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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SAN DIEGO

17 TERRY LEROY JONES and GABRIEL
CAMPOS, on behalf of themselves and all
18 others similarly situated;

19 Petitioners/Plaintiffs,

20 vs.

21 WILLIAM D. GORE, in his official capacity
as Sheriff of San Diego County, California,

22 Respondent/Defendant.
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CASE NO: 37-2021-00010648-CU-MC-CTL
Assigned for All Purposes to Judge: Joel R. Wohlfeil

CLASS ACTION

**FIRST AMENDED VERIFIED PETITION
FOR WRITS OF MANDATE AND
HABEAS CORPUS AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

1. Due Process
(Cal. Const. Art. I, § 7)
2. Cruel and Unusual Punishment
(Cal. Const. Art. I, § 17)
3. Failure to Provide for the Safety of
Incarcerated Individuals
(Cal. Govt. Code § 8658)
4. Disability Discrimination (Cal. Govt.
Code. § 11135)

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I. INTRODUCTION

1. Plaintiffs/Petitioners Terry Leroy Jones and Gabriel Campos (“Plaintiffs”) bring this petition and complaint to seek urgent habeas, mandamus, and injunctive relief to protect people incarcerated in the San Diego County jails from the actions or inaction of Respondent/Defendant Sheriff William D. Gore (“Sheriff Gore” or “Defendant”). This is an issue with enormous implications for all San Diegans. As of March 8, 2021, there are 4,129 people in San Diego jails with tens of thousands of friends and family members in San Diego County who are undoubtedly anxious for their loved ones’ safety, with good reason.

2. Sheriff Gore has denied and continues to violate the constitutional and statutory right to reasonable safety and adequate medical care for thousands of incarcerated people in the custody of the San Diego Sheriff’s Department, who are at heightened risk for contracting and dying of COVID-19 based on the conditions Defendant has created. Defendant, through his policies and practices, has jeopardized Plaintiffs’ and other similarly situated people’s safety by filling the jails to the point where social distancing is impossible. He refuses to exercise his authority to immediately release people who pose minimal risk to the community. He transfers people between facilities throughout his jail system without taking minimal precautions that could help prevent transmission of the virus, thus ensuring the continued free and unbridled transmission of the virus throughout the San Diego County jails system now that it has gained a foothold there. By this action, Plaintiffs, on behalf of themselves and all similarly situated people incarcerated in the San Diego County jails, seek injunctive, declaratory, habeas, and mandamus relief to ensure their safety, before more unnecessary deaths occur.

3. San Diego County is at a crossroads. We are in the midst of an extended period of previously unimaginable suffering disproportionately borne by segments of our community already disadvantaged in terms of health care, housing, and economic opportunity, who are also disproportionately incarcerated. More than half a million lives throughout the country have been lost in less than a year. Moreover, we are starting to learn of ever more virulent and potentially deadly variants of the virus that causes COVID-19—including the California strain which reportedly spreads more easily than its predecessors—that show some resistance to antibodies generated by COVID-19 vaccines or prior infection and are associated with severe illness and death.

1 4. Even as the development of vaccines has provided a glimpse of light at the end of the
2 tunnel, scientists are predicting a dangerous “fourth wave” of the pandemic should we let up on
3 common sense precautions, which are more important than ever. Failure to take such precautions will
4 have predictably deadly consequences. In late February, 2021, Centers for Disease Control (“CDC”)
5 warned that the recent decline in COVID-19 cases appeared to be leveling off, and stated that the
6 situation was tenuous, as we face “a very concerning shift in the trajectory.” In early March, 2021, the
7 CDC announced that infection rates and COVID-19 related deaths had started to increase again.

8 5. And yet, Defendant has not offered vaccines to the vast majority of people in his
9 custody, and has continued to embrace the same dangerous practices that elsewhere have created some
10 of the deadliest outbreaks in the nation and that contributed to a massive outbreak in San Diego jails
11 that has already caused people to die. Without court intervention, more people will die unnecessarily.

12 6. With the approval and increasing supply of COVID-19 vaccinations and an increasing
13 understanding of how to mitigate the spread of the virus, there is no longer any question that reasonable
14 means exist to protect the most vulnerable among us, including people in San Diego jails, from further
15 ravages of the deadly novel coronavirus. The obligation to provide this protection is especially
16 pronounced when considering that Plaintiffs and the people they seek to represent, those who the
17 government has taken into its custody, are uniquely incapable of defending themselves because
18 Defendant forces them to live behind bars in environments where they are denied the ability to take
19 the very precautions our elected leaders and public health officials regularly tell us are essential.

