Filer attests that all other*
2 *signatories listed concur in the filing's content and have authorized this filing.*

3
4 DATED: May 27, 2020

Respectfully submitted,

5 Terry W. Bird
6 Dorothy Wolpert
7 Naeun Rim
8 Shoshana E. Barnett
9 Christopher J. Lee
10 Jimmy Threatt
11 Bird, Marella, Boxer, Wolpert, Nessim,
12 Dooks, Lincenberg & Rhow, P.C.

13 By: /s/ Naeun Rim

14 Naeun Rim

Attorneys for Plaintiff-Petitioners

15 DATED: May 27, 2020

Peter J. Eliasberg
16 Peter Bibring
17 ACLU Foundation of Southern California

18 By: /s/ Peter Bibring

19 Peter Bibring

Attorneys for Plaintiff-Petitioners

20 DATED: May 27, 2020

21 Donald Specter
22 Sara Norman
23 Prison Law Office

24 By: /s/ Donald Specter

25 Donald Specter

26 Attorneys for Plaintiff-Petitioners
27
28

APPLICATION FOR PROVISIONAL CLASS CERTIFICATION

I. INTRODUCTION

Petitioners-Plaintiffs Lance Aaron Wilson, Maurice Smith and Edgar Vasquez (“Petitioners”) have moved for preliminary relief to prevent catastrophic harm to Terminal Island prisoners, many of whom are medically vulnerable, as a result of Respondent Felicia L. Ponce and Michael Carvajal’s failure to take adequate measures to address the COVID-19 pandemic. This motion seeks provisional certification of a class of all current and future prisoners incarcerated at Terminal Island because they are in desperate need of that preliminary relief before they suffer substantial—and potentially fatal—harm.

As described in Petitioner’s *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction, Terminal Island is the site of one of the worst COVID-19 outbreaks at any federal prison in the country. Nearly 70% of all prisoners have tested positive for COVID-19 and eight prisoners have died. Despite these sobering statistics, Respondents have refused to follow Center for Disease Control (CDC) Guidance for Correctional Facilities regarding social distancing, testing, tracing, quarantine and isolation of suspected and confirmed cases, hygiene and medical care. Respondents have repudiated the direction of Attorney General Barr to “immediately maximize appropriate transfers to home confinement of all appropriate inmates,” releasing just 6 out of 1,042 inmates. It is clear that Respondents will not act to protect prisoners from the substantial danger posed by COVID-19, which makes preliminary relief imperative.

Federal courts in the Ninth Circuit “routinely grant provisional class certification for purposes of entering [preliminary] injunctive relief” under Rule 23(b)(2), when the plaintiffs establish that the four prerequisites in Rule 23(a) are also met. *Carrillo v. Schneider Logistics, Inc.*, No. 11-cv-8557, 2012 WL 556309, at *9 (C.D. Cal. Jan. 31, 2012) (citing *Baharona-Gomez v. Reno*, 167 F.3d 1228, 1233 (9th Cir. 1999)); see also *Meyer v. Portfolio Recovery Assocs., LLC*, 707

1 F.3d 1036, 1041 (9th Cir. 2012) (holding district court did not abuse its discretion
 2 by provisionally certifying class for purpose of entering preliminary injunction);
 3 *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1202 (N.D. Cal. 2017) (provisionally
 4 certifying class of detained immigrant children), *aff'd* 905 F.3d 1137 (9th Cir.
 5 2018). Because Rule 23's requirements are easily satisfied here, the Court should
 6 provisionally certify the following Proposed Class for purposes of the Temporary
 7 Restraining Order Petitioners seek: ***All current and future people in post-***
 8 ***conviction custody at Terminal Island.***

9 **II. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF**
 10 **RULE 23(A).**

11 **A. Numerosity**

12 Rule 23(a)(1) requires that the class be “so numerous that joinder of all
 13 members is impracticable.” Fed. R. Civ. P. 23(a)(1). No specific number is needed,
 14 but “forty or more members will generally *satisfy the numerosity requirement.*”
 15 *Arroyo v. United States Dep’t of Homeland Sec.*, No. SA CV 19-815 JGB (SHKX),
 16 2019 WL 2912848, at *9 (C.D. Cal. June 20, 2019); *see also In re Cooper Cos. Inc.*
 17 *Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009). Numerosity is satisfied when
 18 “general knowledge and common sense indicate that [the class] is large.” *Inland*
 19 *Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx),
 20 2018 WL 1061408, at *7 (C.D. Cal. Feb. 26, 2018) (quoting *Cervantez v. Celestica*
 21 *Corp.*, 253 F.R.D. 562, 569 (C.D. Cal. 2008)). To be impracticable, joinder must be
 22 difficult or inconvenient but need not be impossible. *Keegan v. Am. Honda Motor*
 23 *Co.*, 284 F.R.D. 504, 522 (C.D. Cal. 2012).

24 The Proposed Class is sufficiently numerous. Petitioners seek relief on behalf
 25 of all persons incarcerated at Terminal Island. Currently, there are approximately
 26 1,023 prisoners at Terminal Island.¹ That number standing alone satisfies the

27 _____
 28 ¹ <https://www.bop.gov/locations/institutions/trm/> (accessed May 25, 2020).

1 numerosity requirement. See *Arroyo*, 2019 WL 2912848, at *9.

2 **B. Commonality**

3 Rule 23(a) next requires that there be “questions of law or fact common to the
4 class.” Fed. R. Civ. P. 23(a)(2). However, all questions of law and fact need not be
5 common to satisfy Rule 23(a). *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981
6 (9th Cir. 2011). Instead, commonality requires plaintiffs to demonstrate that their
7 claims “depend upon a common contention . . . [whose] truth or falsity will resolve
8 an issue that is central to the validity of each one of the claims in one stroke.” *Wal-*
9 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Commonality can be satisfied
10 by a single common issue. See, e.g., *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d
11 952, 957 (9th Cir. 2013) (Commonality “does not . . . mean that every question of
12 law or fact must be common to the class; all that Rule 23(a)(2) requires is a single
13 significant question of law or fact.”) (citations and internal quotation marks
14 omitted).

