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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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| DAMIAN HART, et al.,<br>Plaintiffs,<br>vs.<br><br>MARICOPA COUNTY SHERIFF'S OFFICE, JOE ARPAIO, the duly Elected Sheriff of Maricopa County, et al.,<br><br>Defendants. | No.CIV 77-479-PHX-EHC-MS<br><br>**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION REQUIRING DEFENDANTS TO ALLOW CLASS COUNSEL ACCESS TO CLASS MEMBERS**<br><br>**EXPEDITED CONSIDERATION REQUESTED** |

Pursuant to Fed. R. Civ. P. 65(a), plaintiffs respectfully move this Court for a preliminary injunction directing defendants, their officers, agents, servants, employees, and attorneys, and all those acting in concert with them, to allow class counsel, and attorneys, paralegals and law students working under the supervision of class counsel, to conduct confidential attorney-client interviews with class members confined in the Maricopa County Jail, without being required to obtain the permission of any third party as a condition of conducting such interviews.

The reasons for this Motion are set forth in the accompanying Memorandum. Plaintiffs respectfully request that the Court expedite briefing and consideration of this

Motion.

Respectfully submitted this ____ day of October, 2005.

Theodore C. Jarvi
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Alice L. Bendheim
Co-Counsel for Plaintiffs

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION REQUIRING DEFENDANTS TO ALLOW CLASS COUNSEL ACCESS TO CLASS MEMBERS**

## INTRODUCTION

This is a class action. The plaintiff class comprises all pretrial detainees held in the Maricopa County Jail. See Dkt. 705 (Amended Judgment), at 2, ¶ 4.

Defendants have moved, pursuant to the Prison Litigation Reform Act, 18 U.S.C. § 3626(b), to terminate the Amended Judgment. As required by Circuit precedent (Gilmore v. People of the State of California, 220 F.3d 987, 1010 (9th Cir. 2000)), the Court has directed that an evidentiary hearing be held on defendants' motion. See Dkt. 905. The focus of that hearing will be "current and ongoing" conditions at the Jail. 18 U.S.C. § 3626(b)(3); see also Gilmore, 220 F.3d at 1008 (citing the district court's duty to "inquire into current conditions at [the] prison before ruling on a motion to terminate"). Obviously, counsel for the plaintiff class need to interview class members in the Jail to gather evidence and prepare witnesses to testify at the evidentiary hearing.

Until recently, defendants permitted class counsel to interview class members in

the Jail, although they imposed on those interviews a number of unlawful restrictions – for example, requiring class counsel to obtain written permission from each class member's criminal defense lawyer – that plaintiffs challenged in an earlier motion.[1] However, since April 2005, defendants have taken the position that class counsel will not be permitted to conduct interviews with any of the class members they represent. See declaration of Stephen A. U'Ren (Dkt. 1095).

Because defendants' position is entirely groundless, and because Supreme Court and Circuit precedent require that class counsel be permitted access to the class members they represent, plaintiffs' motion should be granted.

## ARGUMENT

### I. Standard for preliminary injunction.

"To obtain a preliminary injunction, [plaintiffs] must show either (1) a likelihood of success on the merits and the possibility of irreparable injury or (2) the existence of serious questions going to the merits and the balance of hardships tipping in [their] favor." Warsoldier v. Woodford, 418 F.3d 989, 993-94 (9th Cir. 2005) (citations, internal quotation marks omitted). "These two alternatives represent extremes of a single continuum, rather than two separate tests. Thus, the greater the relative hardship to

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[1] See Plaintiffs' Motion for an Order Requiring Defendants to Allow Class Counsel Access to Class Members (Dkt. 1019), and Plaintiffs' Reply Memorandum in Support of Motion for an Order Requiring Defendants to Allow Class Counsel Access to Class Members (Dkt. 1024), both incorporated herein by reference. That motion, and Plaintiffs' Motion for Order Requiring Defendants to Allow Class Counsel Access to Class Members (Dkt. 1093), were denied without prejudice by the Magistrate Judge on September 30, 2005. See Dkt. 1105, at 38.

[plaintiffs], the less probability of success must be shown." Id. at 994 (citations, internal quotation marks omitted). Plaintiffs easily satisfy this test.

