

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

YONNEDIL CARROR TORRES;
 VINCENT REED; FELIX SAMUEL
 GARCIA; ANDRE BROWN; and
 SHAWN L. FEARS, individually and
 on behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

LOUIS MILUSNIC, in his capacity as
 Warden of Lompoc; and MICHAEL
 CARVAJAL, in his capacity as Director
 of the Bureau of Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04450-CBM-PVCx

**PLAINTIFF-PETITIONERS'
 NOTICE OF EX PARTE 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. Consuelo B. Marshall
 Courtroom 8B

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

2 **PLEASE TAKE NOTICE** that Plaintiff-Petitioners (“Petitioners”) Yonnedil
 3 Carror Torres, Vincent Reed, Felix Samuel Garcia, Andre Brown, and Shawn L.
 4 Fears, individually and on behalf of all others similarly situated, apply, *ex parte*, for
 5 an order provisionally certifying Petitioner’s claims as a class action, appointing
 6 Petitioners as Class Representatives, and appointing Class Counsel, pursuant to the
 7 Federal Rules of Civil Procedure 23(a) and 23(b)(2).

8 Petitioners propose the following class definition: All current and future
 9 people in post-conviction custody at FCI Lompoc and USP Lompoc (collectively
 10 “Lompoc”). If the Court disagrees with the above-stated definition for the Proposed
 11 Class, Petitioners move for the Court to redefine or modify that definition, as such
 12 determinations are within the Court’s discretion. Fed. R. Civ. P. 23(d)(1). Petitioners
 13 also move for the appointment of Petitioners as representatives of the Proposed
 14 Class. Petitioners further move for the ACLU of Southern California, the Prison
 15 Law Office, and Bird Marella to be appointed as Class Counsel under the Federal
 16 Rule of Civil Procedure 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, counsel
 22 for Petitioners, met and conferred with counsel for Respondents, Assistant United
 23 States Attorneys Joanne Osinoff, David M. Harris, and Keith Staub, by telephone
 24 and gave notice of this *ex parte* application. See Declaration of Naeun Rim (“Rim
 25 Decl.”) at ¶ 8. Since then, Ms. Rim has made multiple attempts to find out whether
 26 Respondents intend to oppose this *ex parte* application, but to date, Respondents’
 27 counsel have not advised whether they would oppose. *Id.* Respondents opposed a
 28 similar *ex parte* application in a similar class action filed against FCI Terminal

1 Island titled, *Wilson v. Ponce, et. al.*, U.S.D.C. Central District of California Case
2 No. 2:20-cv-04451-MWF-MRWx, and thus, Petitioners anticipate Respondents will
3 object.

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: June 4, 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: June 4, 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: June 4, 2020

Donald Specter
24 Sara Norman
25 Prison Law Office

26 By: /s/ Donald Specter

Donald Specter

Attorneys for Plaintiff-Petitioners

APPLICATION FOR PROVISIONAL CLASS CERTIFICATION

I. INTRODUCTION

Petitioners-Plaintiffs Yonnedil Carror Torres, Vincent Reed, Felix Samuel Garcia, Andre Brown, and Shawn L. Fears (“Petitioners”) have moved for preliminary relief under a temporary restraining order (Dkt. 18 [“TRO Application”]) to prevent catastrophic harm to Lompoc prisoners, which is being caused by Respondents Louis Milusnic and Michael Carvajal’s failure to take adequate measures to address the COVID-19 pandemic. Specifically, Petitioners have asked the Court (1) to put in place a process-based remedy that requires Respondents to evaluate prisoners for home confinement and compassionate release on an accelerated basis and to eliminate eligibility barriers that categorically exclude most prisoners from consideration, even those who are non-violent and have a viable release plan, and (2) to institute social distancing, sanitation, and medical treatment policies that would bring prison conditions in compliance with the Eighth Amendment.

