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17 **UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
19 **SOUTHERN DIVISION**
20

21 MELISSA AHLMAN, DANIEL KAUWE,
22 MICHAEL SEIF, JAVIER ESPARZA,
23 PEDRO BONILLA, CYNTHIA
24 CAMPBELL, MONIQUE CASTILLO,
25 MARK TRACE, CECIBEL CARIDAD
ORTIZ, and DON WAGNER, on behalf of
themselves and all others similarly situated,

26 *Plaintiffs,*
27 v.
28

Civil Case No.: 8:20-cv-835-JGB-SHK

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF FILED
CONCURRENTLY WITH
DECLARATIONS; EXHIBITS;**

**Date: May 18, 2020
Time: 9:00 AM**

DON BARNES, in his official capacity as
Sheriff of Orange County, California; and
ORANGE COUNTY, CALIFORNIA

Defendants.

Hon. Jesus G. Bernal

Class Action

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8 **pro hac vice application forthcoming*
9 ***C.D. California admission application*
10 *forthcoming*

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INTRODUCTION

The COVID-19 pandemic has upended the nation, sickening over a million people, killing tens of thousands, and sending most Americans into isolation to avoid infection. People confined in the close quarters of jails, however, face a particularly high risk of infection unless corrections officials take reasonable and available steps to protect them. Orange County and its Sheriff have foregone critical measures recommended by the CDC for correctional facilities, putting thousands of vulnerable people in the Orange County Jail (“Jail”) at imminent risk of infection and death. All of the named Plaintiffs fear that they will fall gravely ill and may die. In Mr. Wagner’s words, “I don’t want to get a life sentence by catching the virus and dying.”¹

Defendants have put everyone in the Jail at risk—particularly the Medically-Vulnerable and Disability Subclasses—by failing to consistently or fully implement necessary and feasible public health protections in the Jail. As of this filing, 259 people in the Jail have confirmed positive for COVID-19, out of 738 tests, and 159 results are still pending.² The number of positive tests has doubled in a week’s time.³ With nearly 3,000 detained people in the Jail, the true number of people infected is likely much higher and will keep growing.⁴ The growing infection creates an enormous risk, not just to those within the jail, but also to the surrounding Orange County community, by contributing to the rapid spread of COVID-19 and creating a debilitating burden on its healthcare delivery system.⁵

¹ Exhibit B, Wagner Decl. ¶ 21.

² Orange County Sheriff’s Department, COVID-19 in OC Jails (May 8, 2020), <https://www.ocsd.org/documents/sheriff/COVIDStats5.8.20.pdf>.

³ Orange County Sheriff’s Department, COVID-19 in OC Jails (Apr. 29, 2020), <https://www.ocsd.org/documents/sheriff/COVIDStats4.29.20.pdf>.

⁴ Exhibit C, Parker Decl. ¶ 23.

⁵ *Id.* ¶ 24.

1 The confinement of people under these life-threatening conditions violates the
2 Eighth and Fourteenth Amendments to the U.S. Constitution, as well as the
3 Americans with Disabilities Act (“ADA”) and the Rehabilitation Act. Only urgent
4 action can remedy these serious violations that will lead to mass infection,
5 complications, and even death of people in the Jail. Plaintiffs thus respectfully ask
6 the Court to consider this Petition on an emergency basis, grant immediate releases
7 for members of the Medically-Vulnerable and Disability Subclasses, and order the
8 development of a plan to prevent further spread of COVID-19 within the Jail.

9 **I. THE FACTS THAT NECESSITATE THIS PETITION**

10 The Jail is the midst of a serious outbreak of COVID-19 with the number of
11 COVID cases increasing exponentially. Without immediate intervention, the
12 outbreak will continue to escalate, threatening the lives of detained persons within
13 the Jail, corrections and medical staff at the Jail, and the surrounding community.⁶

14 Once introduced into a jail, COVID-19 spreads quickly among those inside.
15 Jails are hotbeds for spread of COVID-19 because of: many people living in a
16 closed space; shared ventilation; common food preparation space; communal
17 living/bathing/toileting/eating; limited medical facilities; and limited ability to
18 leave the facility when symptomatic or after potential exposure to the virus.⁷
19 Moreover, jails are not closed environments; members of the community,
20 including both staff and incarcerated people, regularly move in and out of the
21 facility bringing illnesses with them into the jail or, after infection inside, out to
22
23

24 ⁶ Exhibit D, Goldenson Decl. ¶¶ 50-55; Ex. C, Parker Decl. ¶¶ 25, 31.

25 ⁷ Ex. D, Goldenson Decl. ¶¶ 17-19; *see Fraihat v. U.S. Immigration & Customs Enft*,
26 No. EDCV 19-1546-JGB (SHKx), 2020 WL 1932570 (C.D. Cal. Apr. 20, 2020));
27 *Ernesto Torres, et al. v. United States Dep’t. of Homeland Sec., et al.*, EDCV 5:18-
28 cv-2604, Dkt. No. 144 (C.D. Cal. April 11, 2020).

1 the community.⁸ Numerous public health experts recommend that jails downsize
2 to reduce the risk of infection.⁹ And courts around the country have responded to
3 the serious risk to people confined in jails with inadequate protections by ordering
4 their release and by requiring jails to implement measures to reduce the spread of
5 COVID-19 within the jails.¹⁰

6
7 ⁸ Ex. D, Goldenson Decl. at ¶¶ 33-34.

8 ⁹ See Ex. C, Parker Decl.; Ex. D, Goldenson Decl.

9 ¹⁰ See, e.g., *Wilson v. Williams*, No. 20-cv-00794, 2020 WL 1940882, at *10-11
10 (N.D. Ohio April 22, 2020) (ordering transfer of class of medically vulnerable
11 people from large prison to their homes, community supervision or other facilities
12 capable of social distancing because of the prison's failure to provide social
13 distancing and protections against COVID), *denying motion to stay preliminary*
14 *injunction*, Case No. 20-3447 (6th Cir. May 4, 2020) (finding that plaintiff prisoners
15 properly invoked Section 2241); *Roman v. Wolf*, No. CV 20-768, 2020 WL 1952656,
16 at *12 (C.D. Cal. Apr. 23, 2020) (granting class-wide preliminary injunction and
17 ordering Adelanto detention facility to immediately stop accepting new detainees
18 and to reduce detainee population to allow for social distancing, giving priority for
19 release to persons over the age of 55 and who are medically vulnerable), *stay granted*
20 *in part pending expedited appeal*, *Roman v. Wolf*, No. 20-55436, 2020 WL 2188048
21 (9th Cir. May 5, 2020); *In the Matter of the Request to Commute or Suspend County*
22 *Jail Sentences*, Consent Order, at *2 (N.J. No. 084230 March 22, 2020) (consent
23 order setting out the presumptive release of all people currently serving a county jail
24 sentence); *Thakker v. Doll*, No. 20-cv-480 (JEJ), Dkt. No. 47, 2020 WL 1671563, at
25 *21 (M.D. Pa. Mar. 31, 2020) (ordering release of detained petitioners in light of the
26 detention facility's inability to provide social distancing and proper hygiene, "the
27 only effective means by which we can stop the spread of COVID-19"); *Savino v.*
28 *Souza*, No. 20-10617-WGY, 2020 WL 1703844, at *1 (D. Mass. Apr. 8, 2020)
(ordering availability of bail for individuals because petitioners are "held in tight
quarters and unable to keep safe distance from others who may – and with time,
inevitably will – carry the highly contagious virus"); *Frailhat v. Wolf*, 20-cv-590,
(C.D. Cal. Mar. 30, 2020); *Castillo v. Barr*, 20-cv-605, Dkt. No. 32, at *9 (C.D. Cal.
Mar. 27, 2020); *Coronel v. Decker*, No. 20-cv-2472 2020 WL 1487274, at *3
(S.D.N.Y. March 27, 2020); *Basank v. Decker*, 20-cv-2518, Dkt. No. 11, at *4
(S.D.N.Y. Mar. 26, 2020) ("The risk that Petitioners will face a severe, and quite

1 Although the Jail has reduced its population since the first documented case,
2 this reduction is not enough to protect individuals held at the Jail from the growing
3 outbreak of COVID-19. Defendants' own Correctional Health Services staff
4 recommended that the population be reduced by 50% in all congregate living areas
5 in order to promote social distancing, a goal Defendants have been unable to
6 achieve.