## II. Plaintiffs have a strong likelihood of success on the merits.

Under Supreme Court and Circuit precedent, class counsel are clearly entitled to have access to the class members they represent. Accordingly, plaintiffs have a strong likelihood of success on the merits.

### A. An attorney-client relationship exists between class counsel and all class members.

Once a class is certified, all the class members are parties to the suit. American Pipe & Construction Co. v. Utah, 414 U.S. 538, 550-52 (1974). All class members are represented by class counsel. Fed. R. Civ. P. 23(g)(1)(B); see also Staton v. Boeing Co., 327 F.3d 938, 959-60 (9th Cir. 2003) (referring to absent class members as "class counsel's clients"); Hanlon v. Chrysler Corp., 150 F.3d 1011, 1027 (9th Cir. 1998) (citing class counsel's duty to represent unnamed class members); Mandujano v. Basic Vegetable Products, Inc., 541 F.2d 832, 835 (9th Cir. 1976) ("The class is not the client. The class attorney continues to have responsibilities to each individual member of the class"); cf. Gomez v. Vernon, 255 F.3d 1118, 1131-35 (9th Cir. 2001) (holding that letters from class counsel to incarcerated class members were protected by attorney-client privilege, and affirming award of sanctions against defense counsel who intercepted those letters).[2]

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[2] Indeed, defendants have consistently taken the position that all class members are

In Resnick v. American Dental Assoc., 95 F.R.D. 372, 376 (N.D. Ill. 1982), the defendants argued that there was no attorney-client relationship between class counsel and the unnamed class members. The court disagreed:

> Without question the unnamed class members, once the class has been certified, are 'represented by' the class counsel. Class counsel have the fiduciary responsibility and all the other hallmarks of a lawyer representing a client.

Id. (footnote omitted). Accordingly, all pretrial detainees in the Maricopa County Jail are the clients of class counsel.[3]

**B. Prisoners have a constitutional right of access to counsel.**

"It is now established beyond doubt that prisoners have a constitutional right of access to the courts." Bounds v. Smith, 430 U.S. 817, 821 (1977). To ensure that this constitutionally-required access is "adequate, effective, and meaningful," id. at 822,

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represented by class counsel and may proceed in this action *only* through class counsel. See Dkt. 931 at 3 n.2 (in opposing motion by class member to intervene, defendants argue that "his interests are already adequately represented by class counsel"); Dkt. 1000 at 2 (in response to pro se filing by class member, defendants argue that he is "not a person authorized by law to bring ... a motion in this case"); Dkt. 1042 at 2 (same); Dkt. 1025, Exh. 1 (when class member requested legal services from Jail staff in connection with this litigation, he was told, "You are represented by Theodore Jarvi in this case number. Please refer your request to your attorney").

[3] See also Cullen v. New York State Civil Serv. Commn., 435 F. Supp. 546, 560 (E.D.N.Y. 1977) ("in granting class status, the court ... in effect creates an attorney-client relationship between the absentee members and the attorney"), appeal dismissed, 566 F.2d 846 (2d Cir. 1977); Smith v. Josten's American Yearbook Co., 78 F.R.D. 154, 163 (D. Kan. 1978) (in certifying a class, a court "not only confers upon absent persons the status of litigants, but in addition it creates an attorney-client relationship between those persons and a lawyer or group of lawyers") (citation, internal quotation marks omitted), aff'd, 624 F.2d 125 (10th Cir. 1980).

prisoners are entitled to unobstructed and confidential communication with attorneys and the attorneys' assistants. Accordingly, the Supreme Court has held that "[r]egulations and practices that unjustifiably obstruct the availability of professional representation ... are invalid." Procunier v. Martinez, 416 U.S. 396, 419 (1974); accord Gluth v. Kangas, 951 F.2d 1504, 1508 (9th Cir. 1991); Leeds v. Watson, 630 F.2d 674, 676 (9th Cir. 1980). In Martinez, the Court held that prison interviewing privileges must be extended to law students and paralegals employed by attorneys. 416 U.S. at 419.

