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15 **UNITED STATES DISTRICT COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 Jacinto Victor ALVAREZ, Joseph  
18 BRODERICK, Marlene CANO, Jose  
19 CRESPO-VENEGAS, Noe  
20 GONZALEZ-SOTO, Victor LARA-  
21 SOTO, Racquel RAMCHARAN,  
22 George RIDLEY, Michael Jamil  
23 SMITH, Leopoldo SZURGOT, Jane  
24 DOE,<sup>1</sup> on behalf of themselves and  
25 those similarly situated.

26 Plaintiff-Petitioners,

27 v.

28 Christopher J. LAROSE, Senior  
Warden, Otay Mesa Detention Center,

Case No.

**CLASS ACTION**

**COMPLAINT – PETITION FOR  
WRIT OF HABEAS CORPUS AND  
INJUNCTIVE AND  
DECLARATORY RELIEF**

<sup>1</sup> Plaintiff Jane Does seeks to proceed under pseudonym to protect her personal medical information. Counsel for Plaintiffs will file a motion to proceed under pseudonym and observe all related requirements.

1 Steven C. STAFFORD, United States  
2 Marshal for the Southern District of  
3 California,

4 Donald W. WASHINGTON, Director  
5 of the United States Marshals Service.  
6 Defendant-Respondents.

7  
8 **SIRINE SHEBAYA\*** (NY SBN 5094990) (sirine@nipnlg.org)  
9 **MATTHEW VOGEL\*** (NY SBN 4406500) (matt@nipnlg.org)

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25 **CLARA SPERA\*** (NY SBN 5590229) (cspera@aclu.org)

26 **AMERICAN CIVIL LIBERTIES UNION FOUNDATION**

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\*Application for *pro hac vice* forthcoming

1 **INTRODUCTION**

2 1. This emergency action seeks immediate court intervention to prevent  
3 a public health crisis at the Otay Mesa Detention Center (“OMDC”). Plaintiff-  
4 Petitioners (“Plaintiffs”) challenge their continued detention, and the detention of  
5 all similarly situated individuals, under conditions of confinement that imperil their  
6 lives in violation of the Fifth and Eighth Amendments to the U.S. Constitution by  
7 placing them at substantial risk of contracting the novel coronavirus and falling  
8 gravely ill with COVID-19. Even as COVID-19 continues to claim the lives of  
9 thousands of people across the country every single day, the U.S. Marshals Service  
10 (“USMS”) has failed to take timely and necessary action to reduce the risk of this  
11 disease to detained persons and staff. As a result, COVID-19 cases are rapidly  
12 proliferating within OMDC, endangering countless lives.

13 2. OMDC is a privately-owned “minimum/medium security” detention  
14 facility that provides services to both the USMS and U.S. Immigration and Customs  
15 Enforcement (“ICE”). This case concerns only the detained persons in USMS  
16 custody at OMDC.<sup>2</sup> There are approximately 330 to 340 USMS detained persons  
17 at OMDC, including at least 50 persons who have been arrested but not yet  
18 convicted of any crime and at least 50 persons who have been convicted of a crime  
19 but not yet sentenced.

20 3. COVID-19, which has been characterized as the world’s worst viral  
21 outbreak since 1918, possesses an estimated lethality rate between 0.3% and  
22 3.5%—at least five to thirty-five times deadlier than the common flu that kills  
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25  
26 <sup>2</sup> A separate class action has been filed on behalf of a class of ICE detainees held  
27 in OMDC and Imperial Regional Detention Facility: *Rodriguez Alcantara v.*  
28 *Archambeault*, No. 3:20-cv-00756 (S.D. Cal. filed Apr. 21, 2020).

1 thousands a year. The World Health Organization (“WHO”) estimates that one in  
2 five people who contract COVID-19 require hospitalization.<sup>3</sup>

3 4. There is no known treatment for or vaccine against COVID-19, and  
4 there is no known cure. According to the U.S. Centers for Disease Control and  
5 Prevention (“CDC”) and public health experts, the only known measure effective  
6 in reducing the risk of COVID-19 is the practice of “social distancing,” which  
7 requires maintaining a minimum distance of six feet between people. Additionally,  
8 vigilant personal and environmental hygiene, including cleaning and disinfecting  
9 all surfaces for exacting periods of time with products containing specific alcohol  
10 contents and avoiding any areas accessed by a sick person, are essential.<sup>4</sup> These  
11 measures are particularly important because the coronavirus spreads aggressively,  
12 and people can spread it even if they do not exhibit any symptoms.<sup>5</sup>

13 5. The United States leads the world in confirmed cases of COVID-19  
14 with approximately 804,194 cases and 43,200 deaths as of April 19, 2020, and  
15 approximately 865,585 cases and 48,816 deaths as of April 24, 2020.<sup>6</sup> In an attempt  
16 to minimize the spread of the virus, over 300 million individuals in the United  
17 States are under some instruction to stay home as of the filing of this complaint.

18 \_\_\_\_\_  
19 <sup>3</sup> *Q&A on Coronaviruses (COVID-19): “Should I Worry About COVID-19?”*  
20 WHO, <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

21 <sup>4</sup> *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in*  
22 *Correctional and Detention Facilities*, CDC, Mar. 23, 2020 (“Both good hygiene  
23 practices and social distancing are critical in preventing . . . transmission.”),  
[https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-](https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf)

24 <sup>5</sup> *How COVID-19 Spreads*, CDC, Apr. 13, 2020,  
25 [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html)  
26 [spreads.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html).

27 <sup>6</sup> *Cases of Coronavirus Disease (COVID-19) in the U.S.*, CDC, Apr. 24, 2020,  
28 <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

1 And every American institution—from schools to places of worship, from  
2 businesses to legislatures—has been ordered to close or exhorted to reduce the  
3 number of people in close quarters.

4 6. Even as the virus is spreading aggressively across the country, the rate  
5 of infection in jails, prisons, and detention facilities is far surpassing that in the U.S.  
6 population at large. For example, the rate of increase of infection at Bureau of  
7 Prisons (“BOP”) facilities is almost thirty times higher than the general population  
8 (notwithstanding that the numbers are almost certainly an undercount in light of  
9 limited testing).<sup>7</sup> A number of infected prisoners have died of COVID-19 at  
10 facilities across the United States, including fourteen prisoners in Bucks County,  
11 Pennsylvania;<sup>8</sup> seven federal prisoners in FCI Oakdale in Louisiana;<sup>9</sup> and six  
12 federal prisoners at FSL Elkton.<sup>10</sup>

13 7. OMDC has not been spared the devastation wrought by COVID-19.  
14 As of April 23, 2020, OMDC had 97 confirmed detainee cases (38 persons detained  
15  
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17 <sup>7</sup> Federal Defenders of New York, *BOP-Reported Positive Tests for COVID-19*  
18 *Nationwide*, <https://federaldefendersny.org/> (last visited Apr. 22, 2020, 9:30 a.m.).  
19 As of April 23, 2020, the number of infected detained persons and staff of the  
20 BOP over the course of the past month increased by almost 40,000 percent. *Id.*

21 <sup>8</sup> Larry R. King, *Bucks County COVID-19 Deaths Reach 14; Four Cases*  
22 *Confirmed at Prison* (Apr. 4, 2020),  
<http://buckscounty.org/sitefinitypfxn/newreader/2020/04/05/bucks-county-covid-19-deaths-reach-14-four-cases-confirmed-at-prison>.

23 <sup>9</sup> Bureau of Prisons, *COVID-19 Cases*,  
<https://www.bop.gov/coronavirus/index.jsp> (last visited Apr. 17, 2020).

24 <sup>10</sup> Rachel Polansky, *3 inmates at eastern Ohio prison dead from suspected cases*  
25 *of COVID-19*, WKYC, Apr. 4, 2020,  
26 <https://www.wkyc.com/article/news/health/coronavirus/3-inmates-at-eastern-ohio-prison-dead-from-suspected-cases-of-coronavirus/95-2307d060-afc1-463a-bdc6-f708793834c4>.  
27

1 by USMS and 59 persons detained by ICE), 18 CoreCivic employee cases, and 8  
2 ICE employee cases.

3 8. Plaintiffs and other people detained at OMDC report increasing fear  
4 and desperation throughout the facility, as many worry about being unable to  
5 protect themselves from falling ill with the virus.