7 Members of the Medically-Vulnerable and Disability Subclasses face
8 imminent risk of fatal infection at the Orange County Jail.¹¹ COVID-19 is
9 particularly dangerous to people who are older or have certain health conditions
10 and disabilities, including diabetes, lung disease, heart disease, and compromised
11 immune systems.¹² Incarcerated people disproportionately experience these

12
13 possibly fatal, infection if they remain in immigration detention constitutes
14 irreparable harm warranting a TRO.”).

15 ¹¹ Ex. D, Goldenson Decl. ¶ 48; Ex. C, Parker Decl. ¶ 19. The California Judicial
16 Council issued an emergency order on April 6th that took several measures to reduce
17 jail populations, including adopting a statewide Emergency Bail Schedule that
18 reduced bail to \$0 for certain offenses. *See* Judicial Council of Cal., Judicial Branch
19 Administration: Emergency Rules in Response to the COVID-19 Pandemic (April
20 6, 2020), available at
21 [https://jcc.legistar.com/View.ashx?M=F&ID=8233133&GUID=4CE2DDDF-](https://jcc.legistar.com/View.ashx?M=F&ID=8233133&GUID=4CE2DDDF-426E-446C-8879-39B03DE418B3)
22 [426E-446C-8879-39B03DE418B3](https://jcc.legistar.com/View.ashx?M=F&ID=8233133&GUID=4CE2DDDF-426E-446C-8879-39B03DE418B3). Plaintiffs Ahlman, Kauwe, and Seif are not
23 eligible for zero bail under the Emergency Bail Schedule, however, because their
24 pending charges fall under exceptions set out in the rule. *See id.* at Emergency rule
25 4(c)(1), (11), (13); Exhibit E, Plaintiff Ahlman Record (charged with a felony
26 violation of 23152(A), exempted by 4(c)(11)); Exhibit F, Plaintiff Kauwe Records
27 (charged with PC 451(B), exempted by 4(c)(1)); Exhibit G, Plaintiff Seif Records
28 (charged with a felony violation of PC 29800(A)(1), exempted by 4(c)(13)).
Additionally, it is imperative that Defendants take further action to reduce the Jail
population given that Plaintiffs' court dates have been postponed for unspecified
periods of time while the courts are operating on a limited basis during the ongoing
pandemic.

¹² Ex. D, Goldenson Decl. ¶ 27; Ex. C, Parker Decl. ¶ 19.

1 conditions, and so are “particularly vulnerable to severe illness from COVID-19.”
2 *United States v. Muniz*, No. 4:09-CR-0199, 2020 WL 1540325, at *2 (S.D. Tex.
3 Mar. 30, 2020). Defendants recognize that persons who are medically vulnerable
4 are at heightened risk, and adopted a policy of granting releases to some sentenced
5 persons with medical vulnerabilities. But Defendants have arbitrarily limited
6 those releases to only those individuals who are within 60 days of the end date of
7 their jail sentences, and then applied vague public safety criteria to whether to
8 release even that category of individuals. Defendants refuse to even consider
9 release of Medically Vulnerable individuals held on violations of probation or
10 parole (including technical violations). According to Defendants' list of all
11 persons in the jail who are medically vulnerable to a COVID infection, there are
12 488 medically vulnerable people currently held in the Jail.

13 Defendants must take further measures to stop the spread of the disease—
14 not only to protect people in the Jail from harm, but also to prevent a major
15 outbreak that would overwhelm community medical resources.¹³ The CDC has
16 announced several guidelines for prison and jails to limit the spread of COVID-
17 19.¹⁴ Quarantining is critical, for 14 days after intake and for symptomatic
18 individuals and their close contacts. Additionally, social distancing (requiring all
19 people to stay a minimum of six feet away from one another), frequent hand
20 washing with soap, and frequently cleaning and disinfecting shared surfaces are
21 essential to reducing the spread of the virus.¹⁵ Testing is another important
22

23
24 ¹³ Ex. C, Parker Decl. ¶¶ 28-30

25 ¹⁴ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in
26 Correctional and Detention Facilities, Centers for Disease Control and Prevention
(March 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

27 ¹⁵ Ex. D, Goldenson Decl., ¶¶ 2, 45.
28

1 component, enabling jail officials to know who is infected so they can be
2 quarantined from the general population.

3 Defendants have failed to appropriately implement these safeguards.
4 Defendants nonetheless assert that they are taking all necessary steps to protect
5 people in the jail from COVID-19, and have made a number of factual
6 representations to Plaintiffs about these alleged steps—some of which are
7 extremely recent, only after Plaintiffs filed the complaint.¹⁶ However, the actual
8 practices in the jail continue to be dangerous:

- 9 • **Failure to Quarantine:** Defendants have not uniformly quarantined new
10 arrivals at the Jail¹⁷; and even when they do quarantine people, they place
11 many in unreasonably risky conditions. The Jail quarantines the close contacts
12 of confirmed COVID-19 cases in cohorts—a practice that is discouraged by
13 the CDC because it places uninfected individuals at risk.¹⁸ The Jail also
14 defeats the purpose of quarantines by mixing cohorts with each other.¹⁹ In the
15 case of at least one of these quarantines, the Jail's ineffective quarantine
16 practices may have contributed to a major cluster of infections.²⁰

17
18
19 ¹⁶ For example, on May 7, Defendants amended their list of screening questions for
20 COVID-19 testing. Late last week, they also began to post signs stating that
21 detainees could request more hand soap. Exhibit H, Ramirez Decl. ¶ 13; Exhibit I,
22 Trace May 9, 2020 Decl. ¶ 2; Exhibit J, Wagner May 8, 2020 Decl. (May 8) ¶ 6.

23 ¹⁷ Exhibit K, Seif Decl. ¶ 10 (stating that new incarcerated individuals are not tested
24 before being placed in his tier); Ex. B, Wagner Decl. ¶ 14 (describing a new inmate
25 placed in his sector whose father was in the hospital with COVID-19).

26 ¹⁸ Ex. C, Parker Decl. ¶ 16; Ex. D, Goldenson Decl. ¶ 46.

27 ¹⁹ See Exhibit L, Miranda Decl. ¶¶ 22, 25; Exhibit M, Esparza Decl. ¶ 7; Exhibit N,
28 Godinez Decl. ¶ 11 (half of quarantined dorm moved to another module and then
mixed with new people).

²⁰ Ex. L, Miranda Decl. ¶¶ 8, 25; Ex. N, Godinez Decl. ¶¶ 8-9; Ex. D, Goldenson
Decl. ¶ 45; Exhibit O, Farias Decl. ¶¶ 6-10; Exhibit P, Lentz Decl. ¶¶ 5-11.

- **Lack of Social Distancing:** In non-quarantined housing units at the Jail, Defendants have not implemented procedures to allow Plaintiffs and putative class members to socially distance from other people. Many people are in cells with as many as eight people to a cell.²¹ In some barracks, Defendants have increased the density by adding several new individuals in recent days.²² Plaintiffs and putative class members have constant, forced contact with many others who may have been exposed to COVID-19.²³ People are forced to eat together, shower together, and to share common laundry and medicine delivery. Defendants frequently move people around the jail, increasing their potential exposures.²⁴

²¹Exhibit Q, Ahlman Decl. ¶¶ 7-8, 11-14 (describing her shared medical unit housing with 12 beds only two feet apart); Ex. P, Lentz Decl. ¶ 12; Ex. H, Ramirez Decl. ¶ 19 (impossible to socially distance in two-person cells or accompanying dayroom).

