

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

RHONDA JONES *et al.*,

Plaintiffs,

v.

VICTOR HILL *et al.*,

Defendants.

CIVIL ACTION

NO. 1:20-CV-2791-ELR

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs respectfully move the Court under Rule 23 of the Federal Rules of Civil Procedure to certify six classes: one class of pretrial detainees, one class of post-adjudication detainees, and four subclasses. As explained in the attached brief, Plaintiffs meet the requirements for class certification under Rule 23(a), (b)(1), and (b)(2) and therefore request that the Court grant this motion by appointing the undersigned as class counsel and certifying the following classes and subclasses:

1. **Principal Pretrial Class:** All persons who are now or will in the future be confined in the Clayton County Jail who are not also being confined under a sentence of imprisonment.
 - a. **Medically Vulnerable Pretrial Subclass:** All individuals in the Clayton County Jail, who are not under a sentence of imprisonment, whose age or medical conditions make them susceptible to serious illness or death if they contract COVID-19, specifically, people aged 55 or older, or people who have been

diagnosed with, or are receiving treatment for the following conditions: asthma (moderate to severe); cerebrovascular disease; chronic kidney disease; COPD (chronic obstructive pulmonary disease); cystic fibrosis; diabetes mellitus (types 1 and 2); serious heart conditions (such as heart failure, coronary artery disease, or cardiomyopathies); hypertension; immunocompromised state (from solid organ transplant, blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines); liver disease; neurologic conditions (such as dementia); obesity (body mass index [BMI] of 30 or higher); pregnancy; pulmonary fibrosis; sickle cell disease; thalassemia.

- b. **Disability Pretrial Subclass:** All individuals in the Clayton County Jail who have not been sentenced to imprisonment and whose medical conditions make them susceptible to serious illness or death if they contract COVID-19, specifically, people who have been diagnosed with, or are receiving treatment for a medical condition which would qualify as a disability under the Americans with Disabilities Act and the Rehabilitation Act. The subclass includes people with any of the conditions listed in the preceding paragraph, except those who are medically vulnerable solely because of age, pregnancy, or BMI.
2. **Principal Post-Adjudication Class:** All persons who are now or will in the future be confined in the Clayton County Jail under sentence of imprisonment.
- a. **Medically Vulnerable Post-Adjudication Subclass:** All individuals in the Clayton County Jail, who are under a sentence of imprisonment, whose age or medical conditions make them susceptible to serious illness or death if they contract COVID-19, specifically, people aged 55 or older, or people who have been diagnosed with, or are receiving treatment for the following conditions: asthma (moderate to severe); cerebrovascular disease; chronic kidney disease; COPD (chronic obstructive pulmonary disease); cystic fibrosis; diabetes mellitus (types 1 and 2); serious heart conditions (such as heart failure, coronary artery disease, or

cardiomyopathies); hypertension; immunocompromised state (from solid organ transplant, blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines); liver disease; neurologic conditions (such as dementia); obesity (body mass index [BMI] of 30 or higher); pregnancy; pulmonary fibrosis; sickle cell disease; thalassemia.

- b. **Disability Post-Adjudication Subclass:** All individuals in the Clayton County Jail who have been sentenced to imprisonment and whose medical conditions make them susceptible to serious illness or death if they contract COVID-19, specifically, people who have been diagnosed with, or are receiving treatment for a medical condition which would qualify as a disability under the Americans with Disabilities Act and the Rehabilitation Act. The subclass includes people with any of the conditions listed in the preceding paragraph, except those who are medically vulnerable solely because of age, pregnancy, or BMI.

CONCLUSION

The Court should certify the six proposed classes and appoint the undersigned as class counsel.

Respectfully submitted,

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July 2, 2020

CERTIFICATE OF COMPLIANCE

I certify that this document has been prepared in compliance with Local Rule 5.1C using 14-point Times New Roman font.

/s/ Ryan Primerano

July 2, 2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via the Court's CM/ECF system on all counsel registered with that system on July 1, 2020.

The foregoing will be served on Defendants by personal service and by depositing true and correct copies thereof with the United States Postal Service, first-class postage prepaid, in envelopes addressed to each named Defendant at the following address:

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July 2, 2020

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**PLAINTIFFS' BRIEF IN SUPPORT OF
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INTRODUCTION

This case is about Defendants' failure to act to protect the lives of people detained in the Clayton County Jail ("Jail") from a novel coronavirus and its resulting disease, COVID-19. Defendants have failed to respond to the urgent threat posed to people confined in the Jail by this growing pandemic, making it impossible for these individuals to observe the precautionary steps necessary to keep themselves safe, such as social distancing, increased personal hygiene, sanitizing one's environment, access to testing, and wearing protective clothing. Defendants' disregard of the known risks of illness and death exposes jail detainees to a highly fatal, infectious disease in violation of their rights under the Eighth and Fourteenth Amendments, as well as federal disability rights laws.