In Ching v. Lewis, 895 F.2d 608 (9th Cir. 1990), the Ninth Circuit invalidated restrictions on attorney-client visitation in the Arizona state prison system; "[prison] policies will not be upheld if they unnecessarily abridge the defendant's meaningful access to his attorney and the courts. The opportunity to communicate privately with an attorney is an important part of that meaningful access." Id. at 609 (citation omitted). See also Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir. 1994) (reversing summary judgment for prison officials on claim that they interfered with prisoner's attorney-client visitation; reaffirming that prisoners' constitutional right of access to courts includes access to counsel).

**C. Class counsel have the right to communicate with class members.**

The United States Supreme Court has specifically held that counsel for a class has the right to communicate with class members absent clear reasons for interference. Gulf Oil Co. v. Bernard, 452 U.S. 89, 101 (1981). In Gulf Oil the Court considered the authority of district courts under the Federal Rules of Civil Procedure to limit

communication by named plaintiffs and their counsel to prospective class members. Id. at 99. The Court held that "an order limiting communications between parties and potential class members should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties." Id. at 101 (footnote omitted).

In Domingo v. New England Fish Co., 727 F.2d 1429 (9th Cir.), modified, 742 F.2d 520 (9th Cir. 1984), the Ninth Circuit relied on Bernard to hold that restrictions imposed by the district court on class counsel's ability to interview class members constituted reversible error. 727 F.2d at 1439. The court noted, in terms well applicable to the present case, that "[t]he restrictions are particularly inappropriate where class members have no other effective means to secure counsel." Id. at 1441. The court held that reversal was required if plaintiffs showed "that the restrictions on communications created at least potential difficulties for them as they sought to vindicate the legal rights of a class of employees," and found that plaintiffs had made that showing. Id.

Since defendants here have not moved the Court for an order limiting communications between class counsel and class members, and have made no allegations regarding the potential abuse of such communication by class counsel, defendants may not unilaterally limit class counsel's right to communicate with class members. Moreover, defendants' ban on attorney-client meetings is interfering with class counsel's ability to obtain evidence that is essential for the pending termination hearing.

In A.J. v. Kierst, 56 F.3d 849 (8th Cir. 1995), the Eighth Circuit applied Gulf Oil in

a case analogous to this one. In a class action challenging conditions at a juvenile facility, the defendants barred class counsel from interviewing juveniles detained at the facility, relying on state policies protecting the privacy of juveniles. Id. at 856. The district court denied class counsel's request for access. Id. The Court of Appeals rejected the reasoning of the district court, stating that although a district court has broad discretion to supervise a class action, that discretion is bounded by the provisions of the Federal Rules of Civil Procedure. Id. at 857.

The Eighth Circuit held that the district court should not have allowed the restriction of counsel's access to class members absent specific findings that class counsel were likely to engage in abusive tactics, or that the proposed access would "otherwise compromise the safety of the juveniles and staff." Id. at 857-58. Accordingly, the court, applying Gulf Oil, concluded that "the district court abused its discretion in conditioning communications between plaintiffs' counsel and class members on the requirements that plaintiffs exhaust alternative resources and demonstrate a compelling need." Id. at 858 (citation omitted).

McClendon v. City of Albuquerque, 272 F.Supp.2d 1250 (D.N.M. 2003), is materially indistinguishable from the case at bar. That case, like the present one, involved a class action challenge to unconstitutional conditions in a county jail, which had been resolved when the parties entered into a settlement agreement. Id. at 1252. In McClendon, as here, the defendants refused to allow class counsel to visit with their incarcerated clients. Id. at 1252, 1258. Class counsel sought a preliminary injunction

allowing them access to their clients. Id. at 1253.

The McClendon court cited the Supreme Court's admonition that "[r]egulations and practices that unjustifiably obstruct the availability of professional representation ... are invalid," Procunier v. Martinez, 416 U.S. 396, 419 (1974), and concluded that the ban on visitation was invalid under this standard. 272 F.Supp.2d at 1258. Based on this unbroken line of authority, plaintiffs have a strong likelihood of success on the merits.