15 Commonality is satisfied where a lawsuit challenges “systemic policies and
16 practices that allegedly expose inmates to a substantial risk of harm,” even where
17 there are “individual factual differences among class members.” *Parsons v. Ryan*,
18 754 F.3d 657, 681-682 (9th Cir. 2014) (collecting cases); *Hernandez v. Lynch*, Case
19 No. EDCV 16-00620-JGB (KKx), 2016 WL 7116611, at *17 (C.D. Cal. Nov. 10,
20 2016), *aff’d sub nom. Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017); see also
21 *Inland Empire-Immigrant Youth Collective*, 2018 WL 1061408, at *8. “The
22 existence of shared legal issues with divergent factual predicates is sufficient, as is a
23 common core of salient facts coupled with disparate legal remedies within the
24 class.” *Arroyo*, 2019 WL 2912848, at *9 (quoting *Staton v. Boeing Co.*, 327 F.3d
25 938, 953 (9th Cir. 2003)).

26 Here, the Proposed Class meets the commonality requirement because all
27 class members are subject to the same practices: Respondents’ unwillingness or
28 inability to institute social distancing, appropriate sanitation and hygiene measures,

1 and to provide adequate care and monitoring of prisoners regarding COVID-19.
 2 While it is true that COVID-19 poses a higher risk of serious illness or death for
 3 certain class members, it is also true that all prisoners are at risk.² *See Brown v.*
 4 *Plata*, 563 U.S. 493, 431-32 (2011) (“Even prisoners with no present physical or
 5 mental illness may become afflicted, and all prisoners in California are at risk so
 6 long as the State continues to provide inadequate care. Prisoners in the general
 7 population will become sick, and will become members of the plaintiff classes, with
 8 routine frequency; and overcrowding may prevent the timely diagnosis and care
 9 necessary to provide effective treatment and to prevent further spread of disease.”)
 10 For example, adults age 20-44 account for 20% of all hospitalizations and 12% of
 11 ICU admissions.³ Even healthier people who contract COVID-19 are susceptible to
 12 severe strokes.⁴ For some, the stroke is even the first symptom of COVID-19.⁵ In
 13 fact, preliminary evidence suggests COVID-19 may render lasting organ damage in
 14 even minimally symptomatic or completely asymptomatic patients.⁶

15 The claims brought by the named Petitioners on behalf of the proposed Class
 16 raise a number of common questions of fact and law, including but not limited to:

- 17 • Whether the Proposed Class Members are able to adequately social

19 ² Complaint, Ex. 5 , ¶¶ 6, 9 (Declaration of Dr. Shamsheer Samra)

20 ³ *Id.*

21 ⁴ *Id.*

22 ⁵ Coronavirus May Pose a New Risk to Younger Patients: Strokes, New York
 23 Times (May 14, 2020), [https://www.nytimes.com/2020/05/14/health/coronavirus-](https://www.nytimes.com/2020/05/14/health/coronavirus-strokes.html)
 24 [strokes.html](https://www.nytimes.com/2020/05/14/health/coronavirus-strokes.html)

25 ⁶ *Id.*(describing the way that COVID-19 can severely damage lung tissues, which
 26 in some case can cause a permanent loss of respiratory capacity, and target the heart
 27 muscle causing a condition known as myocarditis, or inflammation of the heart
 28 muscle, which can lead to rapid or abnormal heart rhythms in the short term and
 long-term heart failure that limits exercise tolerance and the ability to work.)

1 distance at Terminal Island at all times

- 2 • Whether Terminal Island failed to adopt and implement adequate
- 3 testing, tracing, quarantine and isolation protocols to reduce the spread
- 4 of COVID-19;
- 5 • Whether the Proposed Class Members are living in sufficiently
- 6 hygienic living spaces to reduce the spread of COVID-19
- 7 • Whether Terminal Island provided prisoners and staff with appropriate
- 8 Personal Protective Equipment (“PPE”) and adequately enforced the
- 9 usage of PPE to reduce the spread of COVID-19;
- 10 • Whether Terminal Island failed to provide adequate medical
- 11 monitoring and treatment related to COVID-19;
- 12 • Whether the failure to institute social distancing subjects the Proposed
- 13 Class to a heightened risk of serious illness and death and violates the
- 14 Proposed Class Members’ Eighth Amendment rights.

15 Other courts have provisionally certified similar classes. *See e.g. Martinez-*
 16 *Brooks v. Easter*, No. 3:20-cv-00569-MPS, 2020 WL 2405350, at *20-21 (D. Conn.
 17 May 12, 2020) (provisionally certifying class of medically vulnerable prisoners at
 18 FCI Danbury); *Wilson v. Williams*, No. 4:20-cv-00794, 2020 WL 1940882 9 (N.D.
 19 Ohio Apr. 22, 2020) (provisionally certifying a class of medically vulnerable
 20 prisoners at FCI Elkton); *Cameron v. Bouchard*, No. 20-cv-10494 (E.D. Mich.
 21 May 21, 2020) (certifying a class of all current and future persons detained at
 22 Oakland County Jail, as well as two subclasses prior to issuing preliminary
 23 injunction). As in each of these cases, there is a single facility and one overarching
 24 issue—whether Respondents have violated the proposed Class Members Eighth
 25 Amendment rights by exposing them “to a serious communicable disease. . .that is
 26 more than very likely to cause a serious illness.” *See Castillo v. Barr*, 2020 WL
 27 1502864, at *5 (C.D. Cal. Mar. 27, 2020) (citing *Helling v. McKinney*, 509 U.S. 25,
 28 32 (1993)). That obviously presents a common issue amenable to class treatment.

1 **C. Typicality**

2 Federal Rule of Civil Procedure 23(a)(3) requires that “the claims . . . of the
3 representative parties [be] typical of the claims . . . of the class.” “[T]he typicality
4 requirement is permissive and requires only that the representative’s claims are
5 reasonably coextensive with those of absent class members; they need not be
6 substantially identical.” *Rodriguez*, 591 F.3d at 1124 (quotation marks omitted).

7 “The test of typicality is ‘whether other members [of the class] have the same
8 or similar injury, whether the action is based on conduct which is not unique to the
9 named plaintiffs, and whether other class members have been injured by the same
10 course of conduct.’” *Parsons*, 754 F.3d at 685 (citation omitted). Typicality is
11 satisfied “when each class member’s claim arises from the same course of events,
12 and each class member makes similar legal arguments to prove the defendant’s
13 liability.” *Rodriguez*, 591 F.3d at 1124 (quotation omitted).

14 The Proposed Class meets the typicality requirement because the named
15 Petitioners and Proposed class members are all individuals who are incarcerated at
16 Terminal Island and their claims all arise from the same failure to implement
17 appropriate preventative measures, monitoring and treatment in response to COVID-
18 19. Compl. ¶ 52. Finally, they all will suffer the same harm: the significant and
19 avoidable risk of serious illness or death. *See* Compl. ¶ 52.