Plaintiffs are people incarcerated at the Clayton County Jail under conditions that put them at high risk of becoming victims of the COVID-19 global pandemic. While several counties in Georgia have undertaken measures to reduce their jail populations in an effort to slow the spread of COVID-19, Clayton County has thus far refused to take meaningful action to address the risks posed by COVID-19 and has failed to implement adequate, systemwide measures to protect incarcerated individuals. This puts the Plaintiffs and the classes they seek to represent in mortal jeopardy, and also endangers the larger community in light of the daily movement

of both detainees and staff in and out of the Clayton County Jail.

On behalf of themselves and similarly situated persons, Plaintiffs challenge these unconstitutional conditions and now move for class certification under Federal Rules of Civil Procedure 23(a) and 23(b).

PROPOSED CLASSES

Plaintiffs seek to certify two principal classes and four subclasses defined as follows:

1. **Principal Pretrial Class:** All persons who are now or will in the future be confined in the Clayton County Jail who are not also being confined under a sentence of imprisonment.
 - a. **Medically Vulnerable Pretrial Subclass:** All individuals in the Clayton County Jail, who are not under a sentence of imprisonment, whose age or medical conditions make them susceptible to serious illness or death if they contract COVID-19, specifically, people aged 55 or older, or people who have been diagnosed with, or are receiving treatment for the following conditions: asthma (moderate to severe); cerebrovascular disease; chronic kidney disease; COPD (chronic obstructive pulmonary disease); cystic fibrosis; diabetes mellitus (types 1 and 2); serious heart conditions (such as heart failure, coronary artery disease, or cardiomyopathies); hypertension; immunocompromised state (from solid organ transplant, blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines); liver disease; neurologic conditions (such as dementia); obesity (body mass index [BMI] of 30 or higher); pregnancy; pulmonary fibrosis; sickle cell disease; thalassemia.
 - b. **Disability Pretrial Subclass:** All individuals in the Clayton County Jail who have not been sentenced to imprisonment and

whose medical conditions make them susceptible to serious illness or death if they contract COVID-19, specifically, people who have been diagnosed with, or are receiving treatment for a medical condition which would qualify as a disability under the Americans with Disabilities Act and the Rehabilitation Act. The subclass includes people with any of the conditions listed in the preceding paragraph, except those who are medically vulnerable solely because of age, pregnancy, or BMI.

2. **Principal Post-Adjudication Class:** All persons who are now or will in the future be confined in the Clayton County Jail under sentence of imprisonment.
 - a. **Medically Vulnerable Post-Adjudication Subclass:** All individuals in the Clayton County Jail, who are under a sentence of imprisonment, whose age or medical conditions make them susceptible to serious illness or death if they contract COVID-19, specifically, people aged 55 or older, or people who have been diagnosed with, or are receiving treatment for the following conditions: asthma (moderate to severe); cerebrovascular disease; chronic kidney disease; COPD (chronic obstructive pulmonary disease); cystic fibrosis; diabetes mellitus (types 1 and 2); serious heart conditions (such as heart failure, coronary artery disease, or cardiomyopathies); hypertension; immunocompromised state (from solid organ transplant, blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines); liver disease; neurologic conditions (such as dementia); obesity (body mass index [BMI] of 30 or higher); pregnancy; pulmonary fibrosis; sickle cell disease; thalassemia.
 - b. **Disability Post-Adjudication Subclass:** All individuals in the Clayton County Jail who have been sentenced to imprisonment and whose medical conditions make them susceptible to serious illness or death if they contract COVID-19, specifically, people who have been diagnosed with, or are receiving treatment for a medical condition which would qualify as a disability under the Americans with Disabilities Act and the Rehabilitation Act. The subclass

includes people with any of the conditions listed in the preceding paragraph, except those who are medically vulnerable solely because of age, pregnancy, or BMI.

Plaintiffs seek two forms of relief to reduce the risk of harm to acceptable levels. First, on behalf of people who remain in the jail, Plaintiffs seek injunctive relief requiring Defendants to implement reasonable measures to reduce the risk of COVID-19 transmission such as promoting social distancing; ensuring adequate sanitation in cells and common areas; issuing effective personal protective equipment; providing timely and adequate medical care, screening, and testing; and quarantining and isolating suspected or known infected people in accordance with generally accepted medical norms. Second, to protect at-risk populations and facilitate mitigation efforts for those who remain in the jail, Plaintiffs seek immediate release or transfer for medically vulnerable and disabled individuals being held in the Clayton County Jail, pursuant to a writ of habeas corpus or an injunction.

BACKGROUND

A. Defendants' Inadequate Policies and Practices to Combat COVID-19 Pose a Substantial Risk of Serious Harm to All Clayton County Jail Detainees.