**III. Plaintiffs are suffering irreparable injury.**

"When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." Warsoldier, 418 F.3d at 1001-02 (quoting Wright, Miller & Kane, Federal Practice and Procedure). There can be no doubt that defendants' ban on meetings between class counsel and class members interferes with plaintiffs' constitutional right of access to the courts. Accordingly, plaintiffs have shown not just the possibility, but the certainty, of irreparable injury. No more is required. See McClendon, 272 F.Supp.2d at 1259 (finding irreparable injury based on visitation ban's alleged infringement of jail detainees' constitutional right of access to the courts; "Plaintiffs ... need not make any further showing of irreparable injury").

Moreover, the record in this case is replete with evidence that class members are held under unconstitutional, indeed life-threatening, conditions. The Maricopa County Superior Court has found that

> Severe overcrowding, unsanitary conditions, cockroach infestations, extreme noise, lack of air conditioning and bullying by professional criminals, including

> assaults, extortion and stealing medications, are typical of the conditions under which the mentally ill must live.

State v. Marstella, CR 2003-009489-001 DT, Minute Entry, Feb. 24, 2004 (Dkt. 977, Exh. 2), at 3.

> [A]t times patients must be kept in the day room and hallways. The overcrowding results in diminished hygiene, including pods that are at times cockroach infested and filthy, flooded with urine and smeared with feces.

State v. Trujillo, CR 2003-009208-01 DT, Minute Entry, March 10, 2004 (Dkt. 977, Exh. 1), at 4. See also Flanders v. Maricopa County, 203 Ariz. 368, 54 P.3d 837, 846 (App. 2002) (affirming finding that defendant Arpaio was "callously indifferent" to risk of prisoner-prisoner assault and affirming award of punitive damages against Arpaio).[4]

Indeed, before defendants barred class counsel from meeting with their clients, counsel gathered and filed numerous declarations from class members attesting to appalling conditions in the Jail:

> **Declaration of John Kueneman** (Dkt. 1026) (describing overflowing urinals and toilets, prisoners having to wait weeks for psychiatric medication, a prisoner who was experiencing convulsions being ignored by Jail staff, and vermin infestation, including cockroaches, maggots, and mice in food preparation areas).
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> **Declaration of Mark Barnes** (Dkt. 1026) (describing a prisoner who was having a seizure being ignored by Jail staff, delayed and incompetent medical care, filthy shower areas, unsanitary food service, and failure to provide medication for a serious mental health disorder).
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> **Declaration of Maylynn Hughes** (Dkt. 1026) (describing denial of access to medical staff to treat bipolar disorder, denial of prescribed medication, denial of

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[4] Plaintiffs request that the Court take judicial notice of these state court decisions. See Fed. R. Evid. 201(d); United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992).

showers and exercise, extreme heat, infestation by rats, cockroaches, and flies, and spoiled and uncooked food).

**Declaration of Lawrence Lamont Shouse** (Dkt. 1057) (describing denial of medical attention for severe chest pains and shortness of breath which ultimately resulted in hospitalization for six days, prisoners sleeping on the floor, infestation by mice, spoiled food, and showers that are broken and contaminated with human feces).[5]

See also declaration of Toni V. Bair (Dkt. 1003), ¶ 12 (former Assistant Commissioner of New York City jail system opines that the "extraordinarily high number" of restraint chair uses in the Jail "indicates that this potentially dangerous device is being inappropriately used, and suggests a strong likelihood of jail mismanagement").

In addition to the ongoing violation of class members' constitutional right of access to counsel, confinement under the conditions described above unquestionably constitutes irreparable injury. "[P]ain, suffering and the risk of death constitute 'irreparable harm' sufficient to support a preliminary injunction in prison cases." Jones'El v. Berge, 164 F.Supp.2d 1096, 1123 (W.D. Wis. 2001). Accord, Von Colln v. County of Ventura, 189 F.R.D. 583, 598 (C.D. Cal. 1999) ("defendants do not argue that pain and suffering is not irreparable harm, nor could they") (jail conditions case); Arnold v. Lewis, 803 F. Supp. 246, 255 (D. Ariz. 1992) (finding "great likelihood of irreparable harm to her mental health" if schizophrenic prisoner were transferred from mental health facility to prison). Accordingly, plaintiffs are plainly suffering irreparable injury, both from the ongoing violation of their constitutional right of access to counsel, and from

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[5] Class counsel filed a total of 22 such declarations before defendants cut off their access to their clients. See Dkt. 1026, 1033-38, 1049-52, 1057-58, 1072-73, 1080-81.

confinement under conditions that cause substantial risks of serious harm.