In connection with the emergency relief requested, this *ex parte* application seeks provisional certification of a class of all current and future prisoners in post-conviction custody at Lompoc, all of whom would be eligible to seek immediate home confinement or compassionate release or otherwise benefit from a reduced population and improved prison conditions. As demonstrated by the death of Daniel Vadnais, who died on the day that Petitioners filed their TRO Application and is the fourth prisoner to die at Lompoc,¹ *ex parte* consideration is necessary to avoid substantial—and potentially fatal—harm. The emergency remedy requested by Petitioners makes the provisional class analysis straightforward—Petitioners are not asking the Court to make home confinement or compassionate release

¹ <https://www.independent.com/2020/06/02/senators-demand-answers-as-another-lompoc-inmate-dies-of-covid/>

1 determinations for any individual prisoner. Rather, Petitioners are asking that the
2 Court set constitutional standards for *Respondents* to make those determinations and
3 to require *Respondents* to implement policies that improve Lompoc’s health and
4 safety conditions.

5 As described in Petitioner’s TRO Application (Dkt. 18), Lompoc is the site of
6 one of the worst COVID-19 outbreaks at any federal prison in the country. At least
7 1,066 prisoners at Lompoc have tested positive for COVID-19 over the course of a
8 mere two months. (*Id.* at 14.) Despite these sobering statistics, Respondents have
9 refused to follow Center for Disease Control (CDC) Guidance for Correctional
10 Facilities regarding social distancing, testing, tracing, quarantine and isolation of
11 suspected and confirmed cases, hygiene and medical care. Respondents have
12 repudiated the direction of Attorney General Barr to “immediately maximize
13 appropriate transfers to home confinement of all appropriate inmates.” For example,
14 as of April 20, 2020, only 24 out of over 2,500 prisoners at Lompoc were scheduled
15 to be released. (See Dkt. 18-1, Ex. Q.) It is clear that Respondents will not act to
16 protect prisoners from the substantial danger posed by COVID-19, which makes
17 preliminary relief imperative. Indeed, just yesterday, Respondent Carvajal appeared
18 at a Senate hearing and stated *he did not know* whether BOP was complying with a
19 federal court order to immediately evaluate medically vulnerable prisoners at FCI
20 Danbury for home confinement.² Respondents’ brazen refusal to use their existing
21 statutory authority to reduce prison density and their subsequent failure to
22 implement effective social distancing measures and provide adequate medical
23 treatment amount to deliberate indifference to the health and safety of all who are
24 incarcerated at Lompoc.

25 Federal courts in the Ninth Circuit “routinely grant provisional class
26 certification for purposes of entering [preliminary] injunctive relief” under

27 ² [*Id.*](#)
28

1 Rule 23(b)(2), when the plaintiffs establish that the four prerequisites in Rule 23(a)
 2 are met. *Carrillo v. Schneider Logistics, Inc.*, 2012 WL 556309, at *9 (C.D. Cal.
 3 Jan. 31, 2012) (citing *Baharona-Gomez v. Reno*, 167 F.3d 1228, 1233 (9th Cir.
 4 1999)); *see also Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1042
 5 (9th Cir. 2012) (holding district court did not abuse its discretion by provisionally
 6 certifying class for purpose of entering preliminary injunction); *Saravia v. Sessions*,
 7 280 F. Supp. 3d 1168, 1202 (N.D. Cal. 2017) (provisionally certifying class of
 8 detained immigrant children), *aff'd*, *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th
 9 Cir. 2018). Because Rule 23's requirements are easily satisfied here, the Court
 10 should provisionally certify the proposed class for purposes of the injunctive relief
 11 Petitioners seek, defined as ***all current and future people in post-conviction***
 12 ***custody at Lompoc*** (the "Proposed Class").

13 **II. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF** 14 **RULE 23(a).**

15 **A. Numerosity**

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

27 The Proposed Class is sufficiently numerous. Petitioners seek relief on behalf
 28 of all persons incarcerated at Lompoc. As of June 3, 2020, there are approximately

1 2,626 prisoners at both Lompoc facilities (1,677 at USP Lompoc and 949 at FCI
 2 Lompoc).³ That number standing alone satisfies the numerosity requirement. *See*
 3 *Arroyo*, 2019 WL 2912848, at *9.