Georgia and the nation are in the midst of the most significant global pandemic in generations. COVID-19 is a highly contagious and deadly respiratory

disease that poses grave health risks in serious cases, particularly to medically vulnerable people. (Doc. 1). Jails pose a heightened risk for the spread of COVID-19.¹ There is no vaccine or cure for COVID-19.² The best course according to public health experts is to slow and prevent transmission, primarily through “social distancing.”³ This measure is particularly important because the virus spreads aggressively, and people can infect others even if they do not feel sick or exhibit any symptoms.⁴

The CDC has issued guidance about the prevention of COVID-19 specific to correctional and detention facilities.⁵ This guidance describes how to properly quarantine, isolate, and care for persons suspected or known to be positive for COVID-19 and their close contacts. It calls for many straightforward, easily

¹ Ga. Dep’t of Public Health, *Interim Guidance for Management of COVID-19 in Correctional and Detention Facilities in Georgia* 1 (Apr. 15, 2020), <https://bit.ly/3bvWECh>; Ctrs. for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* 6 (Mar. 23, 2020), <https://bit.ly/3bu83xS>.

² World Health Organization, *Coronavirus*, <https://bit.ly/31wJnIv> (“At this time, there are no specific vaccines or treatments for COVID-19.”).

³ Ctrs. for Disease Control and Prevention, *Social Distancing*, <https://bit.ly/2YRGueZ> (“Limiting face-to-face contact with others is the best way to reduce the spread of coronavirus disease 2019 (COVID-19).”).

⁴ Centers for Disease Control, *How COVID-19 Spreads*, <https://bit.ly/3dNfW2s>.

⁵ Centers for Disease Control, *Interim Guidance*.

achievable steps to prevent infection, including regular disinfection and frequent and thorough hand washing with soap, and for facilities to provide masks and protective equipment to be worn in congregate settings.

As set out more fully in the Complaint (Doc. 1), Defendants have failed to implement the CDC's guidance or take other reasonable steps to reduce the risk of transmission of COVID-19, placing Plaintiffs and the putative class members at substantial risk of serious harm, including death. Defendants' failures endanger not only all those within the institution, but the entire community. The only measures that will reasonably reduce the risk of harm are to swiftly release the people most vulnerable to the disease and implement disease-prevention measures for those who remain in the Jail.

B. The Named Plaintiffs Are Being Subjected to Defendants' Unlawful Policies and Practices.

The four named plaintiffs are all currently incarcerated at the Clayton County Jail.

Rhonda Jones is a 58-year-old African-American woman. She is detained pretrial and seeks to represent the pretrial classes and subclasses. Ms. Jones has been confined to the Clayton County Jail since April 9, 2020, for a charge of aggravated assault. A \$10,000 bond was set in her case, but she cannot afford it.

She has been hospitalized twice in the past year for pneumonia. Ms. Jones is susceptible to serious injury or death if she contracts COVID-19.

Randolph Mitchell is a 72-year-old African-American man. He has been confined to the Clayton County Jail since August 9, 2019. He has less than two months left to serve on a 12-month sentence for simple battery, a misdemeanor, and seeks to represent the post-adjudication class and subclasses. He has been diagnosed with high blood pressure and a heart condition. Mr. Mitchell is susceptible to serious illness or death if he contracts COVID-19.

Barry Watkins is a 60-year-old Caucasian man. He is detained pretrial and seeks to represent the pretrial classes and subclasses. Mr. Watkins has been confined to the Clayton County Jail since August 31, 2018, for a charge of theft by deception. A \$5,500 bond was set in his case, but he cannot afford it. He has Type 1 diabetes that requires a controlled diet and regular insulin injections. Mr. Watkins is susceptible to serious injury or death if he contracts COVID-19.

Michael Singleton is a 59-year-old African-American man. He has been confined to the Clayton County Jail since February 17, 2020. He is serving a one-year sentence for a violation of probation and seeks to represent the post-adjudication class and subclasses. Mr. Singleton has been diagnosed with high

blood pressure and is susceptible to serious illness or death if he contracts COVID-19.

ARGUMENT

Plaintiffs' claims for injunctive relief, and the Medically Vulnerable and Disability Subclasses' petition for a writ of habeas corpus, arise from Defendants' failure to protect *all* detainees from the severe risk of death or serious physical harm from COVID-19. All proposed class members challenge Defendants' common failure to adequately protect all six classes from COVID-19 infection. And while the immediate habeas relief sought by the Medically Vulnerable and Disability Subclasses does not run to all class members, it would provide benefits not only to those subclasses, but to the class as a whole: it is only with a significant population reduction that the Jail will be able to successfully implement the public health measures needed to prevent harm to the other class members. Therefore, the Court should certify the Principal Pretrial and Post-Adjudication Classes and their corresponding Medically Vulnerable and Disability Subclasses.