6 9. In recognition of COVID-19's threat to life, and the near impossibility  
7 for people confined in prisons, jails, and detention centers to engage in social  
8 distancing—the Attorney General has issued a directive to the BOP regarding the  
9 release of prisoners to home confinement. Meanwhile, a growing number of courts  
10 have ordered the release of numerous individuals held or incarcerated under the  
11 federal criminal system over the past several weeks. For example:

- 12 • *Wilson v. Williams*, No. 4:20-cv-00794 (N.D. Ohio Apr. 22, 2020) (ordering  
13 federal prison to identify, within one day, all members of a medically  
14 vulnerable subclass and to evaluate their eligibility for transfer, including  
15 through compassionate release or furlough, within two weeks);
- 16 • *United States v. Meekins*, No. 1:18-cr-222-APM, Dkt. No. 75 (D.D.C. Mar.  
17 31, 2020) (post-plea, pre-sentence order releasing defendant with three  
18 pending assault charges due to extraordinary danger COVID-19 poses to  
19 people in detention);
- 20 • *United States v. Davis*, No. 1:20-cr-9-ELH, Dkt. No. 21 (D. Md. Mar. 30,  
21 2020) (releasing defendant due to the “urgent priority” of decarcerating, to  
22 protect both the defendant and the community, and to preserve Sixth  
23 Amendment rights in this perilous time);
- 24 • *United States v. Muniz*, Case No. 4:09-cr-199, Dkt. No. 578 (S.D. Tex. Mar.  
25 30, 2020) (releasing defendant serving 188-month sentence for drug  
26 conspiracy in light of vulnerability to COVID-19: “[W]hile the Court is  
27  
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1 aware of the measures taken by the Federal Bureau of Prisons, news reports  
2 of the virus’s spread in detention centers within the United States and beyond  
3 our borders in China and Iran demonstrate that individuals housed within our  
4 prison systems nonetheless remain particularly vulnerable to infection.”);

- 5 • *United States v. Hector*, No. 2:18-cr-3-002, Dkt. No. 748 (W.D. Va. Mar. 27,  
6 2020) (granting release pending sentencing after Fourth Circuit remanded  
7 detention decision requiring court to specifically consider extraordinary  
8 danger posed by COVID-19 to individuals in prison);
- 9 • *United States v. Grobman*, No. 18-cr- 20989, Dkt. No. 397 (S.D. Fla. Mar.  
10 29, 2020) (releasing defendant convicted after trial of fraud scheme in light  
11 of “extraordinary situation of a medically-compromised detainee being  
12 housed at a detention center where it is difficult, if not impossible, for [the  
13 defendant] and others to practice the social distancing measures which  
14 government, public health and medical officials all advocate”);
- 15 • *United States v. Mclean*, No. 19-cr-380 (D.D.C. Mar. 28, 2020) (“As counsel  
16 for the Defendant candidly concedes, the facts and evidence that the Court  
17 previously weighed in concluding that Defendant posed a danger to the  
18 community have not changed - with one exception. That one exception -  
19 COVID-19 - however, not only rebuts the statutory presumption of  
20 dangerousness, *see* 18 U.S.C. § 3142(e), but tilts the balance in favor of  
21 release.”); and
- 22 • *United States v. Harris*, No. 19-cr-356 (D.D.C. Mar. 26, 2020) (“The Court  
23 is convinced that incarcerating Defendant while the current COVID-19 crisis  
24 continues to expand poses a far greater risk to community safety than the risk  
25 posed by Defendant’s release to home confinement on . . . strict conditions.”).

1           10. Detained persons at OMDC cannot maintain a six foot distance from  
2 other individuals: they sleep, eat, bathe, and engage in other activities in close  
3 proximity with each other. Cleaning standards in OMDC common areas and  
4 Plaintiffs’ cells are inadequate, and cleaning supplies are not always available.  
5 Under these circumstances, release of individuals at high risk of major health  
6 consequences, followed by monitoring and possible staggered release of further  
7 individuals until social distancing can be maintained throughout OMDC, is the only  
8 meaningful way to prevent death and mitigate the proliferation of the virus among  
9 those in USMS custody at OMDC.

10           11. Absent intervention from this Court to align the USMS’s operation of  
11 OMDC with CDC guidance and public health principles—first and foremost, by  
12 releasing as many incarcerated persons as necessary to allow proper social  
13 distancing among those remaining in OMDC—devastating, and in many cases  
14 deadly, harm will befall incarcerated persons, facility staff, and the greater San Diego  
15 community.

16           12. Plaintiffs seek to represent two classes of persons detained in USMS  
17 custody at OMDC: pretrial detained persons, and post-conviction detained persons.  
18 Each of these classes contains a subclass of medically vulnerable detained persons.  
19 By this action, Plaintiffs seek the immediate release of the medically vulnerable  
20 Plaintiffs and subclasses, coupled with appropriate support and conditions upon  
21 release, as informed by public health experts. Plaintiffs further request various  
22 improvements to, and ongoing monitoring of, detention conditions at OMDC, and  
23 the staggered release of remaining Plaintiffs and other class members until  
24 necessary social distancing and hygiene measures can be sustained. If this Court  
25 does not grant the requested relief on the basis of this Petition-Complaint, Plaintiffs  
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1 request a hearing as soon as possible. Given the rapid spread of COVID-19 at  
2 OMDC, there is no time to spare.

3 13. As set forth below, the danger posed by Plaintiffs’ detention during  
4 the COVID-19 pandemic is “so grave that it violates contemporary standards of  
5 decency to expose anyone unwillingly to such a risk” and violates their  
6 constitutional right to safety in government custody. *Helling v. McKinney*, 509  
7 U.S. 25, 36 (1993). Without this Court’s intervention, the Plaintiffs and the classes  
8 they seek to represent will continue to be at imminent risk of severe, preventable  
9 illness or death.

### 10 **JURISDICTION AND VENUE**

11 14. This Court has subject-matter jurisdiction over this action pursuant to  
12 28 U.S.C. §§ 2241 (habeas corpus), 1331 (federal question), 1346 (original  
13 jurisdiction), 1361 (Mandamus Act), and Article I, Section 9, clause 2 of the United  
14 States Constitution (the Suspension Clause). Sovereign immunity against actions  
15 for relief other than money damages is waived pursuant to 5 U.S.C. § 702.

16 15. This Court may grant relief under 28 U.S.C. §§ 2241, 2243 (habeas  
17 corpus), 2201-02 (declaratory relief), 1651 (All Writs Act), 5 U.S.C. § 702  
18 (judgment against U.S. officers), Federal Rule of Civil Procedure 65 (injunctive  
19 relief), Federal Rule of Civil Procedure 23 (class action), as well as the Fifth and  
20 Eighth Amendments to the U.S. Constitution.

21 16. Venue is proper in the Southern District of California pursuant to 28  
22 U.S.C. § 2241(d) because the Plaintiffs and all other class members are in custody  
23 in this judicial district and venue. Venue is proper pursuant to 28 U.S.C.  
24 § 1391(b)(2) because a substantial part of the events or omissions giving rise to  
25 Plaintiffs’ claims occurred in this district.

**PARTIES**

1  
2           17.    Petitioner-Plaintiff George RIDLEY is a 51-year-old man who has  
3 been in pretrial custody at the OMDC since around October 2019. He suffers from  
4 blisters in his left lung and is missing one third of his right lung. He is extremely  
5 vulnerable to serious harm if he were to contract COVID-19. Mr. Ridley was  
6 arrested for sex trafficking/pimping, though not a version of the offense involving  
7 violence or threats of violence. He shares a small cell with another person and is  
8 unable to maintain six feet of distance from other people at the facility. If released,  
9 he would be able to self-quarantine where necessary and practice other  
10 recommended measures, including social distancing, at his home in San Diego, CA.  
11 He appears on behalf of himself and all other medically vulnerable detained persons  
12 held pretrial in USMS custody at OMDC who are at high risk of severe illness and  
13 death due to COVID-19.

14           18.    Petitioner-Plaintiff Jane Doe is a 46-year-old woman who has been in  
15 pretrial custody at the OMDC since December 16, 2019. At least two detained  
16 individuals in her pod have tested positive for COVID-19. She has been unable to  
17 maintain six feet of distance from other detained persons in her pod. Although she  
18 volunteered to serve meals, Ms. Doe did not receive masks from USMS when doing  
19 so. Ms. Doe is HIV positive and is therefore at high risk of severe complications  
20 or death if she contracts COVID-19. Ms. Doe was arrested for illegal reentry and  
21 a supervised release violation. If released, she would be able to self-quarantine  
22 where necessary and practice other recommended measures, including social  
23 distancing, at her aunt’s home in Los Angeles, CA. She appears on behalf of herself  
24 and all other medically vulnerable detained persons held pretrial in USMS custody  
25 at OMDC who are at high risk of severe illness and death due to COVID-19.

1           19. Petitioner-Plaintiff Leopoldo SZURGOT is a 36-year old man who has  
2 been in pretrial custody at the OMDC since November 5, 2019. He has high-blood  
3 pressure, suffers from kidney stones, has had his gallbladder removed, and has an  
4 untreated head injury. He is particularly vulnerable to COVID-19. He is in a pod  
5 with roughly 68 other individuals. Many of the detained people in his pod are  
6 exhibiting flu-like symptoms, and he has been told by staff that at least four or five  
7 people tested positive for COVID-19 in his pod. He cannot stay six feet apart from  
8 individuals in his pod. Mr. Szurgot was arrested for drug importation. If released,  
9 he would be able to self-quarantine where necessary and practice other  
10 recommended measures, including social distancing, at his cousin's home in  
11 Helendale, CA. He appears on behalf of himself and all other medically vulnerable  
12 detained persons held pretrial in USMS custody at OMDC who are at high risk of  
13 severe illness and death due to COVID-19.

14           20. Petitioner-Plaintiff Jacinto Victor ALVAREZ is a 54-year-old man  
15 who has been in pretrial custody at the OMDC since November 4, 2019. He is  
16 detained in a pod with nearly 100 other detained persons and shares a 3-by-4 meter  
17 cell (approximately 10-by-13 feet) with another cellmate. He is unable to ensure  
18 six feet of distance from other people in the facility. He worked in the kitchen prior  
19 to its closure. Mr. Alvarez was arrested for illegal reentry. If released, he plans to  
20 self-quarantine where necessary and practice other recommended measures,  
21 including social distancing, in a halfway house. He appears on behalf of himself  
22 and all other medically vulnerable detained persons held pretrial in USMS custody  
23 at OMDC who are at high risk of severe illness and death due to COVID-19.