4 **B. Commonality**

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

17 Commonality is satisfied where a lawsuit challenges “systemic policies and
 18 practices that allegedly expose inmates to a substantial risk of harm,” even where
 19 there are “individual factual differences among class members.” *Parsons v. Ryan*,
 20 754 F.3d 657, 681-682 (9th Cir. 2014) (collecting cases); *Hernandez v. Lynch*, 2016
 21 WL 7116611, at *17 (C.D. Cal. Nov. 10, 2016), *aff’d sub nom. Hernandez v.*
 22 *Sessions*, 872 F.3d 976 (9th Cir. 2017); *see also Inland Empire-Immigrant Youth*
 23 *Collective*, 2018 WL 1061408, at *8. “The existence of shared legal issues with
 24 divergent factual predicates is sufficient, as is a common core of salient facts
 25 coupled with disparate legal remedies within the class.” *Arroyo*, 2019 WL 2912848,
 26 at *9 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003)).

27 _____
 28 ³ <https://www.bop.gov/locations/institutions/lom/>;
<https://www.bop.gov/locations/institutions/lof/> (last visited on June 3, 2020).

Here, the Proposed Class meets the commonality requirement because all class members are subject to the same practices: Respondents' unwillingness or inability to use their existing statutory authority to reduce prison density and to institute effective social distancing, sanitation, and hygiene measures, or to provide adequate care and monitoring of prisoners for COVID-19. While it is true that COVID-19 poses a higher risk of serious illness or death for certain medically vulnerable class members, it is also true that all prisoners are at risk.⁴ *See Brown v. Plata*, 563 U.S. 493, 531-532 (2011) ("Even prisoners with no present physical or mental illness may become afflicted, and all prisoners in California are at risk so long as the State continues to provide inadequate care. Prisoners in the general population will become sick, and will become members of the plaintiff classes, with routine frequency; and overcrowding may prevent the timely diagnosis and care necessary to provide effective treatment and to prevent further spread of disease.") For example, adults age 20-44 account for 20% of all hospitalizations and 12% of ICU admissions.⁵ Even healthier people who contract COVID-19 are susceptible to severe strokes.⁶ For some, the stroke is even the first symptom of COVID-19.⁷ In fact, preliminary evidence suggests COVID-19 may render lasting organ damage in even minimally symptomatic or completely asymptomatic patients.⁸

⁴ Dkt. 1 (Complaint), Ex. 7 at ¶¶ 6, 9 (Declaration of Dr. Shamsher Samra).

⁵ *Id.*

⁶ *Id.*

⁷ Coronavirus May Pose a New Risk to Younger Patients: Strokes, New York Times (May 14, 2020), <https://www.nytimes.com/2020/05/14/health/coronavirus-strokes.html>

⁸ *Id.* (describing the way that COVID-19 can severely damage lung tissues, which in some case can cause a permanent loss of respiratory capacity, and target the heart muscle causing a condition known as myocarditis, or inflammation of the heart muscle, which can lead to rapid or abnormal heart rhythms in the short term and

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

- 3 • Whether the criteria used by Respondents to make home confinement
 4 determinations are unconstitutionally restrictive in the midst of a global
 5 pandemic;
- 6 • Whether Respondents' delay in evaluating compassionate release
 7 requests is unconstitutional in the midst of a global pandemic;
- 8 • Whether the Proposed Class members are able to adequately social
 9 distance at Lompoc at all times;
- 10 • Whether Lompoc failed to adopt and implement adequate testing,
 11 tracing, quarantine and isolation protocols to reduce the spread of
 12 COVID-19;
- 13 • Whether the Proposed Class members are living in sufficiently hygienic
 14 living spaces to reduce the spread of COVID-19;
- 15 • Whether Lompoc provided prisoners and staff with appropriate
 16 Personal Protective Equipment ("PPE") and adequately enforced the
 17 usage of PPE to reduce the spread of COVID-19;
- 18 • Whether Lompoc failed to provide adequate medical monitoring and
 19 treatment related to COVID-19; and
- 20 • Whether the failure to institute social distancing subjects the Proposed
 21 Class to a heightened risk of serious illness and death and violates the
 22 Proposed Class members' Eighth Amendment rights.