A plaintiff seeking class certification must satisfy each of the requirements of Rule 23(a) of the Federal Rules of Civil Procedure, and at least one of the three criteria for certification under Rule 23(b). *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 614-15 (1997); *Owens v. Metro. Life Ins. Co.*, 323 F.R.D. 411, 415 (N.D.

Ga. 2017); *Campos v. ChoicePoint, Inc.*, 237 F.R.D. 478, 484 (N.D. Ga. 2006).

“Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage.” *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 466 (2013). “Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.” *Id.*

Class certification must be addressed “[a]t an early practicable time” after the complaint is filed. Fed. R. Civ. P. 23(c)(1)(A). In cases where the propriety of class certification is clear from the complaint—as often it is in civil rights actions like the present one—it is appropriate to rule on class certification at the pleading stage. *See General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 160 (1982); *see, e.g., Klay v. Humana, Inc.*, 382 F.3d 1241, 1253 n.6 (11th Cir. 2004) (“[W]e will base our class certification ruling on the Third Complaint.”); *see also Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1309 (11th Cir. 2008) (“In some instances, the propriety *vel non* of class certification can be gleaned from the face of the pleadings.”); *Huff v. N.D. Cass Co of Ala.*, 485 F.2d 710, 713 (5th Cir. 1973). One reason for permitting an early class certification decision is that an order granting class certification is “always provisional in nature” and thus may be amended or

vacated in light of later developments in a case. *Carriuolo v. General Motors Co.*, 823 F.3d 977, 988 (11th Cir. 2016); *see* Fed. R. Civ. P. 23(c)(1)(C).

The propriety of class certification in this case is clear from the face of Plaintiffs' complaint and declarations, and the material facts concerning class certification—including the impracticability of joinder and the similar conditions under which all detainees live—can be readily determined based on incontestable facts about the jail's population and the uniformity of Defendants' policies throughout the jail's housing units. As discussed below, the hundreds of members of the six proposed classes cannot practicably be joined individually in a single action, and the answers to the questions of law and fact at issue in this case will determine, with respect to each Plaintiff and class member, whether the policies and practices applied to them violate federal law. Likewise, Defendants' unlawful acts apply to every member of the classes, such that the requested final declaratory and injunctive relief is appropriate for the class as a whole. The Court should grant Plaintiffs' motion for class certification.

I. The Proposed Classes Meet the Requirements of Rule 23(a).

A plaintiff seeking class certification must meet four requirements under Rule 23(a): (1) the class must be so numerous that joinder of all members is impracticable; (2) there must be questions of law or fact common to the class; (3)

the claims or defenses of the representative parties must be typical of the claims or defenses of the class; and (4) the representative parties must be able to fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). For the reasons discussed below, these prerequisites are easily satisfied in this case.

A. The Proposed Classes Are So Numerous That Joinder Would Be Impracticable.

The first requirement of Rule 23(a) is “that a class be so numerous that joinder of all members is impracticable.” *Owens*, 323 F.R.D. at 411 (citing Fed. R. Civ. P. 23(a)(1)). In determining numerosity, “[t]he proper focus is not on numbers alone, but on whether joinder of all members is practicable in view of the numerosity of the class and all other relevant factors.” *Phillips v. Joint Legis. Comm. on Performance and Expenditure Review*, 637 F.2d 1014, 1022 (5th Cir. 1981). A district court is permitted to make “common sense assumptions” in assessing numerosity. *Campos v. ChoicePoint, Inc.*, 237 F.R.D. 478, 485 (N.D. Ga. 2006) (quoting *Evans v. U.S. Pipe & Foundry*, 696 F.2d 925, 930 (11th Cir.1983)). “As a general rule in the Eleventh Circuit, a prospective class with more than forty members is deemed to satisfy the numerosity requirement.” *Owens*, 323 F.R.D. at 417 (citing *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)). In addition, “the fluid nature of a plaintiff class—as in the prison-litigation context—counsels in favor of certification of all present and

future members.’” *Braggs v. Dunn*, 317 F.R.D. 634, 653 (M.D. Ala. 2016) (quoting *Henderson v. Thomas*, 289 F.R.D. 506, 510 (M.D. Ala. 2012)). Courts have recognized in cases seeking injunctive relief that it is “certainly impracticable” to join “unnamed, unknown” individuals who will in the future be, but are not yet, subjected to the wrongful conduct to be enjoined. *Jack v. Am. Linen Supply Co.*, 498 F.2d 122, 124 (5th Cir. 1974); *see, e.g., Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 878 (11th Cir. 1986) (finding joinder impracticable where future class members could not yet be identified); *Johnson v. Montgomery Cty. Sheriff’s Dep’t*, 99 F.R.D. 562, 565 (M.D. Ala. 1983) (“[W]hen a putative class includes future applicants and employees, as in the present case, joinder is impossible.”).