²² Ex. H, Ramirez Decl. ¶¶ 18 (in the past two days, barracks experienced rapid population increases that make it impossible to socially distance).

²³ Ex. L, Miranda Decl. ¶ 7; Ex. M, Godinez Decl. ¶ 6.; Exhibit R, Bonilla Decl. ¶¶ 6-7 (held in two-person cell, approximately 8x12 feet and dayroom with 7 others where they use the phones one foot apart from each other); Exhibit S, Ortiz Decl. ¶¶ 5-7; (in medical module with beds approximately two to three feet apart and the dayroom with chairs a foot apart from each other); Exhibit T, Hernandez Decl. ¶¶ 6-10, 30; Ex. H, Ramirez Decl. ¶¶ 21 (symptomatic individual transferred from quarantine to crowded barracks without being tested), 24 (symptomatic individual who asserts he has COVID-19 was transferred into new unit, assigned an asymptomatic cellmate, and is mingling with others in common area)

²⁴ See Ex. L, Miranda Decl. ¶¶ 4, 6, 9-12 (moved to four different units since entering custody on January 10, 2020, being exposed to individuals with COVID-19 symptoms, and not being tested until four months later); Ex. Q, Ahlman Decl. ¶ 5 (being placed in overcrowded a holding tank that was only supposed to hold 10 people); Ex. N, Godinez Decl. ¶¶ 7, 10-13 (transferred within jail units, including being transferred from a module with exposure to individuals who had fevers and COVID-19 symptoms to a new module without being tested for nearly a month despite having a persistent cough); Ex. S, Ortiz Decl. ¶¶ 18-19 (trip to the emergency room for six hours returning without any quarantine or screening and the failure to quarantine new inmates in her medical module); Ex. K, Seif Decl. ¶ 9 (tier not tested despite exposure to deputy who tested positive for COVID-19); Exhibit U, Herrera Decl. ¶¶ 6, 10 (unit not tested despite being exposed to deputy who tested positive for COVID-19); Ex. B, Wagner Decl. ¶ 14 (describing an inmate new person placed in his sector whose father was in the hospital with COVID-19); Exhibit V, Trace

- **Inadequate Hygiene:** The Jail fails to provide sufficient hygiene and cleaning supplies at no cost to the detainees, providing 1-2 single use bars of soap once a week that barely last one day. This is not enough soap to wash their hands regularly and clean themselves. Although Defendants represent they have posted signs throughout the jail stating that detainees could request more hand soap (and Plaintiffs confirmed that these signs were newly posted in multiple units at the end of last week), this has not translated to more soap being provided in practice. When Plaintiffs requested the soap, deputies refused to provide it.²⁵ Defendants also provide flimsy, improvised masks that they must reuse for days and weeks without washing.²⁶ Defendants task detainees with cleaning the cells vacated by other individuals who have confirmed cases of COVID-19. Detainees are forced to carry out this high-risk cleaning task without protective equipment like gloves or gowns.²⁷

Decl. ¶ 15 (describing transfers of inmates people in and out of unit without quarantine period); Ex. Q, Ahlman Decl. ¶¶ 21-22; Ex. N, Godinez Decl. ¶¶ 19, 21; Exhibit W, Cardone Decl. ¶ 14.

²⁵ Ex. H, Ramirez Decl. ¶ 13; *see also* Ex. I Trace Decl. (May 9, 2020) ¶ 2 (despite new memo on wall about cleaning or hygiene, Mr. Trace asked for soap and was denied it, and he had only received one bar of soap for 9 days).

²⁶ *See* Ex. Q, Ahlman Decl. ¶ 18; Ex. R Bonilla Decl. ¶ 12; Ex. X, Baguiao Decl. ¶ 13; Ex. W, Cardone Decl. ¶¶ 11-12; Exhibit Y, Castillo Decl. ¶ 17; Ex. T, Hernandez Decl. ¶ 24; Ex. U, Herrera Decl. ¶ 11; Exhibit Z, Kauwe Decl. ¶ 10; Ex. L, Miranda Decl. ¶ 16; Ex. S, Ortiz Decl. ¶ 14; Exhibit AA, Saem Decl. ¶ 15; Ex. V, Trace Decl. ¶ 17; Ex. B, Wagner Decl. ¶ 18; Ex. O, Farias Decl. ¶ 12. Defendants have informed Plaintiffs that they offer replacement laundered mask coverings of some kind every other day but that is inconsistent with recent reports from individuals in the Jail. *See* Ex. H, Ramirez Decl. ¶¶ 10-11 & 14-15 (cloth masks not replaced for weeks), 17 (cloth mask made from blood- and feces-stained sheets).

²⁷ Ex. L, Miranda Decl. ¶ 10 (“Three days after the young man was removed the guards instructed me and another inmate to clean out his belongings from his bunk. We were not given gloves or masks.”); Ex. N, Godinez Decl. ¶ 12; Ex. P, Lentz Decl. ¶ 13 .

- 1 • **Failure to Disinfect:** The Jail does not properly disinfect high touch surfaces
2 to prevent the spread of the virus. Incarcerated people themselves are
3 responsible for cleaning the pods, including the toilets and showers, but the
4 Jail does not provide sufficient cleaning supplies.²⁸ Multiple declarants have
5 testified that incarcerated workers are provided watered-down cleaning
6 supplies or “dirty mop water,” instead of disinfectant to clean the showers and
7 common rooms.²⁹ Defendants have not contested this except as to quarantine
8 and medical isolation units.
- 9 • **Inadequate Testing and Isolation Practices:** Despite California’s directive
10 prioritizing testing in jails, the Jail has failed to test or isolate detainees who
11 have COVID-19 symptoms, and until very recently, only a limited number
12 of detained individuals have been tested in the Jail.³⁰ These testing practices
13 are plainly inadequate as they expose presumptively healthy detainees to
14 others with illness.³¹ Even when symptomatic individuals are tested, they
15 remain in the current housing units and are only moved to isolation after a
16 positive test result, contrary to public health guidance.³²

17 ²⁸ See Ex. Q, Ahlman Decl. ¶¶ 19-20; Ex. R, Bonilla Decl. ¶ 16; Ex. X, Baguiao
18 Decl. ¶ 14-15; Exhibit BB, Campbell Decl. ¶ 20; Ex. Y, Castillo Decl. ¶ 19; Ex. M,
19 Esparza Decl. ¶ 12; Ex. N, Godinez Decl. ¶ 17; Ex. T, Hernandez Decl. ¶¶ 11-12;
20 Ex. L, Miranda Decl. ¶¶ 17, 24-25; Ex. V, Trace Decl. ¶ 18; Ex. B, Wagner Decl. ¶
21 15; Ex. O, Farias Decl. ¶ 13; Ex. H, Ramirez Decl. ¶ 14 (three housing sectors must
22 use the same spray bottle of cleaning solution, which deputies keep behind a locked
23 door and do not consistently permit detainees to use).

24 ²⁹ Ex. K, Seif Decl. ¶ 13; *see also, e.g.*, Ex. O, Farias Decl. ¶ 13; Ex. Y, Castillo
25 Decl. ¶ 19; Ex. I, Trace May 9, 2020 Decl. ¶ 3.

26 ³⁰ See Ex. Q, Ahlman Decl. ¶ 17; Ex. V, Trace Decl. ¶ 9 (request for testing denied);
27 Ex. T, Hernandez Decl. ¶¶ 13, 16; Ex. AA, Saem Decl. ¶ 10; Ex. B, Wagner Decl.
28 ¶ 9; Ex. P, Lentz Decl. ¶ 14.

³¹ Ex. C, Parker Decl. ¶ 17; Ex. H, Ramirez Decl. ¶ 20 (cellmates of symptomatic
individuals not quarantined).