23 Other courts have provisionally certified similar classes. *See e.g. Martinez-*
 24 *Brooks v. Easter*, 2020 WL 2405350, at *30-31 (D. Conn. May 12, 2020)
 25 (provisionally certifying class of medically vulnerable prisoners at FCI Danbury);,
 26 *Wilson v. Williams*, 2020 WL 1940882, at *6-8 (N.D. Ohio Apr. 22, 2020)

27 _____
 28 long-term heart failure that limits exercise tolerance and the ability to work).

(provisionally certifying a class of medically vulnerable prisoners at FCI Elkton); *Cameron v. Bouchard*, 2020 WL 2569868, at *19 (E.D. Mich. May 21, 2020) (certifying a class of all current and future persons detained at Oakland County Jail, as well as two subclasses prior to issuing preliminary injunction). As in each of these cases, there is a single facility and one overarching issue—whether Respondents have violated the proposed class members’ Eighth Amendment rights by exposing them “to a serious communicable disease . . . that is more than very likely to cause a serious illness.” *See Castillo v. Barr*, 2020 WL 1502864, at *5 (C.D. Cal. Mar. 27, 2020) (citing *Helling v. McKinney*, 509 U.S. 25, 32 (1993)). That obviously presents a common issue amenable to class treatment.

C. Typicality

Federal Rule of Civil Procedure 23(a)(3) requires that “the claims . . . of the representative parties [be] typical of the claims . . . of the class.” “[T]he typicality requirement is permissive and requires only that the representative’s claims are reasonably coextensive with those of absent class members; they need not be substantially identical.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quotation marks and citation omitted).

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

The Proposed Class meets the typicality requirement because the named Petitioners and Proposed Class members are all individuals who are incarcerated at Lompoc and their claims all arise from the same failures to reduce prison density and to implement appropriate preventative measures, monitoring, and treatment in

1 response to COVID-19. (Dkt. No. 1 [Compl.] at ¶¶ 44-61, 100-101.) Finally, they
 2 all will suffer the same harm: the significant and avoidable risk of serious illness or
 3 death. *Id.*

4 **D. Adequacy of Representation**

5 Rule 23(a)(4) requires that the “representative parties will fairly and
 6 adequately protect the interests of the class.” The adequacy inquiry asks: “(1) do the
 7 named plaintiffs and their counsel have any conflicts of interest with other class
 8 members and (2) will the named plaintiffs and their counsel prosecute the action
 9 vigorously on behalf of the class?” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020
 10 (9th Cir. 1998), overruled on other grounds by *Wal-Mart Stores, Inc.*, 564 U.S. 338
 11 (2011). This requirement “tend[s] to merge with the commonality and typicality
 12 criteria of Rule 23(a).” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626, n.20
 13 (1997) (internal quotation marks and citation omitted).

14 Both requirements are plainly satisfied here. *First*, there is no conflict
 15 between the named Plaintiffs and other members of the Proposed Class. The named
 16 Petitioners and other class members have the same injury and seek the same relief—
 17 namely, put in place a structured, court-supervised process for *Respondents’*
 18 immediate, individualized consideration of each prisoner’s suitability for release on
 19 an accelerated schedule that is more focused on the critical factors of prisoner and
 20 public safety than the current home confinement review process at Lompoc. *Second*,
 21 the named Petitioners have confirmed their willingness to vigorously prosecute this
 22 action, and their commitment to ensuring that all people facing the current
 23 dangerous conditions in Lompoc benefit from this case just as they do. (*See, e.g.*,
 24 Dkt. 1 [Compl.], Ex. 1 at ¶ 3, Ex. 2 at ¶ 4, Ex. 3 at ¶ 3.)