The proposed classes easily satisfy the numerosity requirement. Plaintiffs Jones and Watkins seek relief on behalf of a Principal Pretrial Class consisting of all people who are or will be detained at the Jail who are not under a sentence of imprisonment—a class consisting of approximately half of the Jail’s detainee population as well as an unknown number of future members.⁶ Similarly, the Principal Post-Adjudication Class, for whom Plaintiffs Mitchell and Singleton seek

⁶ See Ga. Dep’t of Community Affairs, County Jail Inmate Population Report 8 (May 2020), <https://bit.ly/2Zp7OQv>.

relief, consists of all people who are or will be detained at the Jail under sentence of imprisonment; that class includes approximately 40 percent of the Jail's population.⁷ The Clayton County Jail has a current population of over 1,800 detainees and will hold an indeterminate number of future detainees, making joinder of all members of the two Principal Classes impracticable. Regarding the Medically Vulnerable and Disability Subclasses, the April report compiled by the Clayton County Jail's medical provider identified 739 detainees as "chronic care patients" for that month alone. A significant percentage of these patients are expected to be members of the Medically Vulnerable and Disability Subclasses. Moreover, pursuant to Fed. R. Evid. 201(c)(2), Plaintiffs request that the Court take judicial notice that people in jails generally have high rates of disability and chronic illness, meaning that a significant percentage of the jail's population can be expected to include members of the Disability Subclass, the Medically Vulnerable Subclass, or both.⁸ Because the proposed classes can be expected to include well over forty current members, they satisfy the numerosity requirement. *See Owens*, 323 F.R.D. at 417.

⁷ *Id.*

⁸ Bureau of Justice Statistics, *Disabilities Among Prison and Jail Inmates, 2011-12* 1 (Dec. 2015), <https://bit.ly/31wTkRp> (estimating that approximately 40 percent of jail detainees were currently experiencing a chronic health condition).

The numerosity requirement is also met because, regardless of the number of current class members, joinder is impracticable with respect to future members of each class. The members of the six classes include both individuals currently incarcerated and those individuals who may be incarcerated in the coming weeks and months as COVID-19 continues to spread. Because the classes include individuals who will suffer the same injury in the future, traditional joinder is particularly difficult. *See Newberg on Class Actions* § 25:4 (4th ed.) (“Even a small class of fewer than 10 actual members may be upheld if an indeterminate number of individuals are likely to become class members in the future or if the identity or location of many class members is unknown for good cause.”); *Kilgo*, 789 F.2d at 878 (finding impracticability of non-class joinder for a class including future members, who necessarily could not yet be identified).

B. There Are Issues of Law and Fact Common to the Classes.

The second Rule 23(a) requirement is that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). This requirement is met if there is “at least one issue whose resolution will affect all or a significant number of the putative class members.” *Williams v. Mohawk Industries*, 568 F.3d 1350, 1355 (11th Cir. 2009) (quoting *Stewart v. Winter*, 669 F.2d 328, 335 (5th Cir.1982)) (internal quotation marks omitted). The touchstone of commonality is whether

disputed legal or factual questions are capable of class-wide proof or resolution. *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001). Claims need not be identical to satisfy this requirement, and variations within the class are permissible. *Prado-Steiman v. Bush*, 221 F.3d 1266, 1279 n.14 (11th Cir. 2000). Likewise, a plaintiff “need not show that common questions ‘predominate’ over individual questions,” because “even a single common question” will satisfy the commonality requirement. *See Braggs*, 317 F.R.D. at 655 (quoting *Wal-Mart v. Dukes*, 564 U.S. 338, 359 (2011)).

Although there need only be a single common issue of law or fact under Rule 23(a), each of the six classes and subclasses presents numerous common issues of both law and fact.⁹ For each class and subclass, common questions include:

- Principal Pretrial Class:
 - Common questions of fact include whether the class members’ living conditions increase their risk of COVID-19 infections.

⁹ The commonality requirement is met where, as here, plaintiffs challenge commonly applicable conditions and procedures in correctional facilities. *See, e.g., Parsons v. Ryan*, 754 F.3d 657, 681 (9th Cir. 2014) (collecting cases, finding commonality is satisfied where the lawsuit challenges “systemic policies and practices that allegedly expose inmates to a substantial risk of harm,” even where there are “individual factual differences among class members”); *see also Postawko v. Mo. Dep’t of Corr.*, 910 F.3d 1030, 1038–39 (8th Cir. 2018) (similar); *Yates v. Collier*, 868 F.3d 354, 363 (5th Cir. 2017) (similar).