20 **D. Adequacy of Representation**

21 Rule 23(a)(4) requires that the “representative parties will fairly and
22 adequately protect the interests of the class.” The adequacy inquiry asks: “(1) do the
23 named plaintiffs and their counsel have any conflicts of interest with other class
24 members and (2) will the named plaintiffs and their counsel prosecute the action
25 vigorously on behalf of the class?” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020
26 (9th Cir. 1998). This requirement “tend[s] to merge with the commonality and
27 typicality criteria of Rule 23(a).” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591,
28 626 n.20 (1997) (internal quotation marks omitted).

1 Both requirements are plainly satisfied here. *First*, there is no conflict
 2 between the named Plaintiffs and other members of the Proposed Class. The named
 3 Petitioners and other class members have the same injury and seek the same relief—
 4 namely, put in place a structured, court-supervised process for immediate,
 5 individualized consideration of each prisoner’s suitability for release on an
 6 accelerated schedule that is more focused on the critical factors of prisoner and
 7 public safety than the current home confinement review process at Terminal Island;
 8 *Second*, the named Petitioners have confirmed their willingness to vigorously
 9 prosecute this action, and their commitment to ensuring that all people facing the
 10 current dangerous conditions in Terminal Island benefit from this case just as they
 11 do. *See, e.g.*, Compl., Ex. 1, ¶ 4, Ex. 2, ¶ 4, Ex. 3, ¶ 3.

12 Moreover, the Proposed Class is represented by counsel from the American
 13 Civil Liberties Union Foundation of Southern California, the Prison Law Office, and
 14 Bird Marella. Counsel have extensive experience litigating class action lawsuits and
 15 other complex cases in federal court, including litigating cases on behalf of
 16 prisoners. *See* Declaration of Naeun Rim, Declaration of Peter Eliasberg,
 17 Declaration of Donald Specter. Counsel will vigorously represent the Proposed
 18 Class.

19 **III. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF**
 20 **RULE 23(b)(2).**

21 In addition to satisfying the four prerequisites of Rule 23(a), the Proposed
 22 Class qualifies for class treatment under Rule 23(b)(2). Rule 23(b)(2) requires
 23 Petitioners establish that “the party opposing the class has acted or refused to act on
 24 grounds that apply generally to the class, so that final injunctive relief or
 25 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed.
 26 R. Civ. P. 23(b)(2). “Rule [23](b)(2) was adopted in order to permit the prosecution
 27 of civil rights actions.” *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998). As a
 28 result, “[i]t is sufficient’ to meet the requirements of Rule 23(b)(2) [that] ‘class

1 members complain of a pattern or practice that is generally applicable to the class as
 2 a whole.” *Rodriguez*, 591 F.3d at 11226 (citation omitted) (holding that class of
 3 noncitizens detained during immigration proceedings met Rule 23(b)(2) criteria
 4 because “all class members [sought] the exact same relief as a matter of statutory or,
 5 in the alternative, constitutional right”); *id.* at 1125 (“The fact that some class
 6 members may have suffered no injury or different injuries from the challenged
 7 practice does not prevent the class from meeting the requirements of Rule
 8 23(b)(2).”).

9 The class Plaintiffs seek to certify is a paradigm Rule 23(b)(2) class. *First*,
 10 Respondents are acting on grounds that are generally applicable to the class because
 11 they subject all members of the Proposed Class to the same policies or practices—
 12 namely, Terminal Island’s policies do not allow for appropriate social distancing,
 13 adequate testing, tracing, quarantining or isolating, or adequately monitoring or
 14 treating prisoners to prevent the spread and severity of COVID-19. *See e.g.* Compl.
 15 ¶ 52. *Second*, the injunctive relief requested by Petitioners is appropriate for class
 16 as a whole. The class requests uniform relief—(1) the institution of a court-
 17 supervised process by which all prisoners are considered for home release or
 18 confinement on an accelerated basis and (2) an injunction mandating the adoption
 19 and implementation of appropriate social distancing, hygiene, quarantine/isolation,
 20 and treatment practices at Terminal Island. *See* Compl. pp. 50-54

21 Because this remedy would afford the same relief to all members of the
 22 Proposed Class, certification under Rule 23(b)(2) is appropriate. *See Parsons*, 754
 23 F.3d at 689 (holding declaratory and injunctive relief proper as to class where
 24 “every [member] . . . is allegedly suffering the same (or at least a similar) injury and
 25 that injury can be alleviated for every class member by uniform changes in . . .
 26 policy and practice”); *Rodriguez*, 591 F.3d at 1126 (certifying Rule 23(b)(2) class of
 27 imprisoned immigrants where class sought uniform procedure for release, because
 28 “relief from a single practice is requested by all class members”).

1 **IV. CONCLUSION**

2 For the foregoing reasons, Petitioners respectfully request that the Court
3 provisionally certify the Proposed Class.

4 *Local Rule 5-4.3.4(a)(2)(i) Compliance: Filer attests that all other*
5 *signatories listed concur in the filing's content and have authorized this filing.*
6

7 DATED: May 27, 2020

Respectfully submitted,

8 Terry W. Bird
9 Dorothy Wolpert
10 Naeun Rim
11 Shoshana E. Barnett
12 Christopher J. Lee
13 Jimmy Threatt
14 Bird, Marella, Boxer, Wolpert, Nessim,
15 Drooks, Lincenberg & Rhow, P.C.