³² Ex. H, Ramirez Decl. ¶¶ 22 (symptomatic individual was tested but not
quarantined pending results), 23 (in unit containing multiple symptomatic

1 Named Plaintiffs Pedro Bonilla, Mark Trace, Don Wagner, Cynthia
2 Campbell, Monique Castillo, Cecibel Caridad Ortiz, Daniel Kauwe, and Michael
3 Seif are all people with disabilities protected under federal law, and those disabilities
4 place them at high risk of critical illness or death if exposed to COVID-19 because
5 of their medical vulnerability.³³ For these medically vulnerable, disabled Plaintiffs,
6 remaining in the Jail under these conditions increases the chance that they will
7 develop COVID-19 and become either extremely ill or die as a result.³⁴ “Given the
8 high likelihood of contagion and spread in the jail, the safety of these [medically
9 vulnerable] individuals is a pressing emergency that needs to be addressed on an
10 urgent basis.”³⁵

11 II. ARGUMENT

12 Given the dangerous conditions in the Jail, injunctive relief is warranted and
13 necessary to protect Plaintiffs and the classes they represent from being
14 _____
15 individuals, people were not transferred to medical isolation until receiving
16 positive test results).

17 ³³ Mark Trace is a 53-year-old man who has multiple, significant health conditions
18 including sclerosis of the liver, Hepatitis C and D, asthma, tuberculosis, valley fever,
19 and seizures that affect his breathing and lungs. Ex. V, Trace Decl. ¶ 8. Don Wagner
20 is a 68-year-old man who has scar tissue and a persistent cough after surviving
21 cancer four years ago, high blood pressure and a thyroid condition. Ex. B, Wagner
22 Decl. ¶¶ 2, 7. Cynthia Campbell is a 64-year-old woman who has Rheumatoid
23 Arthritis, an autoimmune condition that attacks the joints, liver, kidneys, and heart.
24 Ex. BB, Campbell Decl. ¶¶ 2, 5. Monique Castillo is a 43-year-old woman who has
25 Type 1 diabetes and anxiety. Ex. Y, Castillo Decl. ¶ 2, 7. Cecibel Caridad Ortiz is
26 a 31-year-old woman who has Type 1 diabetes and anxiety. Ex. S, Ortiz Decl. ¶¶ 2,
27 8. Pedro Bonilla is a 36 year-old man who was diagnosed with Hepatitis C, which
28 he contracted during a previous period of imprisonment. Ex. R, Bonilla Decl. ¶¶ 2,
21-22. Daniel Kauwe is a 42-year-old man who is immunocompromised and has
fungal infections on his skin. Ex. Z, Kauwe Decl. ¶¶ 2, 13. Michael Seif is a 35 year
old man who suffered a collapsed lung in June of 2018. Ex. K, Seif Decl. ¶¶ 2, 7-8.

³⁴ Ex. D, Goldenson Decl. ¶ 50.

³⁵ Ex. D, Goldenson Decl. ¶ 48.

unnecessarily exposed to and potentially dying from COVID-19. Plaintiffs meet all the requirements for injunctive relief because they are (1) likely to succeed on the merits, (2) will suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).

A. Plaintiffs Are Likely To Prevail On The Merits Of Their Constitutional And ADA Claims.

Defendants' response to the dangerous conditions in the Jail is so deficient that it violates Plaintiffs' rights under the Fourteenth Amendment, Eighth Amendment, and the ADA and Rehabilitation Act. Each violation independently satisfies a showing of likelihood of success on the merits. Here, Plaintiffs can demonstrate that they will succeed under multiple theories.

1. Defendants Have Violated Plaintiffs' Constitutional Rights To Protection From The Risks Of This Highly Contagious Disease.

Due to the conditions in the Jail, Plaintiffs could become ill or die, and defendants' failure to take appropriate precautions to protect both Plaintiffs who are sentenced and pretrial detainees, violates their rights under the Eighth Amendment and the Fourteenth Amendment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (Eighth Amendment); *Bell v. Wolfish*, 441 U.S. 520, 535 & n.16 (1979) (pretrial detainees retain greater protections than convicted counterparts).

The only defense Class Members have against this novel, deadly disease is for the Jail to implement all CDC guidelines and reduce populations to the level that will allow for social distancing. And Defendants have been unwilling or unable to do so. Defendants' failure to release those members of the Medically Vulnerable and Disability Subclasses whose release would not pose a danger to others creates an untenable risk of serious injury and death. *See Wilson v. Williams*, 2020 WL

1 1940882, No. 4:20-cv-00794, at *1 (N.D. Ohio April 22, 2020) (granting
2 preliminary injunctive relief and finding Defendants acted with deliberate
3 indifference, where despite some proactive measures by Defendants, the prisoners
4 were unable to socially distance and where the prison had “shockingly limited
5 available testing...”).

6 COVID-19 is “a global crisis” that heightens the risk for those in jails, one of
7 “the most vulnerable groups among us.” *Rose v. Baker*, No. 17-15009, Dkt. 54 at 2
8 n.1 (9th Cir. Apr. 9, 2020) (internal quotations omitted). Urgent court intervention
9 is required. *Tre McPherson, et al. v. Ned Lamont, et al.*, Civil No. 3:20-cv-534 (D.
10 Conn. May 6, 2020) (allowing Plaintiffs’ 2241 class action to proceed after finding
11 that “exhaustion of state remedies would be futile, because, under current
12 conditions, Plaintiffs are at substantial risk of contracting the disease prior to
13 completing the exhaustion process”).³⁶ For this reason, the Ninth Circuit has

14 ³⁶ Plaintiffs have exhausted available administrative remedies under the Jail’s
15 official grievance process. *See* OCSO, Inmate/Detainee Grievance Procedure, §
16 1600.5.1 (undated). Plaintiffs filed emergency grievances requesting release or,
17 alternatively, provision of adequate sanitation supplies, personal protective
18 equipment, and space to be able to maintain at least 6 feet of distance from other
19 people. Several of the Plaintiffs received verbal denials of their grievances which
20 deputies informed them were not logged as grievances in the Jail’s system and were
21 not assigned a Jail Incident Number; because the grievance procedure instructs that
22 appeals can only be processed if they include the original grievance’s Jail Incident
23 Number, these Plaintiffs have no other remedies available to them. *See* Exhibit CC,
24 Ortiz Grievance Decl.; Exhibit DD, Seif Grievance Decl.; Exhibit EE Esparza
25 Grievance Decl.; Exhibit FF, Bonilla Grievance Decl.; Exhibit GG, Wagner
26 Grievance Decl.; *see also* Exhibit HH, Herrera Grievance Decl. One Plaintiff
27 submitted a grievance that did not receive any response before his mental health
28 recently decompensated. Exhibit II, Jennifer Rojas Decl. Others received written
denials, which they timely appealed; these appeals were either denied or never
received a response. *See* Exhibit JJ, Trace May 4, 2020 Grievance Decl.; Exhibit
KK, Trace May 5, 2020 Grievance Decl.; Exhibit LL Campbell Appeal Decl.;
Exhibit MM, Ahlman Appeal Decl.; Exhibit NN, Castillo Appeal Decl. Therefore,
Plaintiffs have exhausted the available administrative remedies. *See Andres v.*
Marshall, 867 F.3d 1076, 1078 (9th Cir. 2017) (holding that where prison officials
improperly failed to process timely filed grievance, plaintiff exhausted available
remedies).

1 recognized that incarcerated people face a “risk of serious consequences from the
2 COVID-19 virus, up to and including death, because of [] underlying medical
3 conditions.” *Id.*

4 Defendants are well aware of the risks posed by COVID-19 infections. Those
5 risks are “obvious” to anyone living in California, which has been under a state of
6 emergency since March 4, 2020 and under shelter-in-place orders since March 19,
7 2020.³⁷ Sheriff Barnes has repeatedly been warned of these risks, including by his
8 own deputies.³⁸ Despite these warnings, Defendants have not taken sufficient steps
9 to curb the spread of disease, such as providing adequate amounts of soap,
10 decreasing contact between detainees, and adopting effective practices to disinfect
11 shared surfaces.³⁹

12 The Eighth and Fourteenth Amendments require that Defendants take action
13 to protect people in their custody from communicable diseases. Putting confined
14 persons at risk of disease is a sufficiently cruel and “unsafe, life-threatening
15 condition” such that it can constitute “cruel and unusual punishment” under the
16

17
18 ³⁷ Cal. Exec. Order No. N-33-20 (March 19, 2020),
19 <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf> (noting state of
emergency declared March 4, 2020).