24           21. Petitioner-Plaintiff Joseph BRODERICK is a 35-year-old man who  
25 has been in pretrial custody at the OMDC since January 13, 2020. He shares a  
26 small cell with another person. It is effectively impossible for him to maintain six  
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1 feet of distance from other persons at the facility. Until April 23, 2020, when the  
2 kitchen was closed, he worked shoulder-to-shoulder with other detained persons in  
3 the kitchen. Mr. Broderick was arrested of wire fraud. If released, he would be  
4 able to self-quarantine where necessary and practice other recommended measures,  
5 including social distancing, at his sister's home in Los Angeles, CA. He appears  
6 on behalf of himself and all detained persons held pretrial in USMS custody at  
7 OMDC who are at risk of severe illness and death due to COVID-19.

8 22. Petitioner-Plaintiff Victor LARA-SOTO is a 42-year-old man who has  
9 been in pretrial custody at the OMDC since November 10, 2019. He is detained in  
10 a pod with nearly 100 other detained persons and shares a 3-by-5 meter  
11 (approximately 10-by-16 feet) cell with three other individuals. He is locked in his  
12 cell from 10:00 p.m. each night until approximately 8:00 or 9:00 a.m. the following  
13 morning. It is effectively impossible for him to maintain six feet of distance from  
14 other persons at the facility in or out of his cell. As part of his job duties at the  
15 facility prior to the kitchen's closure, he prepared and served food. OMDC only  
16 provided him with a mask and gloves when he worked in the kitchen, and OMDC  
17 staff members took away the protective equipment when he left. Mr. Lara-Soto  
18 was arrested for drug importation. If released, he would be able to self-quarantine  
19 where necessary and practice other recommended measures, including social  
20 distancing, at his father-in-law's home in Fresno, CA. He appears on behalf of  
21 himself and all detained persons held pretrial in USMS custody at OMDC who are  
22 at risk of severe illness and death due to COVID-19.

23 23. Petitioner-Plaintiff Michael Jamil SMITH is a 42-year-old male who  
24 has been in custody at the OMDC since October 9, 2019. Mr. Smith suffers from  
25 high blood pressure, diabetes, and sleep apnea and is particularly vulnerable to  
26 COVID-19. He is located in a pod with approximately 80 other individuals and has  
27  
28

1 been unable to maintain six feet of distance from other persons in the facility. Mr.  
2 Smith has tested positive for COVID-19. His pod is currently in quarantine. Mr.  
3 Smith was convicted of being a felon in possession with a firearm and is awaiting  
4 sentencing. If released, he would be able to self-quarantine and practice other  
5 recommended measures, including social distancing, at his brother's home in San  
6 Diego, CA. Mr. Smith appears on behalf of himself and all other medically  
7 vulnerable detained persons held post-conviction, presentencing in USMS custody  
8 at OMDC who are high risk of severe illness and death due to COVID-19.

9       24. Petitioner-Plaintiff Jose CRESPO-VENEGAS is a 54-year-old man  
10 who has been in custody at the OMDC since November 29, 2019. He was convicted  
11 of illegal reentry and a supervised release violation. He shares a small cell with  
12 three other individuals and he cannot maintain six feet of distance from other  
13 persons. He worked in the kitchens prior to their April 23 closure. He appears on  
14 behalf of himself and all other detained persons held post-conviction, presentencing  
15 in USMS custody at OMDC who are at risk of severe illness and death due to  
16 COVID-19.

17       25. Petitioner-Plaintiff Noe GONZALEZ-SOTO is a 47-year-old man  
18 who has been in custody at the OMDC since around September 2019. He was  
19 convicted of drug importation and is awaiting sentencing. He shares a small cell  
20 with another individual and he cannot maintain six feet of distance from other  
21 persons. Mr. Gonzalez-Soto has tested positive for COVID-19. He appears on  
22 behalf of himself and all other medically vulnerable detained persons held post-  
23 conviction, presentencing in USMS custody at OMDC who are at high risk of  
24 severe illness and death due to COVID-19.

25       26. Petitioner-Plaintiff Marlene CANO is a 33-year old woman who has  
26 been in custody at the OMDC since December 20, 2019. She was convicted of drug  
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1 importation and is awaiting sentencing. She shares a small cell with another  
2 individual. Her pod is currently in quarantine. She cannot stay six feet apart from  
3 other people in her pod and cell. She has developed a cough and flu-like symptoms.  
4 If released, she would be able to self-quarantine where necessary and practice other  
5 recommended measures, including social distancing, at a friend's house in Chula  
6 Vista, CA. She appears on behalf of herself and all other detained persons held  
7 post-conviction, presentencing in USMS custody at OMDC who are at risk of  
8 severe illness and death due to COVID-19.

9       27. Petitioner-Plaintiff Racquel RAMCHARAN is a 23-year-old woman  
10 who has been in custody at the OMDC since October 24, 2019. She shares a small  
11 cell with another individual. She cannot stay six feet apart from other people in her  
12 pod and cell. Her pod is currently in quarantine. Ms. Ramcharan was convicted of  
13 possession with intent to distribute and is awaiting sentencing. If released, she  
14 would be able to self-quarantine where necessary and practice other recommended  
15 measures, including social distancing, at her aunt's house in San Diego, CA. She  
16 appears on behalf of herself and all other detained persons held post-conviction,  
17 presentencing in USMS custody at OMDC who are at risk of severe illness and  
18 death due to COVID-19.

19       28. Respondent-Defendant Christopher J. LAROSE is the Senior Warden  
20 of the Otay Mesa Detention Center. As the Senior Warden, he is responsible for  
21 overseeing the administration and management of the facility, where Plaintiffs are  
22 detained. Defendant LaRose is a legal custodian of Plaintiffs. He is sued in his  
23 official capacity.

24       29. Respondent-Defendant Steven C. STAFFORD is the United States  
25 Marshal for the Southern District of California. Defendant Stafford is a legal  
26 custodian of Plaintiffs. He is sued in his official capacity.



1 contaminated surfaces and objects.<sup>14</sup> The virus may be transmitted through person-  
2 to-person contact when one is as close as six feet of an infected individual, and as  
3 far as twenty-seven feet.

4 34. People can also spread COVID-19 while asymptomatic, making  
5 testing or seclusion of only those who are exhibiting symptoms an ineffective  
6 solution.

7 35. COVID-19 can result in respiratory failure, kidney failure, and death.  
8 In serious cases, COVID-19 causes acute respiratory disease syndrome (“ARDS”),  
9 which is life-threatening; those who receive ideal medical care with ARDS have a  
10 30% mortality rate. Infected individuals who do not die from the disease may  
11 experience serious damage to the lungs, heart, liver, or other organs, resulting in  
12 prolonged recovery periods, including extensive rehabilitation from neurological  
13 damage and loss of respiratory capacity.

14 36. Complications from COVID-19 can manifest at an alarming pace.  
15 Patients can show the first symptoms of infection in as little as two days after  
16 exposure, and their condition can seriously deteriorate in as little as five days or  
17 sooner.

18 37. People age 45 and over face a high risk of serious illness from COVID-  
19 19, while those over the age of 55 face a high risk of serious illness or death from  
20 COVID-19. Certain underlying medical conditions increase the risk of serious  
21 illness or death from COVID-19 for people of any age, including lung disease, heart  
22 disease, hypertension, asthma, chronic liver or kidney disease, diabetes, epilepsy,  
23 compromised immune systems (such as from cancer, HIV, or an autoimmune  
24

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25 <sup>14</sup> *Interim Infection Prevention and Control Recommendations for Patience with*  
26 *Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare*  
27 *Settings*, CDC, Apr. 2020, <https://cutt.ly/ztRAo0X>.



1 disease), blood disorders (including sickle cell disease), metabolic disorders, stroke,  
2 neurological conditions, and others.

3 38. COVID-19 patients in higher-risk categories who develop serious  
4 illness will need advanced support, including access to specialized equipment  
5 (including ventilators and dialysis machines, which are in limited supply), and  
6 entire teams of care providers. Critical COVID-19 patients may require 1:1 or 1:2  
7 nurse-to-patient ratios, respiratory therapists, and intensive care physicians. Many  
8 of the drastic measures implemented by government officials over the past several  
9 weeks are to “flatten the curve” of the spread of the disease, to ensure that health  
10 care systems are not overwhelmed by too many serious COVID-19 cases at once.

11 39. Even some younger and healthier people who contract COVID-19  
12 may require supportive care, which may include supplemental oxygen, positive  
13 pressure ventilation, and in extreme cases, extracorporeal mechanical oxygenation.

14 40. There is no vaccine against COVID-19, nor is there any known  
15 medication to prevent or cure infection from the virus.

16 41. While hand washing and disinfecting surfaces are advised, social  
17 distancing—remaining physically separated from known or potentially infected  
18 individuals—is the main strategy to prevent infection. For social distancing to be  
19 effective, it must occur before individuals exhibit any symptoms.