25 Moreover, the Proposed Class is represented by counsel from the American
 26 Civil Liberties Union Foundation of Southern California, the Prison Law Office, and
 27 Bird Marella. Counsel have extensive experience litigating class action lawsuits and
 28 other complex cases in federal court, including litigating cases on behalf of

1 prisoners. See Declarations of Naeun Rim, Peter Eliasberg, and Donald Specter.
 2 Counsel will vigorously represent the Proposed Class.

3 **III. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF**
 4 **RULE 23(b)(2).**

5 In addition to satisfying the four prerequisites of Rule 23(a), the Proposed
 6 Class qualifies for class treatment under Rule 23(b)(2). Rule 23(b)(2) requires
 7 Petitioners establish that “the party opposing the class has acted or refused to act on
 8 grounds that apply generally to the class, so that final injunctive relief or
 9 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed.
 10 R. Civ. P. 23(b)(2). “Rule [23](b)(2) was adopted in order to permit the prosecution
 11 of civil rights actions.” *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998). As a
 12 result, “[i]t is sufficient’ to meet the requirements of Rule 23(b)(2) [that] ‘class
 13 members complain of a pattern or practice that is generally applicable to the class as
 14 a whole.’” *Rodriguez*, 591 F.3d at 1126 (citations omitted) (holding that class of
 15 noncitizens detained during immigration proceedings met Rule 23(b)(2) criteria
 16 because “all class members [sought] the exact same relief as a matter of statutory or,
 17 in the alternative, constitutional right”); *id.* at 1125 (“The fact that some class
 18 members may have suffered no injury or different injuries from the challenged
 19 practice does not prevent the class from meeting the requirements of Rule
 20 23(b)(2).”).

21 The class Plaintiffs seek to certify is a paradigm Rule 23(b)(2) class. *First*,
 22 Respondents are acting on grounds that are generally applicable to the class because
 23 they subject all members of the Proposed Class to the same policies or practices—
 24 namely, (1) Respondents have refused to use their authority under the CARES Act
 25 to place people on home confinement in meaningful numbers or promptly evaluate
 26 compassionate release requests, and (2) Lompoc’s policies do not allow for
 27 appropriate social distancing, adequate testing, tracing, quarantining or isolating, or
 28 adequately monitoring or treating prisoners to prevent the spread and severity of

1 COVID-19. (*See e.g.*, Dkt. No. 1 [Compl.] at ¶¶ 44-61, 100-101.) *Second*, the
2 injunctive relief requested by Petitioners is appropriate for class as a whole. The
3 class requests uniform relief—(1) the institution of a court-supervised process by
4 which all prisoners are considered for home release or confinement on an
5 accelerated basis and (2) an injunction mandating the adoption and implementation
6 of appropriate social distancing, hygiene, quarantine/isolation, and treatment
7 practices at Lompoc. (*See id.* at pp. 46-49.) All class members will benefit from the
8 requested relief, whether they are the ones released or not.

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

17 **IV. CONCLUSION**

18 For the foregoing reasons, Petitioners respectfully request that the Court
19 provisionally certify the Proposed Class.

20 *Local Rule 5-4.3.4(a)(2)(i) Compliance: Filer attests that all other*
21 *signatories listed concur in the filing’s content and have authorized this filing.*
22
23
24
25
26
27
28

1 DATED: June 4, 2020

Respectfully submitted,

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

10 By: /s/ Naeun Rim

Naeun Rim

Attorneys for Plaintiff-Petitioners

11
12 DATED: June 4, 2020

Peter J. Eliasberg
13 Peter Bibring
14 ACLU Foundation of Southern California

15 By: /s/ Peter Bibring

Peter Bibring

Attorneys for Plaintiff-Petitioners

16
17 DATED: June 4, 2020

Donald Specter
18 Sara Norman
19 Prison Law Office

20 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

YONNEDIL CARROR TORRES;
 VINCENT REED; FELIX SAMUEL
 GARCIA; ANDRÉ BROWN; and
 SHAWN L. FEARS, individually and
 on behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

LOUIS MILUSNIC, in his capacity as
 Warden of Lompoc; and MICHAEL
 CARVAJAL, in his capacity as Director
 of the Bureau of Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04450-CBM-PVCx