20 ³⁸ See Letter from Jacob Reisberg and Daisy Ramirez, ACLU of Southern California,
21 to Sheriff-Coroner Donald Barnes, Re: COVID-19 Policy in Orange County Jails
22 (Mar. 12, 2020) (ACLU So Cal warning sheriff of risks); Letter from Transforming
23 Justice, et al., to Sheriff Don Barnes, et al., Re: COVID-19 Containment in Orange
24 County Jails and Courthouses (Mar. 17, 2020) (multiple community organizations);
Letter from Tom Dominguez, Ass’n of Orange County Deputy Sheriffs, to Sheriff
Don Barnes (Mar. 25, 2020) (deputies); Letter from Transforming Justice Orange
County, et al., to Sheriff Don Barnes, et al., Re: COVID-19 in Orange County Jails
(Apr. 6, 2020) (multiple community organizations).

25 ³⁹ See Ex. Q, Ahlman Decl. ¶¶ 13, 18-20; Ex. BB, Campbell Decl. ¶¶ 10-11, 13-16,
26 20; Ex. Y, Castillo Decl. ¶¶ 8-11, 17-19; Ex. N, Godinez Decl. ¶¶ 6, 12, 15, 17, 19-
27 20; Ex. T, Hernandez Decl. ¶¶ 7-8, 10-12, 24, 27; Ex. V, Trace Decl. ¶¶ 16-18; Ex.
28 B, Wagner Decl. ¶¶ 11-13, 15-18.

1 Eighth Amendment. *Helling v. McKinney*, 509 U.S. 25, 33 (1993).⁴⁰ Accordingly,
2 the Constitution prohibits Jail officials from acting with deliberate indifference to
3 the risks that people in their custody will suffer harm from infectious diseases.
4 *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Farmer v. Brennan*, 511 U.S. 825, 828
5 (1994). Under the Eighth Amendment, officials act with deliberate indifference
6 when they: (1) have subjective knowledge of the risks or those risks are “obvious,”
7 and (2) fail to take reasonable action to abate those risks. *Lemire v. Cal. Dep’t of*
8 *Corr. & Rehab.*, 726 F.3d 1062, 1078 (9th Cir. 2013) (quoting *Farmer*, 511 U.S. at
9 842); *Delgado v. Barnes*, 465 F. App’x 712, 712–13 (9th Cir. 2012). Under the
10 Fourteenth Amendment, only the objective prong of this test must be satisfied.
11 *Kingsley v. Hendrickson*, 135 S.Ct. 2466, 2473–74 (2015).⁴¹

12 ⁴⁰ See also *Trevizo v. Webster*, No. 17-cv-5868-MWF-KS, 2018 WL 5917858, at *4;
13 (C.D. Cal. Sept. 6, 2018) (“It is well accepted that such substantial risks of harm
14 include exposure of inmates to a serious, communicable disease.”) (internal citation
15 marks omitted) (quoting *Helling*, 509 U.S. at 33); *Lopez v. McGrath*, No. 04-cv-
16 4782 MHP, 2007 WL 1577893, at *5 (N.D. Cal. May 31, 2007) (“Courts have
17 recognized a broad range of diseases which may form the basis for a claim of
18 deliberate indifference.”) (collecting cases); cf. *Andrews v. Cervantes*, 493 F.3d
19 1047, 1055–56 (9th Cir. 2007) (recognizing “imminent danger” posed to prisoners
20 by contagious “diseases [that] quite obviously cause serious health problems, and
21 can result in death.”).

22 ⁴¹ *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018), cert. denied
23 sub nom. *Cty. of Orange, Cal. v. Gordon*, 139 S. Ct. 794, 202 L. Ed. 2d 571 (2019)
24 (holding this test applies to violations of right to adequate medical care). In *Swain*
25 *v. Junior*, the Eleventh Circuit held that because defendants did not “subjectively
26 believe[] the measures they were taking were inadequate” and there was no evidence
27 that “defendants are ignoring or approving the alleged lapses in enforcement of
28 social-distancing policies,” plaintiffs did not satisfy the subjective prong of
deliberate indifference. See *Swain v. Junior*, No. 20-11622-C, 2020 WL 2161317, at
*5 (11th Cir. May 5, 2020). The *Swain* decision conflicts with controlling Ninth
Circuit case law. For pre-trial detainees, subjective knowledge or intent is not
required. *Gordon*, 888 F.3d at 1124-25. For sentenced prisoners, the subjective
prong of deliberate indifference requires two parts: (1) that prison officials were

1 These obligations include prevention, not merely treatment of those who
2 contract the disease. *Helling*, 509 U.S. at 33–34; *Parsons v. Ryan*, 754 F.3d 657,
3 676–77 (9th Cir. 2014) (rejecting defendants’ argument that Eighth Amendment
4 only applies to “current serious health problems”). Failure to follow CDC guidance
5 and other generally-accepted medical guidelines for disease prevention is evidence
6 of deliberate indifference. *Cameron v. Bouchard*, No. CV 20-10949, 2020 WL
7 1929876, at *2 (E.D. Mich. Apr. 17, 2020) (granting TRO based on jail’s failure to
8 comply with COVID-19 guidance from CDC and other public health experts),
9 *modified on reconsideration*, *Cameron v. Bouchard*, No. CV 20-10949, 2020 WL
10 1952836 (E.D. Mich. Apr. 23, 2020); *Hernandez v. Cty. Of Monterey*, 110 F. Supp.
11 3d 929, 942–45 (N.D. Cal. 2015) (finding that “known noncompliance” with CDC
12 tuberculosis guidelines “strongly indicates deliberate indifference to a substantial
13 risk of serious harm” and ordering officials to implement tuberculosis prevention
14 policies); *cf. Valentine v. Collier*, No. 20-20207, 2020 WL 1934431, *3-4 (5th Cir.
15 April 22, 2020) (staying injunctive relief for measures beyond CDC Guidance,
16 where plaintiffs did not contest that defendants were in compliance with CDC
17 Guidance). Any claim that is likely to succeed under the Eighth Amendment is
18 equally if not more likely to succeed under the Fourteenth Amendment. *See id.* at
19 1123–25.

20 Defendants’ actions fall far short of the constitutional requirements by failing
21 to protect detainees from unnecessary exposure to this potentially deadly virus.
22 Defendants’ duty requires that they protect the detainees in the Jail from the risk of
23

24 either subjectively aware of the risk to people in custody or it was “obvious” to them,
25 and (2) the officials lacked a reasonable justification for exposing the people to that
26 risk. *Lemire*, 726 F.3d at 1078. In this case, Defendants are clearly aware of the risks
27 of harm, and—whatever their personal beliefs may be—failed to take reasonable
28 action to abate those risks.

1 contracting this highly communicable disease. Yet Defendants have ignored this
2 duty to Plaintiffs and the Class they seek to represent, who are at serious risk of
3 severe illness or death from COVID-19. Plaintiffs are able to show a strong
4 likelihood of success on the merits on this basis alone.

5 **2. Defendants Are Unconstitutionally Punishing Members Of**
6 **The Pretrial Class.**

7 In addition to violating the Eighth and Fourteenth Amendment deliberate
8 indifference standard for all Plaintiffs, Defendants' failure to secure safe conditions
9 constitutes an impermissible punishment for the Pretrial Class. *See, e.g., Bell v.*
10 *Wolfish*, 441 U.S. 520, 535 (“[U]nder the Due Process Clause, a detainee may not
11 be punished prior to an adjudication of guilt in accordance with due process of
12 law.”); *id.* at n.16 (people detained pretrial retain greater protections than convicted
13 counterparts). A jailer's conduct constitutes punishment if it is either not rationally
14 related to a legitimate, nonpunitive government purpose or is excessive in relation
15 to that purpose. *Bell*, 441 U.S. at 561; *Kingsley*, 135 S. Ct. at 2473–74; *Demery v.*
16 *Arpaio*, 378 F.3d 1020, 1030–33 (9th Cir. 2004).