16 By: /s/ Naeun Rim

Naeun Rim

Attorneys for Plaintiff-Petitioners

17
18 DATED: May 27, 2020

Peter J. Eliasberg
19 Peter Bibring
20 ACLU Foundation of Southern California

21 By: /s/ Peter Bibring

Peter Bibring

Attorneys for Plaintiff-Petitioners

22
23 DATED: May 27, 2020

Donald Specter
24 Sara Norman
25 Prison Law Office

26 By: /s/ Donald Specter

Donald Specter

Attorneys for Plaintiff-Petitioners

Terry W. Bird – Bar No. 49038
 tbird@birdmarella.com
 Dorothy Wolpert – Bar No. 73213
 dwolpert@birdmarella.com
 *Naeun Rim – Bar No. 263558
 nrin@birdmarella.com
 Shoshana E. Bannett – Bar No. 241977
 sbannett@birdmarella.com
 Christopher J. Lee – Bar No. 322140
 cleee@birdmarella.com
 Jimmy Threatt – Bar No. 325317
 jthreatt@birdmarella.com
 BIRD, MARELLA, BOXER,
 WOLPERT, NESSIM, DROOKS,
 LINCENBERG & RHOW, P.C.
 1875 Century Park East, 23rd Floor
 Los Angeles, California 90067-2561
 Telephone: (310) 201-2100
 Facsimile: (310) 201-2110

Peter J. Eliasberg – Bar No. 189110
 peliasberg@aclusocal.org
 Peter Bibring – Bar No. 223981
 pbibring@aclusocal.org
 ACLU FOUNDATION OF
 SOUTHERN CALIFORNIA
 1313 West 8th Street
 Los Angeles, CA 90017
 Telephone: (213) 977-9500
 Facsimile: (213) 977-5297

Donald Specter – Bar No. 83925
 dspecter@prisonlaw.com
 Sara Norman – Bar No. 189536
 snorman@prisonlaw.com
 PRISON LAW OFFICE
 1917 Fifth Street
 Berkeley, California 94710
 Telephone: (510) 280-2621
 Facsimile: (510) 280-2704

Attorneys for Plaintiff-Petitioners

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

LANCE AARON WILSON;
 MAURICE SMITH; EDGAR
 VASQUEZ, individually and on
 behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

FELICIA L. PONCE, in her capacity
 as Warden of Terminal Island; and
 MICHAEL CARVAJAL, in his
 capacity as Director of the Bureau of
 Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04451-MWF-MRWx

**DECLARATION OF NAEUN RIM IN
 SUPPORT OF PLAINTIFF-
 PETITIONERS' EX PARTE
 APPLICATION FOR PROVISIONAL
 CLASS CERTIFICATION**

*[Filed concurrently with Notice of Ex
 Parte and Ex Parte Application;
 Declarations of Peter Eliasberg and
 Donald Specter; and [Proposed] Order]*

Assigned to Hon. Michael W. Fitzgerald
 Courtroom 5A

DECLARATION OF NAEUN RIM

I, Naeun Rim, declare as follows:

1. I am an active member of the Bar of the State of California and attorney of record for Plaintiff-Petitioners Lance Aaron Wilson, Maurice Smith, Edgar Vasquez, individually and on behalf of all others similarly situated, in this action. I make this declaration in support of Plaintiff-Petitioners' *Ex Parte* Application for Provisional Class Certification. Except for those matters stated on information and belief, I make this declaration based upon personal knowledge and, if called upon to do so, I could and would so testify.

2. I am a principal with Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, a professional corporation ("Bird Marella"), a litigation boutique in Los Angeles, California, that has extensive experience litigating class actions. I am counsel for Plaintiff-Petitioners in this matter, along with my partners Terry Bird and Dorothy Wolpert and my colleagues Shoshana Bannett, Christopher Jumin Lee, and Jimmy Threatt.

3. I have been practicing law for approximately twelve years. For the past four years, I have been an attorney at Bird Marella, where I litigate complex criminal and civil matters in federal and state courts. I am currently representing defendants in two class actions brought in this district. Prior to being at Bird Marella, I was a Trial Deputy for four years at the Federal Public Defenders Office in Los Angeles, where I represented federal criminal defendants in this district and litigated several habeas matters. For three years, I was the attorney in charge of overseeing Public Counsel's Federal *Pro Se* Clinic, which was then located in the Spring Street United States Courthouse at 312 N. Spring Street, Los Angeles, California. At the Federal Pro Se Clinic, I advised and directly represent many litigants in civil rights cases, *Bivens* actions, and Federal Tort Claims Act cases brought against federal and state officials and agencies. I clerked for one year for the Honorable A. Howard Matz in the Central District of California.

1 4. Terry Bird and Dorothy Wolpert, two of the founding partners of Bird
2 Marella, each has more than 40 years of litigation experience, including experience
3 litigating class actions and compassionate release cases. Prior to forming Bird
4 Marella, Mr. Bird was an Assistant United States Attorney in the Central District of
5 California. Shoshana Bannett, Christopher Jumin Lee, and Jimmy Threatt are each
6 attorneys in my office who have experience litigating both criminal and civil cases.

7 5. Our co-counsel in this matter include Peter Eliasberg and Peter Bibring,
8 respectively the Chief Counsel and the Director of Police Practices/Senior Staff
9 Attorney of the American Civil Liberties Union Foundation of Southern California
10 (“ACLU”), and Donald Specter and Sara Norman, respectively the Executive
11 Director and Managing Attorney of the Prison Law Office “PLO.”

12 6. ACLU SoCal is a non-profit organization whose mission is to defend
13 the fundamental rights outlined in the United States Constitution and the Bill of
14 Rights and has extensive experience litigating large-scale class actions involving
15 complex constitutional issues in the Southern California area. Further information
16 about ACLU SoCal’s experience is found in the Declaration of Peter Eliasberg.

17 7. PLO is a non-profit public interest law firm that provides free legal
18 services to adult and juvenile offenders to improve their conditions of confinement.
19 The office provides direct services to thousands of prisoners and juveniles each
20 year, advocates for policy changes, and, if necessary, engages in impact litigation to
21 ensure that correctional institutions meet standards required by the U.S.
22 Constitution. PLO’s experience is elaborated on in the Declaration of Donald
23 Specter.

24 8. On May 21, 2020, I met and conferred with Assistant United States
25 Attorneys Joanne Osinoff, David M. Harris, and Keith Staub by telephone and gave
26 notice that Petitioners would be filing this *ex parte* application for provisional class
27 certification. On May 23, 2020, I followed up in an email to Mr. Staub to determine
28 Respondents’ position. Petitioners anticipate that Respondents will object.

1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed May 27, 2020, at Los Angeles, California.