## 20 **II. COVID-19 is Particularly Dangerous in a Custodial Setting.**

21 42. Detention facilities are breeding grounds for infectious diseases, due  
22 to such factors as shared bathrooms, telephones, eating spaces, and common areas;  
23 high rates of turnover and mixing between detained persons and staff, who may be  
24 infected by persons outside the facility; close quarters that prevent social  
25 distancing; poor ventilation; minimal access to sinks, showers, toilets, water,  
26 personal hygiene supplies, and facility cleaning supplies; and substandard medical  
27

1 services. Viruses like COVID-19 that are transmitted through droplets pose special  
2 risks, as detained persons are not able to keep the necessary six-foot distance to  
3 avoid a cough or sneeze. And higher-than-average rates of chronic conditions  
4 among incarcerated people may increase their susceptibility to infection and the  
5 likelihood that they will become sick. Those risk factors are either absent or less  
6 acute when a detained person is able to shelter in place in the community, leading  
7 public health experts to recommend release as a safer alternative to incarceration.

8 43. Cognizant of the heightened risks of COVID-19 in custodial settings,  
9 the CDC issued a guidance on March 23, 2020, recommending that all correctional  
10 facilities take preventative measures, including: ensuring an adequate supply of  
11 hygiene and medical supplies; allowing for alcohol-based sanitizer throughout  
12 facilities; providing no-cost soap to all detained persons for frequent handwashing;  
13 cleaning and disinfecting frequently touched surfaces several times per day;  
14 performing pre-intake screening and temperature checks for all new entrants to a  
15 facility; increasing space between all detained persons to at least six feet, staggering  
16 meals; and having healthcare staff perform regular rounds.<sup>15</sup>

17 44. The USMS has failed to implement or abide by this guidance at  
18 OMDC.

19 45. As contagious as the coronavirus is in daily life in any given  
20 community, the virus is significantly *more* likely to spread in detention facilities  
21 than outside of them. In the community, scientists estimate that one person with  
22 COVID-19 will infect about two and a half people without social distancing, and  
23 about one person with strong social distancing and quarantining. By contrast,  
24 scientists estimate that, in confined settings like prisons and cruise ships, one person

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25 <sup>15</sup> *United States v. Kennedy*, No. 18-20314, Dkt. 77 (E.D. Mich. Mar. 27, 2019)  
26 (citing *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-*  
27 *19) in Correctional and Detention Facilities*, CDC, Mar. 23, 2020).

1 with COVID-19 will infect about 11 people, each of whom will in turn infect up to  
2 eleven other people.

3 46. The BOP implemented a multi-phase COVID-19 plan, which it began  
4 preparing with help from the CDC and WHO in January 2020.<sup>16</sup> Phase One of  
5 BOP’s plan involved obtaining guidance from its Health Services Division on the  
6 nature of COVID-19 and tactics to mitigate its spread. Phase Two involved, *inter*  
7 *alia*, suspending social visits, legal visits, and transfers of detained persons;  
8 implementing measures such as staggered meal and recreation times to maximize  
9 social distancing; screening new arrivals; and quarantining or isolating individuals  
10 with certain risk factors.

11 47. Notwithstanding the BOP’s plan, the Federal Detention Center in  
12 Oakdale, Louisiana “exploded” with COVID-19 cases in March, leading to the first  
13 COVID-19-induced death of a federal detainee. BOP-confirmed cases across the  
14 country have continued to rise. As of April 23, the BOP reported 620 inmates and  
15 357 staff had tested positive for COVID-19—more than fifteen times the number  
16 of cases reported on April 1,<sup>17</sup> and still almost certainly an undercount as BOP is  
17 only testing very sick inmates—and at least 24 inmates had died of COVID-19 in  
18 federal custody.<sup>18</sup>

19 48. As depicted in the below chart, the rate of increase in COVID-19 cases  
20 among those in BOP custody continues to be magnitudes higher than the rate in the

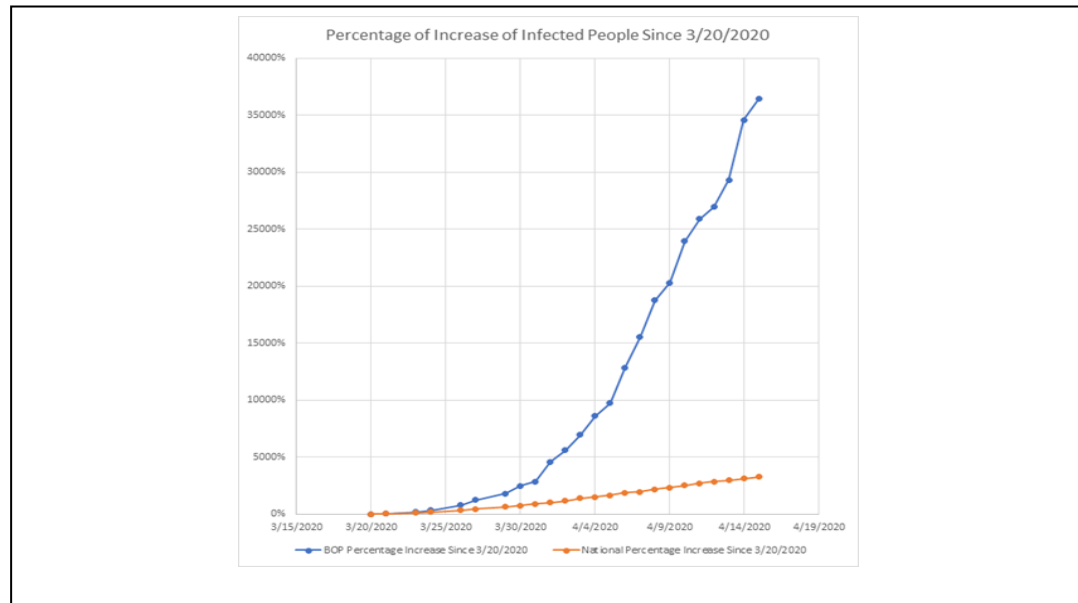
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21 <sup>16</sup> Federal Bureau of Prisons, *Federal Bureau of Prisons COVID-19 Action Plan*  
22 (Mar. 13, 2020), <https://bit.ly/3bQ1xIM>.

23 <sup>17</sup> Bureau of Prisons, *Open COVID-19 Tested Positive Cases* (last accessed Apr.  
24 22, 2020) <https://www.bop.gov/coronavirus/>; Bureau of Prisons, *Open COVID-19*  
25 *Tested Positive Cases* (Apr. 1, 2020),  
<https://web.archive.org/web/20200401000146/https://www.bop.gov/coronavirus/>.

26 <sup>18</sup> Bureau of Prisons, *Open COVID-19 Tested Positive Cases* (last accessed Apr.  
27 23, 2020), <https://www.bop.gov/coronavirus/>.

1 general population<sup>19</sup> and will keep rising because social distancing is effectively  
2 impossible in detention:



13 49. On April 3, 2020, the Attorney General issued a memo encouraging  
14 the BOP to release prisoners to home confinement.<sup>20</sup>

15 50. Significantly, neither the BOP’s multi-phase COVID-19 plan nor the  
16 Attorney General’s April memo govern individuals in USMS custody at OMDC.  
17 Nor has the USMS adopted its own plan. Instead, the USMS has simply claimed  
18 that it “continues to pay close attention to the Coronavirus (COVID-19) situation  
19 and will follow the recommendations of CDC as well as state and local public health  
20 agencies where USMS offices are located.”<sup>21</sup>

21 51. Numerous detained persons and staff at OMDC have already tested  
22 positive for COVID-19. In addition, because of limited testing and widespread

23 <sup>19</sup> Federal Defenders of New York, *BOP-Reported Positive Tests for COVID-19*  
24 *Nationwide*, <https://federaldefendersny.org/> (last visited Apr. 22, 2020).

25 <sup>20</sup> Memorandum from Attorney General William Barr to Director of Bureau of  
26 Prisons, *The Increasing Use of Home Confinement at Institutions Most Affected*  
27 *by COVID-19*, <https://politi.co/2UV3JBi>.

28 <sup>21</sup> *Coronavirus (COVID-19)*, USMS, <https://www.usmarshals.gov/coronavirus/>,  
(last accessed Apr. 23, 2020).

1 community exposure to the virus throughout Southern California, it is likely that  
2 additional staff and detained persons are, or will soon be, exposed to the virus in  
3 their day-to-day life without knowing it. The number of positive cases in San Diego  
4 County has jumped to 2,643 positive cases as of April 22, with 152 new cases  
5 reported just that day.<sup>22</sup> Notably, on March 30, San Diego County’s chief medical  
6 officer, Dr. Nick Yphantides, reported that “four ‘congregate living sites’—which  
7 can be assisted living facilities, prisons, or anywhere where large groups of people  
8 congregate in one living location—have tested positive for 33 cases and include  
9 two of the county’s deaths from the illness.” These positive cases emerged despite  
10 the fact that those sites were “under strict health protocols.”

11 52. The San Diego area healthcare system risks being overwhelmed.<sup>23</sup> A  
12 surge of hospitalizations from OMDC due to Defendants’ failure to reduce the  
13 detained population will divert scarce local medical resources in San Diego at a  
14 time when the community is taking drastic measures to “flatten the curve.” If local  
15 public health systems are overwhelmed, they will be unable to provide necessary  
16 care to community members in need. This, in turn, will increase the likelihood of  
17 preventable deaths in the San Diego community.