17 Defendants have no legitimate, nonpunitive purpose to keep pretrial Plaintiffs
18 and the other members of the Pretrial Class under these conditions. Choosing to
19 violate public health guidelines during a global pandemic is not rationally related to
20 goals of health, safety, or even cost efficiency. Because it arbitrarily inflicts harm,
21 courts may infer it is punitive. *See Demery*, 378 F.3d at 1032 (live webcams in jail
22 are punitive because they are not rationally related to legitimate goals of security or
23 public education).

24 Even if the Jail's failure to follow accepted practices for preventing the spread
25 of COVID-19 had a legitimate, nonpunitive purpose, exposing pretrial detainees to
26 lethal risks is excessive for that purpose. For this reason, the California Judicial
27 Council issued advisories encouraging state courts to increase releases from jails,
28

1 and the California Attorney General has clarified that county sheriffs have full
2 statutory authority to release people from custody in response to the COVID-19
3 emergency.⁴²

4 **3. Defendants Have Violated The ADA and Rehabilitation Act**
5 **By Discriminating against the Disability Subclasses.**

6 Defendants' actions also violate the ADA and Rehabilitation Act. Title II of
7 the ADA requires that public entities refrain from discriminating against qualified
8 individuals on the basis of a disability. 42 U.S.C. § 12132. Section 504 of the
9 Rehabilitation Act imposes parallel requirements on entities that receive federal
10 financial assistance. *See Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir.
11 2001). In order to avoid disability discrimination in Jail in this public health
12 emergency, the only reasonable modification and nondiscriminatory method of
13 administration is release of the Disability Subclasses.

14 Plaintiffs and class members in the disability subclasses are protected people
15 with disabilities under the ADA and Section 504. 42 U.S.C. § 12102(1)(A), (2)(B),
16 28 C.F.R. § 35.108(d)(2)(iii). Plaintiffs and class members are "qualified" for
17 Defendants' programs, services, and activities, including adjudication of their cases;
18 safe, constitutional living conditions during confinement; and medical care and
19 rehabilitative services to prepare for reentry after release. 42 U.S.C. § 12131(2); 28
20 C.F.R. § 35.104; 28 C.F.R. § Pt. 35, App. B ("[T]itle II applies to anything a public
21

22 ⁴² See Advisory from California Chief Justice Tani Cantil-Sakauye to Presiding
23 Judges and Court Executive Officers of the California Courts (Mar. 20, 2020),
24 [https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-](https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures)
25 [advisory-on-emergency-relief-measures](https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures); Attorney General of California,
26 Information Bulletin: COVID-19 and Statutory Authority Under Government Code
27 Section 8658 (Apr. 14, 2020),
28 <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/2020-dle-05.pdf>.

1 entity does”). The Jail is a “public entity” for purposes of the ADA, and is bound to
2 comply with Title II. 42 U.S.C. § 12131(B).

3 Public entities must take affirmative steps to ensure that people with
4 disabilities can participate in all of the entity’s programs, benefits, and services on
5 an equal and equally safe basis as people without disabilities. 28 C.F.R.
6 §§ 35.102(a), 35.130(a), (b); *Frailhat*, 2020 WL 1932570, at *26-27 (C.D. Ca. Apr.
7 20, 2020); *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 266, 269 (D.D.C.
8 2015). These affirmative obligations include making reasonable modifications to
9 their policies, practices, or procedures where necessary to avoid disability
10 discrimination. 28 C.F.R. § 35.130(b)(7)(i). The ADA also prohibits public entities
11 from “utiliz[ing] criteria or methods of administration ... [t]hat have the effect of
12 subjecting qualified individuals with disabilities to discrimination on the basis of
13 disability” or “[t]hat have the purpose or effect of defeating or substantially
14 impairing accomplishment of the objectives of the public entity’s program with
15 respect to individuals with disabilities.” 28 C.F.R. § 35.130(b)(3)(i)-(ii).

16 The Disability Subclasses are entitled to reasonable modifications to ensure
17 they can participate equally and with equal safety in all activities, including the safe
18 adjudication of pretrial detainees’ pending criminal cases, constitutionally-adequate
19 care, medical treatment, and rehabilitative support during confinement. Disability
20 Subclass members cannot access these services if they are severely ill, unconscious,
21 or dead. *See Frailhat*, 2020 WL 1932570, at *26 (C.D. Ca. Apr. 20, 2020) (disabled
22 people in ICE detention entitled to reasonable accommodations in order to
23 participate in the “programmatic ‘benefit’” of the removal process). Given the fast-
24 moving, life-threatening nature of the COVID-19 pandemic, and its disproportionate
25 effect on the Disability Subclasses, immediate release is the only reasonable
26 modification. Defendants’ failure to release the Disability Subclasses violates the
27 ADA and the Rehabilitation Act.

1 Release of the disability subclasses is a reasonable modification and is not a
2 fundamental alteration. Indeed, Defendant Barnes is already engaging in early
3 releases as a result of COVID-19, but his actions have been insufficient to protect
4 all medically vulnerable, disabled people for whom release is especially critical.⁴³
5 *Cf. Henrietta D. v. Bloomberg*, 331 F.3d 261, 281 (2d Cir. 2003). Release is also
6 consistent with the Jail's purposes, including administratively ensuring pretrial
7 detainees show up for court, and preparing post-conviction detainees for safe,
8 healthy release into their communities.

9 **B. Plaintiffs Are Likely To Suffer Irreparable Harm, Including Death,**
10 **If This Court Does Not Issue The Requested Relief.**

11 Plaintiffs are likely to suffer irreparable harm, including death, if they remain
12 incarcerated and Defendants maintain their existing policies and practices. Courts
13 “evaluate these factors via a ‘sliding scale approach,’ such that ‘serious questions
14 going to the merits’ and a balance of hardships that tips sharply towards the plaintiff
15 can support issuance of a preliminary injunction, so long as the plaintiff also shows
16 that there is a likelihood of irreparable injury and that the injunction is in the public
17 interest.” *Arc of California v. Douglas*, 757 F.3d 975, 983 (9th Cir. 2014) (citations
18 omitted). The nature of the potential risk to Plaintiffs--death--weighs heavily in
19 favor of granting emergency injunctive relief.⁴⁴ Further, if Defendants maintain
20 their current practices, COVID-19 will spread further into the Orange County
21 community and possibly more broadly.

22
23 ⁴³ Ex. D, Goldenson Decl. ¶ 48.

24 ⁴⁴ Further, courts find that a constitutional violation in itself amounts to an
25 irreparable injury. *See Northworthy v. Beard*, 87 F.Supp.3d 1164, 1193 (N.D. Cal.
26 2015) (finding the deprivation of a prison inmate's Eighth Amendment right
27 “sufficient to establish irreparable harm”) (citing *Elrod v. Burns*, 427 U.S. 347
28 (1976)).