4

5

/s/ Naeun Rim
Naeun Rim

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Terry W. Bird – Bar No. 49038
 tbird@birdmarella.com
 Dorothy Wolpert – Bar No. 73213
 dwolpert@birdmarella.com
 *Naeun Rim – Bar No. 263558
 nrin@birdmarella.com
 Shoshana E. Bannett – Bar No. 241977
 sbannett@birdmarella.com
 Christopher J. Lee – Bar No. 322140
 cleee@birdmarella.com
 Jimmy Threatt – Bar No. 325317
 jthreatt@birdmarella.com
 BIRD, MARELLA, BOXER,
 WOLPERT, NESSIM, DROOKS,
 LINCENBERG & RHOW, P.C.
 1875 Century Park East, 23rd Floor
 Los Angeles, California 90067-2561
 Telephone: (310) 201-2100
 Facsimile: (310) 201-2110

Peter J. Eliasberg – Bar No. 189110
 peliasberg@aclusocal.org
 Peter Bibring – Bar No. 223981
 pbibring@aclusocal.org
 ACLU FOUNDATION OF
 SOUTHERN CALIFORNIA
 1313 West 8th Street
 Los Angeles, CA 90017
 Telephone: (213) 977-9500
 Facsimile: (213) 977-5297

Donald Specter – Bar No. 83925
 dspecter@prisonlaw.com
 Sara Norman – Bar No. 189536
 snorman@prisonlaw.com
 PRISON LAW OFFICE
 1917 Fifth Street
 Berkeley, California 94710
 Telephone: (510) 280-2621
 Facsimile: (510) 280-2704

Attorneys for Plaintiff-Petitioners

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

LANCE AARON WILSON;
 MAURICE SMITH; EDGAR
 VASQUEZ, individually and on
 behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

FELICIA L. PONCE, in her capacity
 as Warden of Terminal Island; and
 MICHAEL CARVAJAL, in his
 capacity as Director of the Bureau of
 Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04451-MWF-MRWx

DECLARATION OF PETER J. ELIASBERG IN SUPPORT OF PLAINTIFF-PETITIONERS' EX PARTE APPLICATION FOR PROVISIONAL CLASS CERTIFICATION

*[Filed concurrently with Notice of Ex
 Parte and Ex Parte Application;
 Declarations of Naeun Rim and Donald
 Specter; and [Proposed] Order]*

Assigned to Hon. Michael W. Fitzgerald
 Courtroom 5A

DECLARATION OF PETER J. ELIASBERG

I, Peter J. Eliasberg, declare as follows:

1. I am an attorney at law admitted to practice before the courts of the State of California and before this Court. I am the Chief Counsel of the American Civil Liberties Union Foundation of Southern California (“ACLU-SC”), and am co-counsel of record for Plaintiff-Petitioners (“Petitioners”) in this litigation. I make this declaration in support of Petitioners’ Motion for Provisional Class Certification. If called as a witness, I would and could competently testify to the facts stated herein, all of which are within my personal knowledge.

2. The ACLU-SC is committed to the vigorous, effective, and efficient prosecution of the interests of Petitioners and the proposed class (the “Class”), a commitment it has demonstrated in its representation of Petitioners in the proceedings to date in this matter.

3. Based on my co-representation with the attorneys of the law firm Bird Marella Boxer Wolpert Nessim Dooks Lincenberg & Rhow, P.C. (“Bird, Marella”) and the Prison Law Office (“PLO”) in this and other matters, it is my belief that the attorneys of the ACLU, Bird Marella, and PLO are likewise committed to the vigorous, effective, and efficient prosecution of this matter.

4. The ACLU-SC, Bird Marella, and PLO (collectively, “Petitioners’ counsel”) have been working for weeks on this matter. Prior to and since the filing of the complaint in this action, Petitioners’ counsel has dedicated significant hours to the investigation and research of Petitioners’ claims—including speaking with Petitioners, other members of the Class, and witnesses to develop the factual record and legal issues underlying this case, performing legal research about potential claims and relief available to the Class, and drafting a lengthy and detailed complaint, and *ex parte* application for a TRO and supporting documentation, as well as this provisional class certification motion. Through this work, Petitioners’ counsel have built a strong, effective working relationship with the named

1 Petitioners and several other members of the proposed class.

2 5. The ACLU-SC has decades of experience in litigating a broad variety
3 of civil rights cases, including prisoners' rights cases. In addition, I have served as
4 lead counsel or co-lead counsel in numerous federal civil rights class actions in the
5 Central District of California, have been lead counsel in civil rights matters before
6 the United States Court of Appeals for the Ninth Circuit, the California Supreme
7 Court, and the United States Supreme Court, and have argued a case before the U.S.
8 Supreme Court. I have served as co-lead class counsel for all the inmates in Los
9 Angeles County Jails in *Rutherford v. Baca*, No. 75-04111 (C.D. Cal.), in
10 connection with issues concerning over-crowding, since 2009 and since 2012 have
11 served as co-lead class counsel in *Rosas v. Baca*, No. 12-0428 (C.D. Cal.), in
12 connection with use of force inside the Los Angeles County jails.

13 6. My co-counsel Peter Bibring is a senior staff attorney and Director of
14 Police Practices at the ACLU-SC, where he has worked since 2006. In addition to
15 supervising the work around policing at ACLU-SC and coordinating advocacy
16 around policing at the three California ACLU affiliates, Mr. Bibring has litigated
17 numerous complex federal cases and class actions, primarily involving issues
18 around policing, and has been lead counsel and argued cases at the Ninth Circuit,
19 California Supreme Court and Central District, and various California courts,
20 including the California Supreme Court. Representative cases include *Fazaga v.*
21 *Fed. Bureau of Investigation*, 916 F.3d 1202 (9th Cir. 2019) (co-lead counsel) (class
22 action challenge to FBI's use of undercover informants to collect information in
23 mosques without suspicion of criminal activity); *Vasquez v. Rackauckus*, 734 F.3d
24 1025 (9th Cir. 2013) (co-lead counsel) (class action due process challenge to
25 enforcement of gang injunctions); *K.L. v. City of Glendale*, No. CV 11-8484 (C.D.
26 Cal.) (co-lead counsel) (class action challenge to gang sweep in high school by
27 police that exclusively targeted Latino students, resulting in settlement requiring
28 changes to policies and training of four municipal agencies); *Fitzgerald v. City of*

1 *Los Angeles*, No. 03-01876 (C.D. Cal.) (class action challenge to Los Angeles
2 Police Department detention and search practices in the Skid Row area of Los
3 Angeles, resulting in settlement requiring changes in LAPD training on search and
4 detention); *Trujillo v. City of Ontario*, No. ED CV 04-1015 (C.D. Cal.) and No. 06-
5 55736 (9th Cir.) (class action on behalf of police officers subjected to covert video
6 surveillance in their station locker room settled on the first day of trial for more than
7 \$2 million). In addition to his litigation experience, Mr. Bibring helped to develop
8 and for three years taught a Civil Rights Litigation Clinic at UCLA School of Law,
9 in which he provided classroom instruction on procedural and immunities issues
10 with federal civil rights actions, as well as instruction in legal skills including
11 interviews, depositions, negotiations, and close supervision of students in their work
12 on active civil rights cases. Before working at ACLU-SC, Mr. Bibring worked for
13 two years in plaintiff-side employment law, where he litigated class action
14 employment cases, and clerked for the Honorable Marilyn Hall Patel, then Chief
15 Judge of the United States District Court for the Northern District of California, and
16 the Honorable Pierre N. Leval on the United States Court of Appeals for the Second
17 Circuit.