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22 <sup>22</sup> *Covid-19 Cases by Date Reported*, Cty. San Diego, Emergency Operations Ctr.  
23 (Apr. 23, 2020),

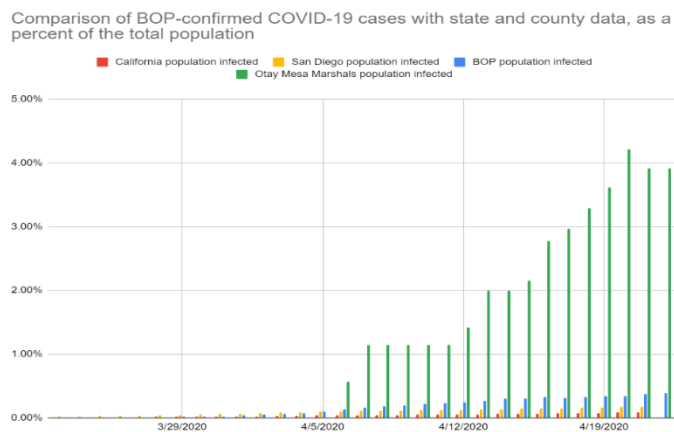
24 <https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/COVID-19%20Bar%20Graph%20of%20New%20and%20Total%20Cases.pdf>.

25 <sup>23</sup> Will Huntsberry, *How Fast the Coronavirus Could Spread in San Diego*, in  
26 *One Chart*, *Voice of San Diego*, Voice of San Diego, Mar. 25, 2020,  
27 <https://www.voiceofsandiego.org/topics/public-safety/how-fast-the-coronavirus-could-spread-in-san-diego-in-one-chart/>.

1 **III. A COVID-19 Outbreak Is Underway at OMDC.**

2 53. A COVID-19 outbreak is underway at OMDC. Individuals detained in  
3 the facility thus face an imminent threat of irreparable harm via illness, permanent  
4 injury, or even death.

5 54. As of April 23, OMDC had 97 confirmed detainee cases (38 persons  
6 detained by USMS and 59 persons detained by ICE), 18 CoreCivic employee cases,  
7 and 8 ICE employee cases. The spread of the virus has been faster among USMS  
8 detainees at OMDC than it has in BOP facilities as a whole:<sup>24</sup>



55. The OMDC facility does not appear to conduct widespread testing for  
COVID-19, and there is no way to be certain how far the virus has already spread.  
Responses to a survey conducted by the Federal Defenders of San Diego of their  
detained clients in early April estimated that 22 to 40 detainees had tested positive

<sup>24</sup> The infection rate dropped on April 19 not because of any improvement in conditions at OMDC, but because of an increase in the number of Marshalls detainees held there. On April 19, there were 304 Marshalls detainees. On April 20, there were 309 detainees, and on April 21, there were 332 detainees. The graph compares infections of detained persons to infections in California. Data for the graph comes from BOP's COVID-19 tested positive list on its website, plus these sources: Federal Bureau of Prisons, *Population Statistics* (last visited Apr. 2, 2020), <https://bit.ly/2UDxt71> (BOP inmate population); California Department of Public Health, *CDPH News Releases 2020*, (last visited Apr. 2, 2020), <https://bit.ly/2JD0Z6I> (California positive cases); United States Census Bureau, *QuickFacts: California* (last visited Apr. 2, 2020), <https://bit.ly/2ypzjQ6> (California population).

1 or were presumed positive for the virus. Given the rapid spread of COVID-19  
2 throughout prison populations in the United States, the conditions at OMDC, and  
3 the fact that the facility has already been exposed to COVID-19, the disease will  
4 inevitably become widespread among the population of USMS detained persons at  
5 OMDC, absent immediate relief from this Court to ensure adequate social  
6 distancing and other essential mitigation efforts.

7 56. Because OMDC detains individuals under the custody of the USMS,  
8 it is particularly vulnerable to a COVID-19 outbreak. Individuals in USMS custody  
9 are generally awaiting trial or sentencing. As a result, the detained population is  
10 transitory, with intake and release being far more common than at a long-term  
11 detention facility. This, in turn, increases the risks of exposure to COVID-19.  
12 Additionally, because the facility is intended for relatively short-term stays, OMDC  
13 does not provide the same level of medical care to detained individuals as long-  
14 term detention facilities might.

15 57. The facility does not and cannot adequately provide the mitigation  
16 measures that public health experts and the CDC recommend. It is virtually  
17 impossible for individuals at OMDC to comply with the CDC's recommendation  
18 to remain six feet apart at all times. Individuals detained at the facility share  
19 communal living space and items such as phones, toilets, showers, and sinks.

20 58. Persons detained at OMDC are housed together in pods, which consist  
21 of roughly 70 to 100 persons each. The pods house individuals in close quarters,  
22 well under the distance of six feet apart that the CDC recommends. Within each  
23 pod, most individuals share small cells with two or three persons per cell. For  
24 example, Plaintiff Lara-Soto shares a 3-by-5 meter (approximately 9-by-16 foot)  
25 cell with three other people and, like everyone at the facility, is locked in the cell  
26 every evening with his cellmates for at least seven hours until morning.

1           59.     When not in their cells, detained persons use common spaces together,  
2 sharing tables, telephones and showers. They cannot reliably maintain a six-foot  
3 distance in communal areas. Chairs and tables in communal areas are bolted to the  
4 ground and chairs are less than three feet apart. To watch television—a key source  
5 of COVID-19 news—individuals have to sit or stand in close proximity to each  
6 other. In one of the pods, more than 100 individuals recently crowded around four  
7 televisions at once in a small room. The preparation and distribution of food at the  
8 facility has been particularly problematic. Before April 6, in order to get to the  
9 cafeteria, individuals were crowded in a locked sally port with fifteen to twenty-  
10 five other detained individuals. At the cafeteria, they had to stand approximately  
11 one foot apart from one another in line to retrieve their food, which was delivered  
12 in a fifteen-person work-line with individuals standing shoulder-to-shoulder. The  
13 dining area was often crowded. By April 23, detained persons no longer ate in the  
14 cafeteria but ate within their pod. However, detained individuals still had to wait in  
15 a single file line—less than six feet apart—to get food within their pod. Many  
16 detained individuals had to eat at the communal tables in the pods, while some  
17 individuals resorted to eating on the toilet in their cell where possible in an effort  
18 to try to distance themselves from others.

19           60.     As of April 14, 2020, one individual with symptoms consistent with  
20 COVID-19 was still working in the kitchen and other kitchen staff who worked in  
21 close proximity with individuals from pods that have had positive COVID-19 cases  
22 were still preparing and serving food for the entire facility, some without masks.  
23 As of April 23, due to additional positive COVID-19 cases, the OMDC kitchens  
24 appear to have closed and food is primarily distributed through boxed lunches.

25           61.     Not only is social distancing essentially impossible in these  
26 conditions, but the hygienic situation in the facility is inadequate to abate the spread  
27  
28



1 of COVID-19. The facility relies on “volunteer” cleaning by detained persons, who  
2 are not provided with sufficient protective equipment, such as gloves or masks.  
3 Showers, which all individuals within a pod must share, are only cleaned once or  
4 twice a day rather than after every use. Telephones—which are generally not six  
5 feet apart—are not wiped down after each use. Plaintiff Ridley reported that  
6 cleaning supplies used in the facility are highly diluted. Plaintiff Cano, who works  
7 in the kitchen, reported not having cleaning solution and cleaning her area of the  
8 kitchen with only a wet rag, and Plaintiff Szurgot reported having to reuse rags to  
9 wipe down communal surfaces because clean rags are not always available.

10         62. Individuals detained at OMDC also lack access to sufficient personal  
11 hygiene products. Detainees report receiving only one small bar of soap every few  
12 days—an insufficient amount given the rigorous handwashing required to avoid  
13 contracting COVID-19. No hand sanitizer is available and—in at least one case—  
14 facility staff have confiscated soap from individuals. The facility often runs out of  
15 toilet paper—sometimes for multiple days. In one instance, after Plaintiff Cano  
16 asked for a roll of toilet paper, a correctional officer told her that they ran out and  
17 that she should use a sock instead.

18         63. OMDC has not been providing detained persons adequate protective  
19 equipment such as masks and gloves. Approximately two weeks ago, detained  
20 persons received only one disposable mask each and were told they had to use it  
21 for a period of two weeks. Detention center staff themselves are not consistently  
22 wearing masks or gloves and are not practicing social distancing.

23         64. Despite these conditions and the existing positive COVID-19 cases,  
24 OMDC does not appear to be conducting widespread testing. Many detainees report  
25 flu-like symptoms consistent with COVID-19 but are not tested. OMDC staff  
26 provides sick detainees with Tylenol or ibuprofen pills or tells them to drink water  
27  
28

1 with salt. Even in pods where individuals have tested positive for the virus, OMDC  
2 staff have informed detained persons that they would only test those with severe  
3 symptoms or that testing everyone would be too expensive. This is particularly  
4 alarming given that COVID-19 carriers can be asymptomatic or not show  
5 symptoms for up to two weeks after exposure. “Screening people based on  
6 observable symptoms is just a game of catch up.” *In re. Extradition of Toledo*  
7 *Manrique*, No. 19-mj- 71055, 2020 WL 1307109, at \*1 (N.D. Cal. Mar. 19, 2020)  
8 (ordering release on bail in part because government’s management plan did not  
9 “say anything about testing”). Moreover, to the extent that detained persons are  
10 tested, even positive test results are not immediately communicated and acted upon:  
11 at least one detained person was informed by his counsel, not OMDC officials, that  
12 he had tested positive for COVID-19 and was not removed from his pod until  
13 approximately an hour and a half later.