1 Plaintiffs are locked inside an environment that the Defendants have failed to
2 ensure is safe. Defendants have not fully complied with the CDC Guidelines. More
3 detainees test positive each day, and infection rates are increasing exponentially.
4 COVID-19 is highly contagious and potentially deadly; it can also cause severe
5 health effects, including organ failure, even if the patient survives the infection.⁴⁵
6 Accordingly, courts have found that detained or incarcerated persons, especially
7 those falling into higher risk categories, are able to show likelihood of irreparable
8 harm. *See, e.g., Bent v. Barr*, No. 19-cv-06123-DMR, 2020 WL 1812850, at *6
9 (N.D. Cal. April 9, 2020) (citing *Coronel v. Decker*, 2020 WL 1487274, at *3) (“Due
10 to their serious underlying medical conditions, all Petitioners face a risk of severe,
11 irreparable harm if they contract COVID-19.”)); *Kaur v. U.S. Dep’t of Homeland*
12 *Sec.*, No. 2:20-cv-03172-ODW (MRWx), 2020 WL 1939386, at *3 (C.D. Cal. Apr.
13 22, 2020) (Order Granting Pl.’s Mot. TRO) (citing *Frailhat v. U.S. Immigration and*
14 *Customs Enf’t*, No. EDCV 19-01546-JGB (SHKx), Dkt. No. 132 at 36 (C.D. Cal.
15 April 20, 2020) (Order Granting Pls.’ Mot. Prelim. Inj.)) (“Even in the early days of
16 the pandemic, and with few exceptions, courts did not hesitate to find irreparable
17 harm as a result of potential COVID-19 exposure in prison and detention, including
18 in facilities where there had not been a confirmed case. At this stage of the pandemic,
19 the threat is even clearer.”).

20 Plaintiffs who are Medically Vulnerable are at especially grave and highly
21 probable risk of irreparable harm.⁴⁶ Dr. Parker concluded that it is his professional

22
23 ⁴⁵ Ex. C, Parker Decl. ¶ 6.

24 ⁴⁶ *Vazquez Barrera v. Wolf*, No. 4:20-CV-1241, 2020 WL 1904497, at *6 (S.D. Tex.
25 Apr. 17, 2020) (“Plaintiffs’ alleged harm is both imminent and irreparable. The
26 COVID-19 pandemic has reached every state in our nation, and the numbers of
27 infected and dead increase daily. According to the CDC, those with particular
28 medical vulnerabilities, including Plaintiffs, are particularly susceptible to serious
illness and death. There is currently no vaccine or cure for COVID-19.”)

1 judgment that Medically Vulnerable individuals “are at greater risk of serious health
2 consequences” and “face an imminent threat of death unless they are released.”⁴⁷
3 COVID-19 can cause severe health effects, including organ failure, even if the
4 patient survives the infection.⁴⁸

5 Immediate release of the Medically Vulnerable and Disability Subclasses is
6 the only way to effectively mitigate the grave and imminent risk of harm to these
7 Class Members from this highly contagious, lethal disease with no treatment and no
8 cure.⁴⁹ Without significant reductions in the jail population (as well as other
9 mitigation measures), the disease will continue to spread in the jail.⁵⁰ Thus,
10 continued detention will expose the Medically-Vulnerable and Disability Subclasses
11 to unacceptably high levels of lethal risk.⁵¹ There is, in other words, no set of
12 conditions of confinement at the Orange County Jail that, given the current infection
13 prevalence and community spread of COVID-19, would be able to comply with the
14 Constitution or the ADA or Rehabilitation Act for the Medically-Vulnerable and
15 Disability Subclasses.

16 For the other Class Members, the Sheriff’s refusal to undertake population
17 reduction measures of sufficient speed and scope is causing an interacting set of
18 failures that make it impossible for the Jail to meet the CDC Guidance. As one
19 example, the Jail cannot effectively quarantine people it incarcerates. Given the
20 current number and growth of cases, it is already unlikely that there are sufficient
21 numbers of single cells to carry out necessary isolation and quarantine procedures.⁵²

22 ⁴⁷ Ex. C, Parker Decl. ¶ 33.

23 ⁴⁸ *Id.* ¶ 6.

24 ⁴⁹ Ex. C, Parker Decl. ¶¶ 34-35; Ex. D, Goldenson Decl. ¶ 48.

25 ⁵⁰ Ex. D, Goldenson Decl. ¶¶ 33-37.

26 ⁵¹ Ex. C, Parker Decl. ¶ 33.

27 ⁵² Ex. D, Goldenson Decl. ¶¶ 43-44.

1 In the absence of adequate isolation and quarantine bedspace, the Jail will be forced
2 to use more cohort quarantines, thus exposing more people to infection risks.⁵³

3 The increasing need for quarantine bedspace in turn puts additional pressure
4 on available bedspace in other parts of the Jail, leading to greater movement and
5 mixing that increases exposure risks.⁵⁴ Because the Jail must reserve so much space
6 for quarantines, officials have been consolidating increasingly large groups of
7 people in dorms, making it even harder for non-quarantined individuals to socially
8 distance.⁵⁵ As the number of confirmed and suspected cases grows and such
9 crowding worsens, the only way to instantly create more available bedspace is to
10 reduce the jail population.

11 The only way to relieve pressure on the system and meet the simultaneous
12 needs for adequate quarantine beds, adequate social distancing, and adequate
13 hygiene, PPE, and testing is to reduce the number of people in the Jail.⁵⁶

14 The likelihood of irreparable harm factor tips the scale in favor of emergency
15 injunctive relief. Without judicial intervention, some Plaintiffs, especially the
16 Medically Vulnerable and Disabled, may die or suffer serious illness. For some,
17 incarceration in the Orange County Jail will be a death sentence, without any of the
18 due process associated with that most final of punishments.

24 ⁵³ *Id* at ¶¶ 45-46.

25 ⁵⁴ *Id* at ¶ 47.

26 ⁵⁵ Ex. N, Godinez Decl. ¶¶ 6, 18-19; Ex. B, Wagner Decl. ¶¶ 6, 16-17; Ex. T, Hernandez Decl. ¶¶ 6-10, 30.

27 ⁵⁶ Ex. D, Goldenson Decl. ¶ 53.

C. The Potential Harms To Plaintiffs Are Much Greater Than Any Speculative Harm Defendants May Assert, and the Public's Interest Favors the Requested Injunction.

The threatened injury to Plaintiffs and putative Class Members—sickness up to and including organ failure and death—outweighs any theoretical injury posed by the requested Injunction to Defendants.

Although Defendants may argue that releasing Plaintiffs somehow will impact public safety, any such impact pales in comparison to the potential human cost and, anyway, is purely speculative. Over a month ago, the California Judicial Council recommended early releases for more categories of people than Defendants are currently considering for early release. Sheriff Barnes also has broad authority to move or release people in his custody in order to protect them from the COVID-19 pandemic. *See* California Government Code § 8658. That statutory authority permits him to go well beyond what he has done thus far to protect those entrusted to his care under § 8658, many of whom are still afforded the presumption of innocence. The speculative risk that a person could commit a crime if released must be weighed against the clear evidence that the longer Sheriff Barnes holds people in the jail—particularly those in the Medically Vulnerable and Disability Subclasses—the greater the risk that they will become infected and die.

Not only do detained people risk becoming sick themselves, but allowing COVID-19 to spread in the Jail endangers the health of deputies, healthcare workers, other staff, and attorneys visiting clients, as well as the health of their families. Further, a continued outbreak in the Jail would strain hospital resources in the Orange County community, potentially creating a humanitarian disaster. These

1 hospital resources are limited and are not equipped to handle the kind of outbreak
2 that is likely to occur in the Orange County Jail without immediate intervention.⁵⁷

3 The public interest thus leans heavily in favor of the requested injunction.

4 **D. Plaintiffs' Requested Relief**

5 Because Plaintiffs are likely to succeed on the merits, face risk of immediate
6 harm, and the balance of harms weighs decidedly in their favor, Plaintiffs request:

7 **1. Release of Medically-Vulnerable and Disability Subclass Members**

8 The members of the Medically-Vulnerable and Disability Subclasses all have
9 health conditions, disabilities, or characteristics that cause them to be exceptionally
10 vulnerable to death or serious harm to their health if they contract COVID-19. The
11 Orange County Jail has identified, but not released, approximately 488 detainees
12 who are medically vulnerable and at heightened risk of serious infection and death.
13 All people on this list are in the Medically-Vulnerable Subclass. Most of the people
14 on this list are also in the Disability Subclasses, including people of any age who
15 have certain underlying medical conditions also have an elevated risk.⁵⁸ The
16 structure of the Jail makes it impossible to detain Medically-Vulnerable and
17 Disability subclass members in a constitutional manner during this pandemic.⁵⁹
18 Given this, the Jail cannot consistently enforce social distancing and 20 second
19 handwashing by all incarcerated people (and all those who work at the Jail) in a
20 manner that would ensure the Medically-Vulnerable and Disability subclass
21

22 ⁵⁷ Ex. C, Parker Decl. ¶¶ 28-30; *see Fraihat*, 2020 WL 1932570, at *28 (“Plaintiffs
23 also attach evidence suggesting that a failure to protect the most vulnerable detainees
24 could quickly overwhelm local hospitals with insufficient ICU beds or respirators,
diminishing the available health resources for all . . . If a preliminary injunction is
entered, however, survival is maximized . . .”) (internal citations omitted).