18 7. The ACLU-SC has dedicated and will continue to commit substantial
19 resources to the representation of this class.

20 8. Petitioners' counsel have agreed to act jointly as class counsel, if the
21 Court so designates them.

22 9. A true and correct copy of my resume is attached hereto as Exhibit A.

23 I declare under penalty of perjury of the laws of the State of California that
24 the foregoing is true and correct.

25 I declare under penalty of perjury under the laws of the United States of
26 America that the foregoing is true and correct.

1 Executed May 27, 2020, at Los Angeles, California.
2

3 /s/ Peter J. Eliasberg
4 Peter J. Eliasberg
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Peter J. Eliasberg
ACLU of Southern California
1313 West 8th Street
Los Angeles, California 90017
213-977-9500 ext 228
peliasberg@aclu-sc.org

LEGAL EXPERIENCE

2016-	Chief Counsel and Manheim Family Attorney for First Amendment Rights for the ACLU Foundation of Southern California B Significant cases listed on separate sheet
2011- 2016	Legal Director and Manheim Family Attorney for First Amendment Rights for the ACLU of Foundation Southern California
2004-2011	Managing Attorney and Manheim Family Attorney for First Amendment Rights for the ACLU of Southern California Significant cases listed on separate sheet
2002-2004	Managing Attorney for the ACLU Foundation of Southern California
1996-2001	Staff Attorney for the ACLU Foundation of Southern California George Slaff First Amendment Fellow

1995-1996	Law Clerk for the Honorable Stephen Reinhardt United States Court of Appeals for the Ninth Circuit
1994-1995	Law Clerk for the Honorable Stanley Sporkin United States District Court for the District of Columbia

EDUCATION

1991-1994	Harvard Law School, Cambridge, Massachusetts J.D., <u>magna cum laude</u> Ames Moot Court Semi-Finalist Research Assistant for Richard Fallon, Professor of Federal Courts and Constitutional Law
1978-1982	Yale College, New Haven, Connecticut B.A., <i>magna cum laude</i> Honors In History

SELECTED APPEARANCES IN CIVIL RIGHTS CASES IN FEDERAL AND STATE COURT

PRISONERS= RIGHTS

Rosas v. Baca B co-lead counsel in class action in federal district court challenging pattern of deputy on inmate abuse in the Los Angeles County jails. Case resulted in consent decree requiring Sheriff=s Department to implement wide-ranging systemic reforms to policies, practices, and training to end pattern of jail beatings

Rutherford v. Baca B co-lead counsel overseeing monitoring of jails as a result of successful judgment in case challenging conditions of confinement in Los Angeles County jails.

FIRST AMENDMENT SPEECH AND ASSOCIATION

Porter v. Bowen B successfully represented plaintiffs in Ninth Circuit Court of Appeals making First Amendment challenge to California Secretary of State=s attempt to prohibit so-called vote swapping web sites.

Alliance For Survival v. City of Los Angeles -- Case on behalf of non-profit peace and environmental organization challenging validity of city's anti-solicitation ordinance. Argued for Plaintiffs in Ninth Circuit Court of Appeals and California Supreme Court on certification of state law question.

Valley Vote v. City of Los Angeles -- Represented and negotiated settlement for non-profit group barred from gathering petition signatures in public forum.

Burkow v. City of Los Angeles B Obtained preliminary injunctive relief forbidding defendant from enforcing ordinance banning AFor Sale@ signs on parked cars. Defendant subsequently agreed to cease enforcing the ordinance permanently in settlement agreement.

Lifestyles Inc. v. Stroh -- Successfully represented adult organization that had been barred from holding its annual sensual and erotic art exhibition. Obtained injunctive relief allowing exhibition to go forward. Argued for Plaintiff in Ninth Circuit Court of Appeals.

Neal v. Basset Unified School District B Represented student suspended for writing open letter to school community critical of principal. Obtained Temporary Restraining Order enabling student to return to school and Preliminary Injunction allowing student to attend graduation with his class and obtain his diploma.

FIRST AMENDMENT RELIGION

Buono v. Norton B Successfully represented plaintiffs challenging display of Latin Cross on federal land in Mojave National Preserve in both district court and the Ninth Court of Appeals. Represented Plaintiff in United States Supreme Court on challenge to validity of congressional transfer of land upon which the Latin Cross is located.

Bacus v. Palo Verde Unified School District B Case on behalf of two teachers challenging constitutionality of school board practice of opening school board

meetings with sectarian prayers. Successfully argued appeal for Plaintiffs in Ninth Circuit Court of Appeals.

ACLU v. City of Redlands B Obtained injunctive relief under the Establishment Clause preventing City of Redlands from sponsoring March For Jesus Parade.

FOURTH AMENDMENT AND PRIVACY

Trujillo/Bernhard v. City of Ontario B Represented class of police officers challenging warrantless video surveillance of police locker room. Successfully argued appeal for Plaintiff class in Ninth Circuit Court of Appeal of denial of qualified immunity to Defendants.

Fitzgerald v. City of Los Angeles B Represented group of homeless individuals and obtained settlement in challenge to pattern of arrests and searches of Plaintiffs.

Riordan v. Verizon and Campbell v. AT&T B Representing telephone customers in challenge to telecommunications carriers= practice of turning over customer phone records to the National Security Agency.

DISABILITY RIGHTS

Beauchamp v. MTA -- class action suit on behalf of bus riders in wheelchairs against the Los Angeles County MTA for failing to obey Americans With Disabilities Act. Obtained preliminary injunctive relief and negotiation settlement agreement requiring significant improvements in bus service to riders with mobility impairments.

Miles v. Superior Court B Represented class of persons with disabilities challenging inaccessibility of Los Angeles County Superior Courts.

EDUCATIONAL EQUITY

Daniel v. California B Challenge to unequal access to AP classes under the California State Constitution. Case resulted in settlement through legislation setting up AP Challenge Grant program for schools with few or no AP classes.