- Common questions of law include whether Defendants' failures to ensure adequate social distancing, sanitation, and personal hygiene present a substantial risk of serious harm; whether Defendants have responded reasonably to the risk of harm created by conditions at the Clayton County Jail; and whether Defendants have violated the class members' rights under the Fourteenth Amendment Due Process Clause.
- Medically Vulnerable Pretrial Subclass:
 - Common questions of fact include whether the class members' living conditions and preexisting medical conditions increase their risk of COVID-19 infections.
 - Common questions of law include whether Defendants' failures to ensure adequate social distancing, sanitation, and personal hygiene present a substantial risk of serious harm; whether Defendants have responded reasonably to the risk of harm created by conditions at the Clayton County Jail; and whether Defendants have violated the class members' rights under the Fourteenth Amendment Due Process Clause.
- Disability Pretrial Subclass:
 - Common questions of fact include whether the class members' living conditions and disabilities, as defined under federal disability rights laws, increase their risk of COVID-19 infections.
 - Common questions of law include whether Defendants have prevented the class members from benefiting from programs, services, and activities on account of their disabilities; whether Defendants have failed to provide reasonable accommodations for the class members' disabilities; and whether Defendants have violated the class members' rights under the Americans with Disabilities Act and Rehabilitation Act.
- Principal Post-Adjudication Class:

- Common questions of fact include whether the class members' living conditions increase their risk of COVID-19 infections.
- Common questions of law include whether Defendants' failures to ensure adequate social distancing, sanitation, and personal hygiene present a substantial risk of serious harm; whether Defendants have responded reasonably to the risk of harm created by conditions at the Clayton County Jail; and whether Defendants have violated the class members' rights under the Eighth and Fourteenth Amendments.
- Medically Vulnerable Post-Adjudication Subclass:
 - Common questions of fact include whether the class members' living conditions and preexisting medical conditions increase their risk of COVID-19 infections.
 - Common questions of law include whether Defendants' failures to ensure adequate social distancing, sanitation, and personal hygiene present a substantial risk of serious harm; whether Defendants have responded reasonably to the risk of harm created by conditions at the Clayton County Jail; and whether Defendants have violated the class members' rights under the Eighth and Fourteenth Amendments.
- Disability Post-Adjudication Subclass:
 - Common questions of fact include whether the class members' living conditions and disabilities, as defined under federal disability rights laws, increase their risk of COVID-19 infections.
 - Common questions of law include whether Defendants have prevented the class members from benefiting from programs, services, and activities on account of their disabilities; whether Defendants have failed to provide reasonable accommodations for the class members' disabilities; and whether Defendants have violated the class members' rights under the Americans with Disabilities Act and Rehabilitation Act.

The common questions of fact and law listed above are those necessary to determine the Defendants' liability with respect to all current and future people in their custody who are subject to the challenged policies and practices of the Clayton County Jail. Therefore, there are factual and legal questions in this case whose resolution will advance the legal claims of all class members. *See Wal-Mart*, 564 U.S. at 349–50 (explaining that it is not just the existence of hypothetical common questions that justify class treatment but common answers that resolve the factual or legal claims presented by the plaintiffs).

C. The Proposed Class Representatives' Claims Are Typical of Those of the Classes.

Rule 23(a)'s typicality requirement ensures that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “A class representative must possess the same interest and suffer the same injury as the class members in order to be typical under Rule 23(a)(3).” *Murray*, 244 F.3d at 811. “Typicality, however, does not require identical claims or defenses.” *Kornberg v. Carnival Cruise Lines*, 741 F.2d 1332, 1337 (11th Cir. 1984). Rather, it “measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large.” *Prado-Steiman*, 221 F.3d at 1279. “A sufficient nexus is established if the claims or defenses of the class and the class representative arise from the same event or

pattern or practice and are based on the same legal theory.” *Kornberg*, 741 F.2d at 1337. As long as the claims of the named plaintiffs and the class members arise from the same practice and the same underlying legal theory, the typicality requirement is satisfied even if there is some “factual variation” in how the practice applies to the named plaintiffs and the class members. *Owens*, 323 F.R.D. at 418 (quoting *Kornberg*, 741 F.2d at 1337).

Here, the named Plaintiffs’ legal claims are the same as the legal claims of the other members of the proposed classes they represent. The Plaintiffs and class members they represent are all injured in the same way: Defendants are incarcerating them in conditions of confinement that put them at substantial risk of serious harm. For the subclasses, each person claims that they must be released because their health is at imminent and immediate risk from the same virus and same policy failures as each other person in the subclasses. Thus, the ongoing and future injury of the classes and the class representatives arise from the same policy and practice. *See Newberg on Class Actions* § 23:4 (4th ed.) (“[T]he typicality requirement is generally satisfied when the representative plaintiff is subject to the same statute, regulation, or policy as class members.”). The claims of the named Plaintiffs also rely on the same legal theories as the claims of all other class members concerning whether Defendants’ deliberate indifference to the risk of

serious harm is unconstitutional. *See Murray*, 244 F.3d at 811 (“The typicality requirement may be satisfied despite substantial factual differences . . . when there is a ‘strong similarity of legal theories.’” (citation omitted)). The proof concerning whether Defendants have acted with deliberate indifference in the face of the COVID-19 pandemic and the legal argument about whether this inaction is unlawful are critical for each class and subclass member in this case to establish the liability of Defendants. Plaintiffs therefore satisfy the typicality requirement. *See Braggs*, 317 F.R.D. at 663-64.