14         65. These policies are turning OMDC into a ticking time bomb. Plaintiff  
15 Gonzalez-Soto, for example, recently had a high fever and was vomiting for two  
16 days. Once he was able to see a doctor, he received a physical and some Tylenol.  
17 The doctor informed him that he would only be tested for COVID-19 if he displayed  
18 symptoms for five days. Gonzalez-Soto was not isolated from his cellmate and  
19 continued his laundry duties while sick, delivering laundry to every person in his  
20 pod daily. He has since tested positive for COVID-19.

21         66. Given the alarming situation at the facility, a number of Plaintiffs and  
22 other detained individuals have filed or attempted to file grievances asking for  
23 protective gear, hygiene products and improved conditions to no avail. Grievance  
24 slips (the only means of filing grievances) are supposed to be available in each pod  
25 for individuals to fill out and file. Yet the slips are not consistently available, and  
26 a direct request for slips from staff may not be responded to for up to five days.

1 Some detained persons have not filed grievances because they believe they will be  
2 rejected as a matter of course. In one case, after an individual learned that his prior  
3 cellmate had tested positive for coronavirus and had to be hospitalized, he filed a  
4 grievance merely asking to be tested for COVID-19. The grievance was denied.  
5 When responding to grievances, the USMS has not consistently provided a means  
6 of appeal.

7 67. The situation has become unbearable for those in detention at OMDC,  
8 and both a pod and kitchen crew have gone on a hunger strike to protest conditions.  
9 Among their requests are that OMDC (1) test everyone, (2) tell the detained persons  
10 whether they have been exposed via identified cases among the staff, (3) provide  
11 clarity on those who have become sick and sent for treatment but not tested, and (4)  
12 provide disinfectant and require its use.

13 68. The CDC recommendations previously described are virtually  
14 impossible at OMDC. Under these conditions, none of the Plaintiffs are able to  
15 consistently maintain a six-foot distance from others. Detained persons are aware  
16 that the facility is woefully inadequate, and many fear dying at the facility.

17 **IV. Release is Essential to Ensure the Safety of Class Members and the**  
18 **General Public.**

19 69. Because of the severity of the threat posed by COVID-19 and its  
20 potential to rapidly spread throughout detention facilities, public health experts  
21 recommend the immediate release from custody of people most vulnerable to  
22 COVID-19. Release protects the people with the greatest vulnerability to COVID-  
23 19 from transmission of the virus and allows for greater risk mitigation both for  
24 people who remain detained and the broader community. Release of the most  
25 vulnerable people from custody also reduces the burden on the region's health care  
26 infrastructure by reducing the likelihood that an overwhelming number of people  
27  
28

1 will become seriously ill from COVID-19 at the same time. The same is true for  
2 COVID-19 positive individuals who can more safely quarantine elsewhere and  
3 access a broader range of medical services as needed.

4 70. Across the country, state officials and jail staff have recognized the  
5 threat posed by COVID-19 and released high numbers of detained persons. Jail  
6 administrators in Cuyahoga County, Ohio;<sup>25</sup> Los Angeles, California;<sup>26</sup> San  
7 Francisco, California;<sup>27</sup> Jefferson County, Colorado;<sup>28</sup> and the State of New  
8 Jersey,<sup>29</sup> among others, have concluded that widespread release of detained people  
9 is a necessary and appropriate public health intervention.<sup>30</sup>

10 71. Widespread release of vulnerable individuals is necessary because it  
11 is extremely difficult, if not practically impossible, for facilities like OMDC to  
12 adopt policies that can sufficiently protect detained persons.

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14 <sup>25</sup> Scott Noll & Camryn Justice, *Cuyahoga County Jail Releases Hundreds of*  
15 *Low-Level Offenders to Prepare for Coronavirus Pandemic*, (Mar. 20, 2020 6:04  
16 p.m.), [https://www.news5cleveland.com/news/local-news/oh-cuyahoga/cuyahoga-](https://www.news5cleveland.com/news/local-news/oh-cuyahoga/cuyahoga-county-jail-releases-hundreds-of-low-level-offenders-to-prepare-for-coronavirus-pandemic)  
17 [county-jail-releases-hundreds-of-low-level-offenders-to-prepare-for-coronavirus-](https://www.news5cleveland.com/news/local-news/oh-cuyahoga/cuyahoga-county-jail-releases-hundreds-of-low-level-offenders-to-prepare-for-coronavirus-pandemic)  
18 [pandemic](https://www.news5cleveland.com/news/local-news/oh-cuyahoga/cuyahoga-county-jail-releases-hundreds-of-low-level-offenders-to-prepare-for-coronavirus-pandemic).

18 <sup>26</sup> Alene Tchekmedyan, *More L.A. County Jail Inmates Released Over Fears of*  
19 *Coronavirus Outbreak*, L.A. Times, Mar. 19, 2020, <https://cutt.ly/ltRSCs6>.

19 <sup>27</sup> Megan Cassidy, *Alameda County Releases 250 Jail Inmates Amid Coronavirus*  
20 *Concerns, SF to Release 26*, San Francisco Chronicle, Mar. 20, 2020,  
21 <https://cutt.ly/0tRSVmG>.

22 <sup>28</sup> Jenna Carroll, *Inmates Being Released Early from JeffCo Detention Facility*  
23 *Amid Coronavirus Concerns*, KDVR Colorado, Mar. 19, 2020,  
24 <https://cutt.ly/UtRS8LE>.

24 <sup>29</sup> Erin Vogt, *Here's NJ's Plan for Releasing Up to 1,000 Inmates as COVID-19*  
25 *Spreads* (March 23, 2020), <https://cutt.ly/QtRS53w>.

25 <sup>30</sup> *See also Wilson v. Williams*, No. 4:20-cv-00794 (N.D. Ohio Apr. 22, 2020)  
26 (ordering federal prison to identify, within one day, all members of a medically  
27 vulnerable subclass and to evaluate their eligibility for transfer, including through  
28 compassionate release or furlough, within two weeks).

1 **LEGAL FRAMEWORK**

2 72. Defendants’ continued detention of Plaintiffs and members of the  
3 proposed classes under current conditions and population levels puts them at a high  
4 risk of exposure to a highly contagious disease resulting in serious illness, severe  
5 harm, or death, in violation of the pretrial Plaintiffs’ and classes’ Fifth Amendment  
6 right to due process and the post-conviction Plaintiffs’ and classes’ Fifth  
7 Amendment rights and/or their Eighth Amendment right to be free from cruel and  
8 unusual punishment.

9 **I. The Pretrial Plaintiffs’ Incarceration at OMDC during the Current**  
10 **COVID-19 Pandemic Violates their Fifth Amendment Right to Due**  
11 **Process.**

12 73. The Fifth Amendment to the U.S. Constitution guarantees individuals  
13 the right to be free from punitive conditions of confinement. The government  
14 violates this guarantee when conditions of confinement lack a “reasonable relation  
15 to the purpose for which the individual is committed.” *Jones v. Blanas*, 393 F.3d  
16 918, 931 (9th Cir. 2004). This standard is met when the conditions create an  
17 unreasonable risk to detainees’ safety and health, such that pretrial detainees need  
18 only show “an intentional decision” regarding conditions that puts detainees at  
19 “substantial risk of suffering serious harm” and a failure to “take reasonable  
20 available measures to abate that risk.” *See Gordon v. Cty. of Orange*, 888 F.3d 1118,  
21 1125 (9th Cir. 2018).

22 74. Defendants are harming pretrial Plaintiffs by detaining them in a  
23 facility where they are at a high risk of contracting COVID-19. Given the existing  
24 outbreak of COVID-19 at the facility and the availability of alternatives to  
25 confinement, continued pretrial detention lacks a reasonable relationship to any  
26 legitimate governmental purpose. It is excessive in relation to the goals of pretrial  
27 detention and its objectives can easily be accomplished through alternatives to  
28

1 detention. Moreover, the policies adopted by the BOP since the emergence of  
2 COVID-19—including a multi-step action plan and a recommendation of home  
3 confinement in some cases—evince that individuals in pretrial detention at OMDC  
4 are being held in worse conditions of confinement than those in BOP custody who  
5 are already convicted of crimes.

6 **II. The Post-Conviction Plaintiffs’ Incarceration at OMDC during the**  
7 **Current COVID-19 Pandemic Violates Their Fifth Amendment Right**  
8 **of Due Process, and/or Their Eighth Amendment Right to be Free from**  
9 **Cruel and Unusual Punishment.**

10 75. Defendants’ continued confinement of Post-Conviction Plaintiffs  
11 similarly lacks a reasonable relationship to any legitimate governmental purpose  
12 given the substantial risks imposed by COVID-19, the existing outbreak at the  
13 facility, and the available alternatives to confinement, in violation of their Fifth  
14 Amendment rights. Additionally, the Eighth Amendment prohibits punishment that  
15 is “cruel and unusual.” To the extent that conditions violate the Eighth Amendment,  
16 they necessarily violate the Fifth Amendment as well. *Jones*, 393 F.3d at 933.

17 76. Under the Eighth Amendment, prison officials “must provide humane  
18 conditions of confinement;” “ensure that inmates receive adequate food, clothing,  
19 shelter, and medical care,” and “take reasonable measures to guarantee the safety  
20 of the inmates[.]” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (internal quotation  
21 marks omitted). This obligation also requires corrections officials to address  
22 prisoners’ serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976);  
23 *Brown v. Plata*, 563 U.S. 493, 531-32 (2011).