Williams v. California B Challenge to unequal and inadequate school facilities, unqualified teachers and lack of instructional materials in K-12 public schools. Settlement provided for, among other things, \$800 million emergency repair program and monitoring of facilities, access to instructional materials by County Superintendents of Education.

EQUAL PROTECTION

Gregorio T. v. Wilson -- case successfully challenging the constitutionality of California's Proposition 187.

FREEDOM OF INFORMATION

Wiener v. FBI -- successfully represented University of California history professor seeking documents concerning the FBI's surveillance of John Lennon during the early 1970's

HABEAS CORPUS

McDougal v. Ramon -- Successfully challenged confinement of Whitewater suspect, Susan McDougal, in 23-hour lockdown in Los Angeles County Jail.

Terry W. Bird – Bar No. 49038
 tbird@birdmarella.com
 Dorothy Wolpert – Bar No. 73213
 dwolpert@birdmarella.com
 *Naeun Rim – Bar No. 263558
 nrin@birdmarella.com
 Shoshana E. Bannett – Bar No. 241977
 sbannett@birdmarella.com
 Christopher J. Lee – Bar No. 322140
 cleee@birdmarella.com
 Jimmy Threatt – Bar No. 325317
 jthreatt@birdmarella.com
 BIRD, MARELLA, BOXER,
 WOLPERT, NESSIM, DROOKS,
 LINCENBERG & RHOW, P.C.
 1875 Century Park East, 23rd Floor
 Los Angeles, California 90067-2561
 Telephone: (310) 201-2100
 Facsimile: (310) 201-2110

Peter J. Eliasberg – Bar No. 189110
 peliasberg@aclusocal.org
 Peter Bibring – Bar No. 223981
 pbibring@aclusocal.org
 ACLU FOUNDATION OF
 SOUTHERN CALIFORNIA
 1313 West 8th Street
 Los Angeles, CA 90017
 Telephone: (213) 977-9500
 Facsimile: (213) 977-5297

Donald Specter – Bar No. 83925
 dspecter@prisonlaw.com
 Sara Norman – Bar No. 189536
 snorman@prisonlaw.com
 PRISON LAW OFFICE
 1917 Fifth Street
 Berkeley, California 94710
 Telephone: (510) 280-2621
 Facsimile: (510) 280-2704

Attorneys for Plaintiff-Petitioners

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

LANCE AARON WILSON;
 MAURICE SMITH; EDGAR
 VASQUEZ, individually and on
 behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

FELICIA L. PONCE, in her capacity
 as Warden of Terminal Island; and
 MICHAEL CARVAJAL, in his
 capacity as Director of the Bureau of
 Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04451-MWF-MRWx

**DECLARATION OF DONALD
 SPECTER IN SUPPORT OF
 PLAINTIFF-PETITIONERS’
 MOTION FOR PROVISIONAL
 CLASS CERTIFICATION**

*[Filed concurrently with Notice of Ex
 Parte and Ex Parte Application;
 Declarations of Naeun Rim and Peter
 Eliasberg; and [Proposed] Order]*

Assigned to Hon. Michael W. Fitzgerald
 Courtroom 5A

DECLARATION OF DONALD SPECTER

I, Donald Specter, declare as follows:

1. I am the Executive Director of the Prison Law Office (“PLO”), co-counsel of record to Plaintiff-Petitioners Lance Aaron Wilson, Maurice Smith, and Edgar Vasquez (“Petitioners”) in this matter. I am an active member of the Bar of the State of California. I have personal knowledge of the facts set forth herein, which are known by me to be true and correct, and if called as a witness, I could and would competently testify thereto.

2. The PLO Office has litigated numerous large-scale prisoner and parolee class actions for more than 30 years, including two cases before the U.S. Supreme Court in *Brown v. Plata*, 563 U.S. 493 (2011) (holding the court mandated population limit for California prisons was necessary to remedy violations of prisoners’ constitutional rights to adequate medical and mental health care) and *Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206 (1998) (unanimously holding the Americans with Disabilities Act applies to state prisoners).

3. Other class action and impact litigation cases brought by the PLO involving the rights of incarcerated people include *Gates v. Deukmejian*, 987 F.2d 1392 (9th Cir. 1993) (conditions, psychiatric and medical care, and HIV discrimination at California Medical Facility); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995) (conditions, medical and mental health care, guard brutality, due process, personal safety, access to law libraries at Pelican Bay State Prison); *Coleman v. Wilson*, 912 F. Supp. 1282 (E.D. Cal. 1995) (statewide class action on the adequacy of mental health care in California prisons); *Clark v. California*, 123 F.3d 1267 (9th Cir. 1997) (statewide class action on behalf of developmentally disabled California prisoners under the Americans with Disabilities Act); *Armstrong v. Wilson*, 124 F.3d 1019 (9th Cir. 1997) (statewide class action on behalf of physically disabled California prisoners under the Americans with Disabilities Act and the Rehabilitation Act); *Plata v. Brown, supra*, (statewide class action

1 challenging inadequacy of California prisoner health care); *Valdivia v. Davis*, 206 F.
 2 Supp. 2d 1068 (E.D. Cal. 2002) (statewide class action challenging the lack of due
 3 process in California Board of Prison Terms parole revocation proceedings); *Perez*
 4 *v. Tilton*, Case No. 3:05-cv-05241-JSW (N.D. Cal. 2005) (statewide class action
 5 challenging inadequacy of California prisoner dental care); *Parsons v. Ryan*, 289
 6 F.R.D. 513 (D. Ariz. 2013), aff'd, 754 F.3d 657 (9th Cir. 2014) (statewide class
 7 action challenging inadequacy of Arizona Department of Correction's medical,
 8 dental, and mental health care, and conditions of confinement in isolation units);
 9 *Farrell v. Tilton*, Case No. 3079344 (Alameda County Sup. Ct. 2003) (taxpayer
 10 action to reform the conditions of confinement for wards under the jurisdiction of
 11 the Division of Juvenile Justice [formerly California Youth Authority]).