D. The Proposed Class Representatives and Class Counsel Can Adequately Represent the Classes.

As class representatives in this case, named Plaintiffs will “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The adequacy analysis involves “two separate inquiries: (1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action.” *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003) (citation omitted).

Regarding the first inquiry, the named Plaintiffs are adequate representatives of the classes they represent because their interests in the vindication of the legal claims that they raise are completely aligned with, and are not antagonistic to, the interests of the other class members. The named Plaintiffs, like other class

members, have a strong interest in no longer being detained in unsafe and possibly lethal conditions. The named Plaintiffs who represent the Medically Vulnerable and Disability Subclasses share the subclasses' interest in release because of the particular danger that the virus presents for them. There are no known conflicts of interest among members of the proposed classes, all of whom have a similar interest in vindicating their constitutional and statutory rights in the face of their unlawful treatment by Defendants. Moreover, the declaratory and injunctive relief sought by the named Plaintiffs will benefit the entire class.

Regarding the second inquiry, the named Plaintiffs also meet the requirement that they will adequately prosecute the action. They are represented in this case by experienced civil rights attorneys who are able and willing to conduct this litigation on behalf of the class. Plaintiffs' counsel from the ACLU, the ACLU of Georgia, and the Southern Center for Human Rights collectively have extensive experience litigating complex class action cases and civil rights cases on behalf of incarcerated and detained people.¹⁰ Plaintiffs thus satisfy Rule 23(a)(4)'s adequacy requirement.

¹⁰ For example, ACLU attorney David C. Fathi is Director of the ACLU National Prison Project, which brings challenges to conditions of confinement in prisons, jails, and other detention facilities. For almost 25 years he has devoted his legal practice exclusively to class actions on behalf of incarcerated persons, serving as

II. The Proposed Classes Meet the Requirements of Rule 23(b).

This action qualifies for class certification under both Rule 23(b)(1) and Rule 23(b)(2). *See Wal-Mart*, 564 U.S. at 361–62 (“Classes certified under (b)(1) and (b)(2) share the most traditional justifications for class treatment—that individual adjudications would be impossible or unworkable, as in a (b)(1) class, or

lead counsel or co-counsel in cases including *Parsons v. Ryan*, 289 F.R.D. 513 (D. Ariz. 2013); *Jones’El v. Berge*, 172 F. Supp. 2d 1128, 164 F. Supp. 2d 1096 (W.D. Wis. 2001); *Inmates of the Rhode Island Training School v. Martinez*, 465 F. Supp. 2d 131 (D.R.I. 2006); and *Austin v. Pennsylvania Department of Corrections*, 876 F. Supp. 1437 (E.D. Pa. 1995). ACLU attorney Stephen Pevar has been employed by the National Office of the ACLU since 1976 and has litigated more than 50 class actions against jails and prisons, including *Board of Pardons v. Allen*, 482 U.S. 369 (1987); *Kelly v. Wengler*, 822 F.3d 1085 (9th Cir. 2016); *Hiser v. Franklin*, 82 F.3d 869 (9th Cir. 1996); *Browning v. Vernon*, 44 F.3d 318 (9th Cir. 1995); *J.P. v. Taft*, 439 F. Supp. 2d 793 (S.D. Ohio 2006); *Ginest v. Board of County Comm’rs of Carbon County, Wyoming*, 423 F. Supp.2d 1237 (D. Wyo. 2006); *Skinner v. Uphoff*, 234 F. Supp.2d 1208 (D. Wyo. 2002); *Kersh v. Board of County Commr’s of Natrona County, Wyoming*, 851 F. Supp. 1541 (D. Wyo. 1994); *Sage v. Risley*, 795 F. Supp. 134 (D. Mont. 1992); *McKenzie v. Crotty*, 738 F. Supp. 1287 (D.S.D. 1990); *Noren v. Straw*, 578 F. Supp. 1 (D. Mont. 1982). SCHR attorney Sarah Geraghty has served as lead counsel or co-counsel in prison-conditions class actions including *Georgia Advocacy Office v. Jackson*, No. 1:19-CV-1634 (N.D. Ga.); *Gumm v. Ford*, No. 5:15-CV-41 (M.D. Ga.); and *Hicks v. Hetzel*, No. 2:09-CV-155 (M.D. Ala.), as well as in other civil rights class actions, *see, e.g., Adams v. Sentinel Offender Serv.*, No. 1:17-CV-2813 (N.D. Ga.); *K.A. v. Hobby*, No. 1:17-CV-99 (M.D. Ga.); *Harrison v. Consol. Gov’t of Columbus*, 4:16-CV-329 (M.D. Ga.); *Luse v. Sentinel Offender Services*, No. 2:16-CV-30 (N.D. Ga.); *Walker v. City of Calhoun*, No. 4:15-CV-0170 (N.D. Ga.); *Edwards v. Red Hills Community Probation*, 1:15-CV-67 (M.D. Ga.); *Jones v. Grady County*, No. 1:13-CV-156 (M.D. Ga.).