**IV. The balance of hardships tips sharply in plaintiffs' favor.**

The Court will soon conduct an evidentiary hearing on defendants' motion to terminate the Amended Judgment pursuant to 18 U.S.C. § 3626(b). If evidence at the hearing establishes current and ongoing violations of federal rights, then the Court will be obliged to retain some or all of the relief set forth in the Amended Judgment, or grant new relief, to redress those violations. See Gilmore, 220 F.3d 987, 1007-08 (on motion to terminate, "a district court cannot terminate or refuse to grant prospective relief necessary to correct a current and ongoing violation, so long as the relief is tailored to the constitutional minimum"); id. at 991-92 ("When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights"). If the evidence does not establish a current and ongoing violation, however, the Amended Judgment will be terminated, and class members will be left without protection from the conditions of confinement described above (see pp. 9-11, supra).

Obviously, class counsel must be given access to their clients to gather evidence on current conditions at the Jail and prepare for this evidentiary hearing, at which the fundamental constitutional rights of approximately 5500 class members are at stake. "Access is essential to lawyers and legal assistants representing prisoner clients[.]" Thornburgh v. Abbott, 490 U.S. 401, 407 (1989). From the development of the complete facts of the case to strategizing about the litigation plan, it is crucial that attorneys be able

to communicate with their clients. Clearly, to prepare for the forthcoming evidentiary hearing, class counsel must be allowed to gather information from their clients. They must also prepare individual class members to testify at the hearing. Indeed, since defendants have barred plaintiffs' experts from the Jail, class members may be the only witnesses plaintiffs are able to present. See Dkt. 1105 at 38 (denying plaintiffs' motions for appointment of experts and for expert access to the Jail).

The testimony of class members may well be sufficient to prevent termination of the Amended Judgment, in whole or in part, especially given that defendants have the ultimate burden of proving their compliance with the Constitution. See Gilmore, 220 F.3d at 1008 (defendant seeking termination under PLRA must "prove its compliance" with constitutional mandates in areas covered by the decree). Benjamin v. Fraser, 343 F.3d 35 (2d Cir. 2003), involved a PLRA motion to terminate a decree covering fourteen facilities in the New York City jail system, the nation's largest. The district court denied defendants' termination motion on various environmental health and safety issues, basing its ruling on the testimony of one expert witness and 29 current and former detainees, and the court of appeals affirmed. Id. at 41-42, 57. Thus, defendants' refusal to allow class counsel to meet with their clients and prepare them to testify deprives the plaintiff class of evidence that may well be dispositive at the upcoming evidentiary hearing.

While written correspondence is also being used to communicate with class members, it cannot replace face-to-face meetings. Because such meetings "enable the attorney to assess a witness' demeanor and credibility, they are a necessary means for the

establishment of a relationship between the inmate and his or her lawyer." Young v. Larkin, 871 F. Supp. 772, 783 (M.D. Pa. 1994) (internal quotation marks omitted), aff'd, 47 F.3d 1163 (3d Cir. 1995).

In addition, some class members may not be sufficiently literate to read and understand written correspondence from counsel or to respond in writing.[6] Others may have mental illnesses that would prevent them from writing intelligibly. The only remedy for these types of communication difficulties is face-to-face contact. Both written and in-person communication is therefore necessary for plaintiffs' counsel to fairly and adequately represent the interests of the class.

"Faced with a conflict between financial concerns and preventable human suffering, we have little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor." Rodde v. Bonta, 357 F.3d 988, 999 (9th Cir. 2004) (quoting Lopez v. Heckler, 713 F.2d 1432 (9th Cir. 1983)). While class counsel urgently need access to class members in order to litigate their clients' right not to be held under unhealthy and dangerous jail conditions, defendants have no comparable countervailing interest. Granting plaintiffs' motion for access to class members will have only a *de minimis* effect on defendants.