DECLARATION OF DONALD SPECTER 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 Peter
 Eliasberg; and (Proposed) Order]

Assigned to Hon. Consuelo B. Marshall
 Courtroom 8B

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 Yonnedil Carror Torres, Vincent Reed, Felix Samuel Garcia, Andre Brown and Shawn L. Fears, individually and on behalf of all others similarly situated (“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

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

13 4. The Prison Law Office also has litigated successfully multiple cases
 14 challenging health care conditions in county jails in California, including: *Hall v.*
 15 *Cty. of Fresno*, Case No. 1:11-cv-02047-LJO-BAM (E.D. Cal.) (Consent Decree,
 16 Dkt. 112); *Gray v. Cty. of Riverside*, Case No. EDCV 13-0444-VAP (Opx) (C.D.
 17 Cal) (Consent Decree, Dkt. 173); *Chavez v. Cty. of Santa Clara*, Case No. 1:15-cv-
 18 05277-NJV (N.D. Cal.); and *Turner v. Cty. of San Bernardino*, Case No. 5:16-cv-
 19 00355-VAP-DTB (C.D. Cal.) (pending); *Plata v. Newsome*, Case No. 3:01-cv-
 20 01351-TEH (N.D. Cal. 2001).

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

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

25 Executed June 4, 2020, at Sea Ranch, California.

26
 27 /s/ Donald Specter
 28 Donald Specter

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

YONNEDIL CARROR TORRES;
 VINCENT REED; FELIX SAMUEL
 GARCIA; ANDRE BROWN; and
 SHAWN L. FEARS, individually and
 on behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

LOUIS MILUSNIC, in his capacity as
 Warden of Lompoc; and MICHAEL
 CARVAJAL, in his capacity as Director
 of the Bureau of Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04450-CBM-PVCx

**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. Consuelo B. Marshall
 Courtroom 8B

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 (“Petitioners”) Yonnedil Carror Torres, Vincent Reed, Felix Samuel Garcia, Andre Brown and Shawn L. Fears, 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 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

1 the Honorable A. Howard Matz in the Central District of California.

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

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

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

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

25 8. On May 21, 2020, I met and conferred with counsel for Respondents,
26 Assistant United States Attorneys Joanne Osinoff, David M. Harris, and Keith
27 Staub, by telephone and gave notice that Petitioners would be filing this *ex parte*
28 application for provisional class certification. Since then, I have sent several emails

1 to counsel for Respondents to determine whether they intend to oppose this *ex parte*
2 application. As of the date of this declaration, they have not responded to my
3 inquiries.

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

6 Executed June 4, 2020, at Los Angeles, California.

7
8 /s/ Naeun Rim
9 Naeun Rim
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

YONNEDIL CARROR TORRES;
 VINCENT REED; FELIX SAMUEL
 GARCIA; ANDRE BROWN; and
 SHAWN L. FEARS, individually and
 on behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

LOUIS MILUSNIC, in his capacity as
 Warden of Lompoc; and MICHAEL
 CARVAJAL, in his capacity as Director
 of the Bureau of Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04450-CBM-PVCx

**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. Consuelo B. Marshall
 Courtroom 8B

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’ *Ex Parte* Application 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 application. Through this work, Petitioners’ counsel have built a strong, effective working relationship with the

1 named 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. Since 2012, I 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 ///

26 ///

27 ///

28 ///

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 June 4, 2020, at Los Angeles, California.

4
5 /s/ Peter J. Eliasberg
6 Peter J. Eliasberg
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 "For 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

YONNEDIL CARROR TORRES;
 VINCENT REED; FELIX SAMUEL
 GARCIA; ANDRE BROWN; and
 SHAWN L. FEARS, individually and
 on behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

LOUIS MILUSNIC, in his capacity as
 Warden of Lompoc; and MICHAEL
 CARVAJAL, in his capacity as Director
 of the Bureau of Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04450-CBM-PVCx

[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. Consuelo B. Marshall
 Courtroom 8B

1 Plaintiff-Petitioners’ *ex parte* application for an order (1) provisionally
2 certifying a class, as defined below, (2) appointing Petitioners as class representative
3 and (3) appointing class counsel (the “*Ex Parte* Application”) came on for a hearing
4 before the Court.