that the relief sought must perforce affect the entire class at once, as in a (b)(2) class.”).

A. Certification of the Proposed Classes Is Warranted Under Rule 23(b)(1).

Rule 23(b)(1) permits class certification where “prosecuting separate actions by or against individual class members would create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class” Fed. R. Civ. P. 23(b)(1)(A). Certification under Rule 23(b)(1)(A) is appropriate only in “actions seeking declaratory or injunctive relief.” *Babineau v. Fed. Exp. Corp.*, 576 F.3d 1183, 1195 (11th Cir. 2009). Plaintiffs easily satisfy this standard. If hundreds of individual class members were to bring separate suits challenging Defendants’ inadequate policies and practices to combat the COVID-19 virus, the adjudication of these actions would risk creating inconsistent decisions that would establish varying standards to which Defendants would have to adhere. Any prospective relief granted to Plaintiffs will necessarily benefit the classes they represent; therefore, certification pursuant to Rule 23(b)(1) is appropriate.

B. Certification of the Proposed Classes Is Warranted Under Rule 23(b)(2).

Rule 23(b)(2) provides for class certification when “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2); *Wal-Mart*, 564 U.S. at 360; *Melanie K. v. Horton*, No. 1:14-CV-710-WSD, 2015 WL 1308368, at *5 (N.D. Ga. Mar. 23, 2015). The requirements of Rule 23(b)(2) are “almost automatically satisfied” in actions seeking injunctive relief for common legal claims. *Baby Neal v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994). And “Rule 23(b)(2) has been liberally applied in the area of civil rights, including suits challenging conditions and practices at various detention facilities.” *See Braggs*, 317 F.R.D. at 667 (quoting *Bumgarner v. N.C. Dep’t of Corr.*, 276 F.R.D. 452, 457 (E.D.N.C. 2011)); *Parsons v. Ryan*, 289 F.R.D. 513, 524 (D. Ariz. 2013), *aff’d*, 754 F.3d 657 (9th Cir. 2014) (“[C]laims for injunctive relief stemming from allegedly unconstitutional conditions of confinement are the quintessential type of claims that Rule 23(b)(2) was meant to address.”).

The classes and subclasses that Plaintiffs seek to certify fit squarely within Rule 23(b)(2)’s requirements. *See, e.g., Ibrahim v. Acosta*, 326 F.R.D. 696, 699 (S.D. Fla. 2018) (certifying class of plaintiffs seeking habeas relief). Plaintiffs and

putative class members challenge Defendants' failure to implement adequate safety precautions at the Jail, which exposes them to a heightened risk of contracting COVID-19.

For example, Plaintiffs Jones and Watkins seek to represent the Principal Pretrial Class, and any prospective relief granted to Plaintiffs Jones and Watkins with respect to the jail's conditions will necessarily benefit each member of the class because all pretrial detainees are held under similar conditions and subjected to the same challenged policies and practices. Plaintiffs Jones and Watkins also seek to represent the Medically Vulnerable Pretrial Subclass and Disability Pretrial Subclass, and any prospective relief granted to Plaintiffs Jones and Watkins—including improvements to the jail's conditions and releases of certain detainees—will necessarily benefit each member of the subclass. The same is true for the members of the Post-Adjudication Classes, who are entitled to relief similar to that sought by the Pretrial Classes but under distinct constitutional provisions. Plaintiffs thus qualify for certification under Rule 23(b)(2).

CONCLUSION

The Court should certify the six proposed classes and appoint the undersigned as class counsel.

Respectfully submitted,

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July 2, 2020

CERTIFICATE OF COMPLIANCE

Pursuant to N.D. Ga. Local Civil Rule 7.1(D), I hereby certify that the foregoing has been prepared in compliance with N.D. Ga. Local Civil Rule 5.1(C) in Times New Roman 14-point typeface.

/s/ Ryan Primerano

July 2, 2020

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of filing to all counsel of record.

The foregoing will be served on Defendants by personal service and by depositing true and correct copies thereof with the United States Postal Service, first-class postage prepaid, in envelopes addressed to each named Defendant at the following address:

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/s/ Ryan Primerano

July 2, 2020