24 77. Conditions that pose an unreasonable risk of future harm violate the  
25 Eighth Amendment’s prohibition against cruel and unusual punishment. *Helling*,  
26 509 U.S. at 33–34 (“That the Eighth Amendment protects against future harm to  
27 inmates is not a novel proposition. . . . It would be odd to deny an injunction to  
28 inmates who plainly proved an unsafe, life-threatening condition in their prison on

1 the ground that nothing yet had happened to them.”). Corrections officials are thus  
2 obligated to protect incarcerated people from infectious diseases such as COVID-  
3 19; they may not wait until detained persons are already infected, ill, or dying.

4 78. Detention officials violate the Eighth Amendment by acting with  
5 “deliberate indifference” to a substantial risk of serious harm. *Farmer*, 511 U.S. at  
6 828. With respect to an impending infectious disease like COVID-19, deliberate  
7 indifference is satisfied when corrections officials “ignore a condition of  
8 confinement that is sure or very likely to cause serious illness and needless suffering  
9 the next week or month or year,” even when “the complaining inmate shows no  
10 serious current symptoms.” *Helling*, 509 U.S. at 33. Here, Defendants’ deliberately  
11 indifferent failure to allow post-conviction Plaintiffs and class members to engage  
12 in proper social distancing and other medically recommended mitigation efforts  
13 violates their Eighth Amendment rights.

### 14 **III. 28 U.S.C. § 2241 is an Appropriate Vehicle to Remedy These Violations.**

15 79. Section 2241(c)(3) allows this court to order the release of detained  
16 persons such as Plaintiffs who are held “in violation of the Constitution.” 28 U.S.C.  
17 2241(c)(3); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“It is clear, not only  
18 from the language of §§ 2241(c)(3) and 2254(a), but also from the common-law  
19 history of the writ, that the essence of habeas corpus is an attack by a person in  
20 custody upon the legality of that custody, and that the traditional function of the  
21 writ is to secure release from illegal custody.”); *Peyton v. Rowe*, 391 U.S. 54, 67  
22 (1968) (Section 2241(c)(3) can afford immediate release for claims other than those  
23 challenging the sentence itself).

24 80. The Ninth Circuit and Supreme Court have held that where “prisoners  
25 would have been entitled to immediate release from prison [if successful], habeas  
26 was the exclusive remedy for the[] claims.” *Nettles v. Grounds*, 830 F.3d 922, 927  
27  
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1 (9th Cir. 2016) (citing *Preiser*, 411 U.S. at 500). Here, the challenged condition is  
2 a rapidly spreading and unprecedented pandemic. Thus, as multiple health experts  
3 have opined and numerous courts have recognized, immediate release of at least  
4 some incarcerated people is the only medically and legally sound remedy. Habeas  
5 corpus is a sufficiently malleable remedy to address this unique emergency  
6 situation. *See Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (habeas “is not now  
7 and never has been a static, narrow, formalistic remedy”).

8 81. Alternatively, this Court may order release pending resolution of the  
9 Plaintiffs’ habeas petition in the form of enlargement, a remedy sometimes referred  
10 to as “release” or “bail,” in which an individual remains in custody, but the place  
11 of custody is enlarged by the Court. *See Wilson v. Williams*, No. 4:20-cv-00794, at  
12 \*8 (N.D. Ohio Apr. 22, 2020) (“District courts have inherent authority to grant  
13 enlargement to a defendant pending a ruling on the merits of that defendant’s  
14 habeas petition.”). The Ninth Circuit has recognized a District Court’s authority to  
15 order enlargement where there are “special circumstances or a high probability of  
16 success.” *Land v. Deeds*, 878 F.2d 318 (9th Cir. 1989). Recently, in *Wilson*, the  
17 Court ordered this remedy for a medically vulnerable subclass of incarcerated  
18 individuals in light of the COVID-19 pandemic. *See Wilson*, No. 4:20-cv-00794 at  
19 \*8–9 (finding exceptional circumstances and a likelihood of success on the merits  
20 and ordering respondents “to determine the appropriate means of transferring  
21 medically vulnerable subclass members out of [a federal prison]”).

### 22 **CLASS ACTION ALLEGATIONS**

23 82. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of  
24 Civil Procedures on behalf of themselves and a class of similarly situated  
25 individuals.  
26  
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1           83. Plaintiffs Alvarez, Broderick, Lara-Soto, Ridley, Szurgot, and Doe  
2 each seek to represent a class of all current and future people in pretrial detention  
3 at OMDC (“Pretrial Class”) including a subclass of persons who, by reason of age  
4 or medical condition, are particularly vulnerable to injury or death if they were to  
5 contract COVID-19 (“Pretrial Medically Vulnerable Subclass”).

6           84. The “Pretrial Medically Vulnerable Subclass” is defined as “All  
7 current and future people detained at OMDC who are aged 45 years or older or who  
8 have medical conditions that place them at heightened risk of severe illness or death  
9 from COVID-19.”<sup>31</sup>

10           85. Plaintiffs Alvarez, Broderick, Lara-Soto, Ridley, Szurgot, and Doe can  
11 represent the Pretrial Class because each Plaintiff is currently housed at OMDC in  
12 pretrial custody. Plaintiffs Alvarez, Ridley, Szurgot, and Doe can represent the  
13 Pretrial Medically Vulnerable Subclass because each Plaintiff is over the age of 45  
14 and/or suffers from a qualifying medical condition.

15           86. Plaintiffs Cano, Crespo-Venegas, Gonzalez-Soto, Ramcharan, and  
16 Smith each seek to represent a class of all current and future people in post-  
17 conviction, presentencing detention at OMDC (“Post-Conviction Class”),  
18 including a subclass of persons who, by reason of age or medical condition, are  
19 particularly vulnerable to injury or death if they were to contract COVID-19 (“Post-  
20 Conviction Medically Vulnerable Subclass”).

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21  
22  
23 <sup>31</sup> Qualifying medical conditions for class membership will fall within standards  
24 set by the CDC. *See, e.g., People Who Are at Higher Risk for Severe Illness*,  
25 CDC, Apr. 15, 2020, [https://www.cdc.gov/coronavirus/2019-ncov/specific-](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html)  
26 [groups/people-at-higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html). Pregnancy should also qualify someone for  
27 Subclass membership because the CDC acknowledges that “[p]regnant people  
28 have had a higher risk of severe illness when infected with viruses from the same  
family as COVID-19.” *See Pregnancy and Breastfeeding*, CDC, Apr. 15, 2020,  
[https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html)  
[breastfeeding.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html).

1           87. The “Post-Conviction Medically Vulnerable Subclass” is defined as  
2 “All current and future people detained post-conviction at OMDC who are aged 45  
3 years or older or who have medical conditions that place them at heightened risk of  
4 severe illness or death from COVID-19.”

5           88. Plaintiffs Cano, Crespo-Venegas, Gonzalez-Soto, Ramcharan, and  
6 Smith can represent the Post-Conviction Class because each Plaintiff is currently  
7 housed at OMDC in post-conviction custody. Crespo-Venegas, Gonzalez-Soto,  
8 and Smith can represent the Post-Conviction Medically Vulnerable Subclass  
9 because each Plaintiff is over the age of 45 and/or suffers from a qualifying medical  
10 condition.

11           89. This action has been brought and may properly be maintained as a  
12 class action under federal law. It satisfies the numerosity, commonality, typicality,  
13 and adequacy requirements for maintaining a class action under Fed. R. Civ. P.  
14 23(a).

15           90. Joinder is impracticable because (1) the classes are numerous; (2) the  
16 classes include future members, and (3) the class members are incarcerated,  
17 rendering their ability to institute individual lawsuits limited, particularly in light  
18 of the conditions at OMDC and generally reduced legal visitation and court closures  
19 in the Southern District of California instituted to address COVID-19 concerns.

20           91. There are at least 50 current people detained and an unknowable  
21 number of potential future people who will be detained in the proposed Pretrial  
22 Class. There are at least 50 current people detained post-conviction and an  
23 unknowable number of potential future people who will be detained post-  
24 conviction in the proposed Post-Conviction Class. The precise size of the proposed  
25 Pretrial and Post-Conviction Medically Vulnerable Subclasses are not presently  
26 known to Plaintiffs.

1 92. Common questions of law and fact exist as to all members of the  
2 proposed Classes and Subclasses: all have a right to receive adequate COVID-19  
3 prevention, testing, and treatment.

4 93. Named Plaintiffs have the requisite personal interest in the outcome of  
5 this action and will fairly and adequately protect the interests of the class. Plaintiffs  
6 have no interests adverse to the interests of the proposed classes. Plaintiffs retained  
7 pro bono counsel with experience and success in the prosecution of civil rights  
8 litigation. Counsel for Plaintiffs know of no conflicts among proposed class  
9 members or between counsel and proposed class members.

10 94. Defendants have acted on grounds generally applicable to all proposed  
11 Class members, and this action seeks declaratory and injunctive relief. Plaintiffs  
12 therefore seek class certification under Rule 23(b)(2).

13 95. In the alternative, the requirements of Rule 23(b)(1) are satisfied,  
14 because prosecuting separate actions would create a risk of inconsistent or varying  
15 adjudications with respect to individual class members that would establish  
16 incompatible standards of contact for the party opposing the proposed classes.