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

- 8 (a) under Rule 23(a)(1), the Proposed Class, defined as all current and
9 future people in post-conviction custody at FCI Lompoc and USP
10 Lompoc (collectively, the “Lompoc”), is sufficiently numerous in that
11 it consists of over 1,000 individuals;
- 12 (b) under Rule 23(a)(2), there exist common questions of law and fact as to
13 all class members, which include, among other things:
 - 14 (i) whether the criteria used by Respondents to make home
15 confinement determinations are unconstitutionally restrictive in
16 the midst of a global pandemic;
 - 17 (ii) whether Respondents’ delay in evaluating compassionate release
18 requests is unconstitutional in the midst of a global pandemic;
 - 19 (iii) whether the Proposed Class members are able to adequately
20 social distance at Lompoc at all times;
 - 21 (iv) whether Lompoc failed to adopt and implement adequate testing,
22 tracing, quarantine and isolation protocols to reduce the spread of
23 COVID-19;
 - 24 (v) whether the Proposed Class members are living in sufficiently
25 hygienic living spaces to reduce the spread of COVID-19;
 - 26 (vi) whether Lompoc provided prisoners and staff with appropriate
27 Personal Protective Equipment (“PPE”) and adequately enforced
28 the usage of PPE to reduce the spread of COVID-19;

(vii) whether Lompoc failed to provide adequate medical monitoring and treatment related to COVID-19; and

(viii) whether the failure to institute social distancing subjects the Proposed Class to a heightened risk of serious illness and death and violates the Proposed Class members' Eighth Amendment rights;

(c) under Rule 23(a)(3), the claims of the Proposed Class representatives are typical of the claims of all class members in that the Petitioners and Proposed Class members are all individuals who are incarcerated at Lompoc and their claims all arise from the same failure to implement appropriate preventative measures, monitoring and treatment in response to COVID-19, and they all will suffer the same harm: the significant and avoidable risk of serious illness or death;

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

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

(f) under Rule 23(b)(2), the party opposing the class has acted or refused to act on grounds that apply generally to the class so that final injunctive relief is appropriate respecting the class as a whole, because Respondents subject all members of the Proposed Class to the same policies or practices—namely, Lompoc's policies do not allow for appropriate social distancing, adequate testing, tracing, quarantining or isolating, or adequately monitoring or treating prisoners to prevent the spread and severity of COVID-19, and the injunctive relief requested

1 by Petitioners is appropriate for class as a whole—(1) the institution of
2 a court-supervised process by which all prisoners are considered for
3 home release or confinement on an accelerated basis and (2) an
4 injunction mandating the adoption and implementation of appropriate
5 social distancing, hygiene, quarantine/isolation, and treatment practices
6 at Lompoc.

7 As good cause has been shown, IT IS HEREBY ORDERED THAT:

8 1. The above-styled action is hereby provisionally certified as a class
9 action as to all claims in the Complaint in this action pursuant to Rule 23(b)(2) of
10 the Federal Rules of Civil Procedure, for purposes of entering the Temporary
11 Restraining Order and/or preliminary injunction;

12 2. The “Class” of plaintiff-petitioners is defined as follows: all current and
13 future people in post-conviction custody at FCI Lompoc and USP Lompoc;

14 3. Plaintiff-Petitioners Yonnedil Carror Torres, Vincent Reed, Felix
15 Samuel Garcia, Andre Brown and Shawn L. Fears are appointed as representatives
16 of the Class; and

17 4. The ACLU of Southern California, the Prison Law Office, and Bird
18 Marella are appointed as Class Counsel for all purposes related to the Temporary
19 Restraining Order and/or preliminary injunction.

20 SO ORDERED.

21
22 DATED:

23
24
25 _____
26 Hon. Consuelo B. Marshall
27 United States District Judge
28