In fiscal year 2003, more than 118,000 persons were booked into the Maricopa

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[6] The National Center for Education Statistics reported in 1994 that seven out of ten prisoners perform at the lowest literacy levels. Karl O. Haigler et al., U.S. Dept. of Educ., Literacy Behind Prison Walls: Profiles of the Prison Population from the National Adult Literacy Survey xviii, 17-19 (1994).

County Jail. Maricopa County Justice System Activities Report, Fiscal Year 2002-03, at 64 (available at http://www.maricopa.gov/justice_activities/pdf/FY2002-03.pdf). Presumably many of these persons were represented by counsel, whose visits were accommodated by the Jail. On an average *day*, Jail staff transport more than 400 prisoners to court appearances. Id. at i. Obviously, the addition of a few dozen interviews by class counsel in this case will have little or no impact on the Jail's operation.

Indeed, the Jail usually accommodates visits by attorneys as a matter of course. See Dkt. 1025, Exh. 2, at 2-3 (Maricopa County Sheriff's Office policy on "Inmate Visitation," describing procedure for attorney visits). The fact that defendants' ban on attorney-client meetings applies *only to class counsel in this case* carries with it a heavy presumption of its invalidity. See Sturm v. Clark, 835 F.2d 1009, 1015 (3d Cir. 1987) (reversing dismissal of challenge to prison visiting restrictions that applied to a specific attorney; "any possibility of the restriction's neutrality is undermined" by the fact that it applied only to a single lawyer).

As the McClendon court observed in an identical situation, jail officials have no legitimate interest in barring class counsel from meeting with their clients:

> [T]he only potential harm to Defendants is that inmate allegations of constitutional violations will be brought to the attention of this Court. This is not a legitimate concern. By contrast, the lives of class and sub-members may be at risk if their attorneys are prevented from investigating their reports of unconstitutional conditions of confinement.

272 F.Supp.2d at 1259. Here, as in McClendon, the balance of hardships tips sharply in

favor of plaintiffs.

## V. The public interest favors granting the motion.

"The protection of constitutional rights is always in the public interest." Int'l Soc. For Krishna Consciousness v. Kearnes, 454 F. Supp. 116, 125 (E.D. Cal. 1978). More specifically, "[r]espect for law, particularly by officials responsible for the administration of the State's correctional system, is in itself a matter of the highest public interest. The public at large is not served by ... the willful or wanton infliction of pain and suffering on prisoners." Duran v. Anaya, 642 F. Supp. 510, 527 (D.N.M. 1986); see also Cohen v. Coahoma County, Miss., 805 F. Supp. 398, 408 (N.D. Miss. 1992) (noting "the public's interest in the vindication of constitutional rights and the proper and lawful administration of the jail"). As the McClendon court observed:

> The public has an interest in the City's and the County's maintenance of prison facilities that provide the minimal conditions of confinement required by the Constitution and federal law. ... This public interest can be served most effectively by allowing the attorneys for Plaintiffs ... access to the [Jail] so that they can gather accurate facts regarding the operation of that facility.

272 F.Supp.2d at 1259. Accordingly, the court granted the preliminary injunction, ordering that defendants "[i]mmediately allow counsel for Plaintiffs ... to have reasonable and unimpeded access to [the Jail]." Id. at 1260. This Court should enter a similar order in this case.

## VI. Security should not be required.

Fed. R. Civ. P. 65(c) provides that "[n]o ... preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems

proper[.]" However, the Ninth Circuit has held that the district court has discretion to require only nominal security, or to dispense with it entirely. Barahona-Gomez v. Reno, 167 F.3d 1228, 1237 (9th Cir. 1999); see also Jorgensen v. Cassiday, 320 F.3d 906, 919 (9th Cir. 2003) ("The district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct").

Here, the class is composed of pretrial detainees, the vast majority of whom are indigent. Moreover, given that the Jail admittedly accommodates visits by all lawyers *except* class counsel in this case, the requested injunction will result in no harm to defendants. Accordingly, no security should be required.

**VII. The Court should expedite this motion.**

Because plaintiffs are suffering ongoing irreparable injury, plaintiffs request that the Court expedite briefing and consideration of this motion.

## CONCLUSION

The motion for preliminary injunction should be granted.

Respectfully submitted this ____ day of October, 2005.

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Alice L. Bendheim
Co-Counsel for Plaintiffs