### 17 **CLAIMS FOR RELIEF**

18 96. Plaintiffs in the Pretrial Class and Pretrial Medically Vulnerable  
19 Subclass seek relief under the Fifth Amendment to the U.S. Constitution because  
20 the Defendants' actions have subjected these individuals to unlawful punishment  
21 and amounts to deliberate indifference to a substantial risk of serious harm. Plaintiffs  
22 in the Post-Conviction Class and Post-Conviction Medically Vulnerable Subclass  
23 seek relief under the Fifth Amendment and/or the Eighth Amendment to the U.S.  
24 Constitution because the Defendants' actions violate their rights to due process and  
25 amount to deliberate indifference to a substantial risk of serious harm to their health  
26 and safety.

1 97. OMDC has neither the capacity nor the ability to comply with public  
2 health guidelines to manage the outbreak of COVID-19 and, therefore, cannot  
3 provide for the safety of the Plaintiffs and proposed class members, absent a  
4 substantial reduction of the detainee population.

5 98. Defendants' actions and inactions result in the confinement of  
6 members of the Classes in a detention center where Defendants have not followed  
7 and seem incapable of following public health guidance regarding social distancing  
8 and personal hygiene, and treating or preventing COVID-19 outbreaks and deaths,  
9 all of which violates Plaintiffs' and the proposed class members' rights to treatment  
10 and adequate medical care.

11  
12 **FIRST CLAIM FOR RELIEF: VIOLATION OF FIFTH AMENDMENT**  
13 **RIGHT TO SUBSTANTIVE DUE PROCESS (UNLAWFUL**  
14 **PUNISHMENT)**

15 99. Plaintiffs incorporate herein the allegations set forth in the preceding  
16 paragraphs of this complaint.

17 100. Defendants have subjected the Pretrial and Post-Conviction Plaintiffs  
18 and proposed class members—particularly those Plaintiffs in the Medically  
19 Vulnerable Subclasses who by virtue of their age and/or medical conditions are at  
20 a high risk of severe illness or death if they contract COVID-19—to punishment,  
21 in violation of the Fifth Amendment, by providing conditions of confinement that  
22 substantially increase their risk of contracting COVID-19, for which there is no  
23 known vaccine, treatment, or cure. Defendants are therefore subjecting Plaintiffs  
24 and proposed class members to an unreasonable risk of serious harm and punitive  
25 conditions, in violation of their rights under the Due Process Clause. For the  
26 Medically Vulnerable Plaintiffs and Subclasses, these individuals' underlying  
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1 conditions—of which Defendants are or should be aware—render them especially  
2 vulnerable to severe illness or even death if they contract COVID-19.

3 101. Defendants’ continued detention of Plaintiffs (and proposed class  
4 members) fails to adequately protect Plaintiffs and proposed class members from  
5 the risks of contracting COVID-19.

6 102. Plaintiffs’ and the proposed class members’ ongoing confinement,  
7 particularly under the dangerous and unsanitary conditions in OMDC, lacks a  
8 reasonable relationship to any legitimate governmental purpose or is excessive in  
9 relation to its purpose. To the extent that there is a purpose to Plaintiffs’ and  
10 proposed class members’ confinement, that purpose can be achieved through  
11 alternative and less harsh methods.

12 103. Defendants continued detention of the Pretrial and Post-Conviction  
13 Plaintiffs and proposed class members is punitive and therefore violates the Due  
14 Process Clause of the Fifth Amendment.

15 **SECOND CLAIM FOR RELIEF: VIOLATION OF FIFTH AMENDMENT**  
16 **RIGHT TO SUBSTANTIVE DUE PROCESS (DELIBERATE**  
17 **INDIFFERENCE)**

18 104. Plaintiffs incorporate herein the allegations set forth in the preceding  
19 paragraphs of this complaint.

20 105. Defendants acted with knowing disregard for the maintenance of  
21 hygienic and safe conditions under which the Pretrial and Post-Conviction  
22 Plaintiffs (and proposed class members) are detained.

23 106. Defendants have acted with reckless or knowing disregard for the  
24 health and safety of the Pretrial and Post-Conviction Plaintiffs (and proposed class  
25 members) by failing to mitigate the risks of COVID-19 to Plaintiffs and proposed  
26 class members.

1           107. Defendants are subjecting the Pretrial and Post-Conviction Plaintiffs  
2 to a substantial risk of serious harm, particularly those Plaintiffs in the Medically  
3 Vulnerable Subclasses who by virtue of their age and/or medical conditions are at  
4 a high risk of severe illness or death if they contract COVID-19, for which there is  
5 no known vaccine, treatment, or cure.

6           108. Defendants are aware of or have recklessly disregarded the substantial  
7 risks COVID-19 imposes upon the Pretrial and Post-Conviction Plaintiffs and  
8 proposed class members.

9           109. Defendants have failed to take reasonable measures to abate the risk  
10 that the Pretrial and Post-Conviction Plaintiffs (and proposed class members) will  
11 contract COVID-19.

12           110. Defendants have acted with objective deliberate indifference to the  
13 health and safety of the Pretrial and Post-Conviction Plaintiffs (and proposed class  
14 members), in violation of the Fifth Amendment Due Process Clause.

15           **THIRD CLAIM FOR RELIEF: VIOLATION OF THE EIGHTH**  
16           **AMENDMENT (DELIBERATE INDIFFERENCE)**

17           111. Plaintiffs incorporate herein the allegations set forth in the preceding  
18 paragraphs of this complaint.

19           112. Defendants are aware of the substantial risk COVID-19 poses to  
20 members of both Classes, and particularly members of the Medically Vulnerable  
21 Subclasses, yet have failed to take meaningful action to reduce the population of  
22 OMDC and otherwise mitigate the risk of harm to the Class members.

23           113. Defendants have therefore acted or failed to act with deliberate  
24 indifference to that risk in violation of the Post-Conviction Plaintiffs' (and proposed  
25 class members') Eighth Amendment rights.

1 114. Defendants' actions and inactions subject the Post-Conviction  
2 Plaintiffs and proposed class members to a risk of harm that contravenes  
3 contemporary standards of decency and is not tolerated in today's society.

4 115. By failing to implement controls necessary to contain the COVID-19  
5 outbreak and stop preventable deaths at OMDC, Defendants have violated the  
6 Eighth Amendment rights of the Post-Conviction Class and particularly the Post-  
7 Conviction Medically Vulnerable Subclass.

8 **REQUEST FOR RELIEF**

9 WHEREFORE, Plaintiffs and Class Members respectfully request that the Court:

- 10 a. Certify this Petition as a Class Action and appoint named Plaintiffs as  
11 class and subclass representatives and the undersigned counsel as class  
12 counsel;
- 13 b. Issue a writ of habeas corpus requiring the immediate release of both  
14 Medically Vulnerable Subclasses and the orderly release, with  
15 appropriate precautionary public health and safety measures, of a  
16 sufficient number of class members to reduce the overall population  
17 of USMS detainees at OMDC to levels that permit adequate social  
18 distancing, maintenance of hygiene, and provision of medical care, on  
19 the grounds that continued detention of class members under current  
20 conditions violates the Fifth and Eighth Amendments of the U.S.  
21 Constitution;
- 22 c. In the alternative, issue injunctive relief or a temporary restraining  
23 order requiring Defendants, their officers, agents, servants,  
24 employees, attorneys, and all other persons in active concert or  
25 participation with any of the foregoing persons to immediately release  
26 both Medically Vulnerable Subclasses and ensure the orderly release,  
27  
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1 with appropriate precautionary public health and safety measures, of a  
2 sufficient number of class members to reduce the overall population  
3 of USMS detainees at OMDC to levels that permit adequate social  
4 distancing, maintenance of hygiene, and provision of medical care, on  
5 the grounds that continued detention of class members under current  
6 conditions violates the Fifth and Eighth Amendments of the U.S.  
7 Constitution;

8 d. Issue an order requiring Defendants to provide to Plaintiffs and the  
9 Court, at intervals the Court deems proper, information regarding the  
10 ongoing COVID-19 outbreak at OMDC;

11 e. Order, following immediate release of all members of the Pretrial and  
12 Post-Conviction Medically Vulnerable Subclasses, a plan, to be  
13 immediately submitted to the Court and overseen by a qualified public  
14 health expert pursuant to Fed. R. Evid. 706, which outlines:

15 i. Specific mitigation efforts, in line with CDC guidelines to prevent,  
16 to the degree possible, contraction of COVID-19 by all Class  
17 Members not immediately released;

18 ii. A housing and/or public support plan for any released Class or  
19 Subclass Members for whom testing confirms exposure to or  
20 infection with COVID-19 and who do not readily have a place to  
21 self-isolate for the CDC-recommended period of time (currently 14  
22 days).

23 f. If immediate release is not granted on the basis of this Petition alone,  
24 then expedited review of the Petition, including oral argument, via  
25 telephonic or videoconference if necessary;



- 1 g. Issue a judgement declaring that the conditions under which  
2 Defendants have confined Plaintiffs and OMDC class members  
3 violate the Due Process Clause of the Fifth Amendment with respect  
4 to both the Pretrial and Post-Conviction Classes, and the Eighth  
5 Amendment's prohibition against cruel and unusual punishment with  
6 respect to the Post-Conviction Class;
- 7 h. Grant Plaintiffs their reasonable attorneys' fees and expenses pursuant  
8 to the Equal Access to Justice Act, 28 U.S.C. § 2412, and other  
9 applicable law; and
- 10 i. Grant any further relief as this Court deems just and proper.

11  
12 Respectfully submitted,

13  
14 DATED: April 25, 2020

**ROPES & GRAY LLP**

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\*Application for *pro hac vice* forthcoming