12 4. The Prison Law Office also has litigated successfully multiple cases
 13 challenging health care conditions in county jails in California, including *Hall v.*
 14 *Cty. of Fresno*, Case No. 1:11-cv-02047-LJO-BAM (E.D. Cal.) (Consent Decree,
 15 Dkt. 112); *Gray v. Cty. of Riverside*, Case No. EDCV 13-0444-VAP (Opx) (C.D.
 16 Cal) (Consent Decree, Dkt. 173); *Chavez v. Cty. of Santa Clara*, Case No. 1:15-cv-
 17 05277-NJV (N.D. Cal.); and *Turner v. Cty. of San Bernardino*, Case No. 5:16-cv-
 18 00355-VAP-DTB (C.D. Cal.) (pending). *Schwarzenegger*, Case No. 3:01-cv-01351-
 19 TEH (N.D. Cal. 2001).

20 5. PLO has dedicated and will continue to commit to dedicate substantial
 21 resources to the representation of the Proposed Class.

22 I declare under penalty of perjury under the laws of the United States of
 23 America that the foregoing is true and correct.

24 Executed May 27, 2020, at Sea Ranch, California.

25
 26 /s/ Donald Specter
 27 Donald Specter
 28

Terry W. Bird – Bar No. 49038
 tbird@birdmarella.com
 Dorothy Wolpert – Bar No. 73213
 dwolpert@birdmarella.com
 *Naeun Rim – Bar No. 263558
 nrin@birdmarella.com
 Shoshana E. Bannett – Bar No. 241977
 sbannett@birdmarella.com
 Christopher J. Lee – Bar No. 322140
 cleee@birdmarella.com
 Jimmy Threatt – Bar No. 325317
 jthreatt@birdmarella.com
 BIRD, MARELLA, BOXER,
 WOLPERT, NESSIM, DROOKS,
 LINCENBERG & RHOW, P.C.
 1875 Century Park East, 23rd Floor
 Los Angeles, California 90067-2561
 Telephone: (310) 201-2100
 Facsimile: (310) 201-2110

Peter J. Eliasberg – Bar No. 189110
 peliasberg@aclusocal.org
 Peter Bibring – Bar No. 223981
 pbibring@aclusocal.org
 ACLU FOUNDATION OF
 SOUTHERN CALIFORNIA
 1313 West 8th Street
 Los Angeles, CA 90017
 Telephone: (213) 977-9500
 Facsimile: (213) 977-5297

Donald Specter – Bar No. 83925
 dspecter@prisonlaw.com
 Sara Norman – Bar No. 189536
 snorman@prisonlaw.com
 PRISON LAW OFFICE
 1917 Fifth Street
 Berkeley, California 94710
 Telephone: (510) 280-2621
 Facsimile: (510) 280-2704

Attorneys for Plaintiff-Petitioners

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

LANCE AARON WILSON;
 MAURICE SMITH; EDGAR
 VASQUEZ, individually and on
 behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

FELICIA L. PONCE, in her capacity
 as Warden of Terminal Island; and
 MICHAEL CARVAJAL, in his
 capacity as Director of the Bureau of
 Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04451-MWF-MRWx

**[PROPOSED] ORDER GRANTING
 PLAINTIFF-PETITIONERS' EX
 PARTE APPLICATION FOR
 PROVISIONAL CLASS
 CERTIFICATION**

*[Filed concurrently with Notice of Ex
 Parte and Ex Parte Application; and
 Declarations of Naeun Rim, Peter
 Eliasberg, and Donald Specter]*

Assigned to Hon. Michael W. Fitzgerald
 Courtroom 5A

1 Plaintiff-Petitioners Lance Aaron Wilson, Maurice Smith, and Edgar
 2 Vasquez's ("Petitioners") *Ex Parte* Application for an order provisionally certifying
 3 a class, as defined below, appointing Petitioners as class representative and
 4 appointing class counsel, came on for a hearing before the Court.

5 Upon reading and considering the supporting papers filed in connection with
 6 the Application and the evidence presented in support thereof, the Court finds that:

- 7 (a) under Rule 23(a)(1), the Proposed Class is sufficiently numerous in that
 8 it consists of over 1,000 individuals;
- 9 (b) under Rule 23(a)(2), there exist common questions of law and fact as to
 10 all class members, which include, *inter alia*,
 11 (i) whether the Proposed Class Members are able to adequately
 12 social distance at Terminal Island at all times;
 13 (ii) whether Terminal Island failed to adopt and implement adequate
 14 testing, tracing, quarantine and isolation protocols to reduce the
 15 spread of COVID-19;
 16 (iii) whether the Proposed Class Members are living in sufficiently
 17 hygienic living spaces to reduce the spread of COVID-19;
 18 (iv) whether Terminal Island provided prisoners and staff with
 19 appropriate Personal Protective Equipment ("PPE") and
 20 adequately enforced the usage of PPE to reduce the spread of
 21 COVID-19;
 22 (v) whether Terminal Island failed to provide adequate medical
 23 monitoring and treatment related to COVID-19; and
 24 (vi) whether the failure to institute social distancing subjects the
 25 Proposed Class to a heightened risk of serious illness and death
 26 and violates the Proposed Class Members' Eighth Amendment
 27 rights.
- 28 (c) under Rule 23(a)(3), the claims of the proposed class representatives

1 are typical of the claims of all class members in that the Petitioners and
2 Proposed Class Members are all individuals who are incarcerated at
3 Terminal Island and their claims all arise from the same failure to
4 implement appropriate preventative measures, monitoring and
5 treatment in response to COVID-19, and they all will suffer the same
6 harm: the significant and avoidable risk of serious illness or death;

7 (d) under Rule 23(a)(4), the proposed class representatives have
8 demonstrated that each of them will fairly and adequately protect the
9 interests of the class;

10 (e) the proposed counsel for the class, the ACLU of Southern California,
11 the Prison Law Office and the law firm of Bird Marella have
12 demonstrated that they are experienced in prosecuting class actions of
13 this nature and will adequately represent the interests of the Class;

14 (f) under Rule 23(b)(2), the party opposing the class has acted or refused
15 to act on grounds that apply generally to the class so that final
16 injunctive relief is appropriate respecting the class as a whole, because
17 Respondents subject all members of the proposed class to the same
18 policies or practices—namely, Terminal Island’s policies do not allow
19 for appropriate social distancing, adequate testing, tracing, quarantining
20 or isolating, or adequately monitoring or treating prisoners to prevent
21 the spread and severity of COVID-19, and the injunctive relief
22 requested by Petitioners is appropriate for class as a whole—(1) the
23 institution of a court-supervised process by which all prisoners are
24 considered for home release or confinement on an accelerated basis and
25 (2) an injunction mandating the adoption and implementation of
26 appropriate social distancing, hygiene, quarantine/isolation, and
27 treatment practices at Terminal Island; and
28