25 ⁵⁸ *Coronavirus disease (COVID-19) advice for the public: Myth busters*, World
26 Health Organization, <https://cutt.ly/dtEiCyc> (Last visited on Apr. 28, 2020).

27 ⁵⁹ Ex. D, Goldenson Decl. ¶¶ 44-48; Ex. C, Parker Decl. ¶¶ 11-19.
28

1 members would not be at risk of being infected with the virus.⁶⁰ Put simply,
2 Defendants cannot ensure their health and safety within the Jail. Recognizing this
3 grave risk to life, courts across the country have granted emergency habeas petitions
4 ordering the release of medically-vulnerable and disabled people from confinement.
5 The Defendants should establish release procedures to identify and release within 24
6 hours all Medically-Vulnerability and Disability Subclass members unless there is
7 proof of judicially-recorded findings by clear and convincing evidence that the
8 individual poses such a risk of flight or danger to others that no other condition can
9 mitigate that risk.

10 **2. A Mandatory Plan To Address The Jail's COVID-19 Crisis**

11 The Court also should order Defendants to submit a plan to the Court in three
12 (3) days and appoint a qualified public health expert under Fed. R. Evid. 706, as
13 further described in the Complaint.

14 **3. Implementing Constitutionally Sufficient Conditions at the Orange**
15 **County Jail.**

16 Finally, the Court should order Defendants to take further steps to mitigate the
17 risk to Class Members who remain in the jail, including any additional releases that
18 are needed to prevent the further spread of COVID-19 in the jail.

19 **CONCLUSION**

20 For the foregoing reasons, this Court should grant this request for a
21 temporary restraining order and a preliminary injunction.

22
23 Respectfully submitted,

24 Dated: May 11, 2020

25
26
27 ⁶⁰ Ex. C, Parker Decl. ¶¶ 18-19.

/s/Cassandra
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ATTORNEYS FOR PLAINTIFFS

**pro hac vice application forthcoming*

***C.D. California admission application forthcoming*

1 UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA,
3 SOUTHERN DIVISION
4

5 MELISSA AHLMAN, DANIEL KAUWE,
6 MICHAEL SEIF, JAVIER ESPARZA,
7 PEDRO BONILLA, CYNTHIA
8 CAMPBELL, MONIQUE CASTILLO,
9 MARK TRACE, CECIBEL CARIDAD
10 ORTIZ, and DON WAGNER, on behalf of
themselves and all others similarly situated,

11 *Plaintiffs,*

12 v.

13 DON BARNES, in his individual capacity
14 and official capacity as Sheriff of Orange
15 County, California; and Orange County,
16 California,

17 Defendants.

Civil Case No.: 8:20-cv-835-JGB-SHK

**[PROPOSED] TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE**

18
19 **[PROPOSED] ORDER GRANTING TEMPORARY RESTRAINING ORDER**

20 Upon consideration of Plaintiffs' Application for a Temporary Restraining Order
21 and Memorandum of Points and Authorities in support thereof, and for good cause
22 shown:

23 **IT IS HEREBY ORDERED** that Plaintiffs' Application for a Temporary
24 Restraining Order be, and hereby is, GRANTED.

25 **IT IS FURTHER ORDERED** that Defendants shall immediately:

26 1. Identify all Medically-Vulnerable Subclass Members and Disability
27 Subclass Members in both the Pre-trial and Post-conviction Classes within six hours of
28 the Court's order and adopt procedures for release of all such persons pursuant to 28

U.S.C. § 2241 within twenty-four hours of submission of the list absent proof of judicially-recorded findings by clear and convincing evidence that the individual poses such a serious risk of flight or danger to others that no other conditions can mitigate, and requiring Defendants to provide all persons released with educational resources on COVID-19 including instructions that they should self-isolate for the CDC-recommended period of time (currently 14 days) following release;

2. Immediately adopt mitigation efforts to protect all Class Members not immediately released, including but not necessarily limited to:

- a. Provide adequate spacing of six feet or more between incarcerated people so that social distancing can be accomplished in accordance with CDC guidelines
- b. Effectively communicate to all incarcerated people, including low-literacy and non-English-speaking people, sufficient information about COVID-19, measures taken to reduce the risk of transmission, and any changes in policies or practices to reasonably ensure that individuals are able to take precautions to prevent infection;
- c. Ensure that each incarcerated person receives, free of charge, an individual supply of hand soap and paper towels sufficient to allow frequent hand washing and drying each day; an adequate supply of clean implements for cleaning such as sponges and brushes and disinfectant hand wipes or disinfectant products effective against the virus that causes COVID-19 for daily cleanings;
- d. Ensure that all incarcerated people have access to hand sanitizer containing at least 60% alcohol;
- e. Provide access to daily showers and daily access to clean laundry, including clean personal towels and washrags after each shower;

- f. Require that all Jail staff wear personal protective equipment, including CDC-recommended surgical masks, when interacting with any person or when touching surfaces in cells or common areas;
- g. Require that all Jail staff wash their hands, apply hand sanitizer containing at least 60% alcohol, or change their gloves both before and after interacting with any person or touching surfaces in cells or common areas;
- h. Take the temperature of all class members, jail staff, and visitors daily (with a functioning and properly operated and sanitized thermometer) to identify potential COVID-19 infections;
- i. Assess (through questioning) each incarcerated person daily to identify potential COVID-19 infections;
- j. Conduct immediate testing for anyone (class members, jail staff and visitors) displaying known symptoms of COVID-19;
- k. Ensure that individuals identified as having COVID-19 or having been exposed to COVID-19 receive adequate medical care and are properly quarantined (without resorting to cohorting, if possible), in a non-punitive setting, with continued access to showers, recreation, mental health services, reading materials, phone and video visitation with loved ones, communications with counsel, and personal property;
- l. Respond to all emergency (as defined by the medical community) requests for medical attention within an hour;
- m. Provide sufficient disinfecting supplies, free of charge, so incarcerated people can clean high-touch areas or items (including, but not limited to, phones and headphones) between each use;
- n. Waive all medical co-pays for those experiencing COVID-19-related symptoms;

o. Waive all charges for medical grievances during the COVID-19 outbreak

3. Following immediate release of all Medically-Vulnerable and Disability Subclass Members, a plan, to be submitted to the Court in 3 days and overseen by a qualified public health expert pursuant to Fed. R. Evid. 706, which outlines:

- a. Any further mitigation efforts, in line with CDC guidelines, that will substantially reduce the risks of COVID-19 infection for Class Members not immediately released; and
- b. A housing and/or public support plan for any released Class or Subclass Members whose testing confirms they have been exposed to or infected with COVID-19 and who do not readily have a place to self-isolate for the CDC-recommended period of time (currently 14 days).

IT IS FURTHER ORDERED that Defendants shall show cause, if they have any, as to why the Court should not issue a preliminary injunction in this case. Defendants' response, if any, to this order to show cause shall be filed by ___ a.m./p.m. on May __, 2020. Plaintiffs' Reply, if any, to Defendants' response shall be filed by ___ a.m./p.m. on May __, 2020. The matter will then stand submitted.

IT IS SO ORDERED.

Dated: _____, 2020

Jesus Bernal

UNITED STATES DISTRICT JUDGE