20 7. By letter dated December 21, 2020, attorney Bardis Vakili informed Defendant of a
21 series of concerns raised by the current outbreak in San Diego County jails. Notably, the letter pointed
22 out that: Defendant had allowed the population levels in the jails to swell in recent months; social
23 distancing was not possible at current population levels; there had been a dramatic increase in reported
24 cumulative COVID-19 cases in the jails in recent months; Defendant’s policies of transferring
25 incarcerated individuals between facilities likely violated CDC’s recommendation against transfers
26 during the pandemic; Defendant’s apparent failures to regularly test incarcerated individuals or staff
27 members could have catastrophic consequences; and similar practices in the Orange County Jail were
28 recently ruled illegal in *Campbell v. Barnes*, Case No. 30-2020-1141117, Order on Writ of Habeas

1 Corpus and Writ of Mandate (Dec. 11, 2020) (requiring, inter alia, a 50% reduction in each facility
2 and housing unit). The letter also reminded Defendant of his statutory duty under Government Code
3 Section 8658 to remove incarcerated individuals “to a safe and convenient place ... to avoid the
4 danger” of an emergency that threatens their lives, or to “release them” if that is not possible.

5 8. Defendant’s January 14, 2021 letter addressing these concerns touted his allegedly
6 “successful” response to the pandemic, while nevertheless acknowledging that the “seven jail facilities
7 work collectively as one system” where inmates “may be moved fluidly within the system as their
8 individual housing needs dictate.” The letter expressly acknowledged Defendant’s authority “under
9 Government Code [Section] 8658 to release inmates in cases where it is necessary to do so to avoid
10 imminent danger,” while making clear that Defendant was declining to exercise that authority.

11 9. Defendant has consistently failed to meet his obligation to implement reasonable means
12 of protection. Without widespread vaccination, the risk of serious illness or death from COVID-19 is
13 greatly increased when people are confined in tight, poorly ventilated spaces, forced to interact in close
14 contact with an ever-changing cast of individuals cycling into those spaces from the community, and
15 denied necessary medical care, protective equipment, and sanitary supplies to properly prevent
16 infection. In choosing to ignore common sense preventive measures, deny appropriate access to
17 prevention and proper testing for COVID-19, and make and enforce policies that create a likely risk
18 of expanding the ongoing outbreak of COVID-19, or creating another one, in the facilities under his
19 control, Defendant violates Plaintiffs’ and class members’ rights under the Constitution of the State of
20 California, as well as California law.

21 10. Plaintiffs seek to represent classes of current and future individuals held at the San
22 Diego County jails whose health and safety are and will be jeopardized by Defendant’s failure to
23 take necessary and appropriate precautions to protect them from the COVID-19 pandemic.

24 **II. JURISDICTION AND VENUE**

25 11. The Court has personal jurisdiction of Defendant Sheriff Gore because he is a resident
26 of and/or doing business in the State of California.

27 12. Venue is proper in this Court in accordance with Sections 393(b) and 394(a) of the
28 California Code of Civil Procedure because Plaintiffs are or were detained in the San Diego County

1 jails (“Jails”) at all times relevant to this Petition/Complaint, Defendant is the head of a local agency
2 situated in San Diego County, and the cause of this dispute arose in San Diego County.

3 III. PARTIES

4 13. Defendant San Diego County Sheriff, William D. Gore is a San Diego County Official,
5 and the elected head of the San Diego Sheriff’s Department. Sheriff Gore currently has immediate
6 custody over Plaintiffs and all other putative class members as the administrator of the San Diego
7 County Jails. Sheriff Gore is a final policymaker for running and administering the San Diego County
8 Jails. He is sued in his official capacity.

9 14. Plaintiff Terry Leroy Jones is a 55-year-old man who is currently incarcerated in
10 the medical housing unit, 8C, of the San Diego Central Jail, awaiting sentencing. He has been in
11 custody since approximately July, 2019. Plaintiff Jones has a variety of medical ailments. He uses
12 a prosthetic leg after losing his leg in an accident, which requires consistent access to a shower and
13 must be regularly cleaned to avoid infection. He also has type 2 diabetes. He has had asthma since
14 approximately 2001, and requires regular access to his asthma inhaler, which has to be replaced
15 every few months.

16 15. The medical unit where Plaintiff Jones currently resides can hold approximately 60
17 people in a dorm-style unit with bunks stacked two or three high. There are people in the unit who
18 require specialized medical care, including people whose medical condition renders them
19 incapable of climbing onto the bunks. The bunks are spaced approximately two feet apart from
20 each other, so the people in the medical unit have no way to avoid being close to each other when
21 they sleep.

22 16. The people in Plaintiff Jones’ medical unit are unable to maintain safe physical
23 distance from each other at other times too. They are forced to stand in line right next to other
24 people, with no more than a foot between them, to get food or medication. Plaintiff Jones is
25 required to stand in lines like this at least three times per day.

26 17. In December, 2020, a man was transferred from George Bailey Detention Center
27 into the medical unit where Plaintiff was then housed. This person was given a COVID-19 test
28 after a week or two in the unit, but Defendant kept him in the medical unit in close contact with

1 medically vulnerable people for approximately three days while waiting for the test results. He
2 was then told that he had tested positive for COVID-19, and only then did Defendant move him
3 into an isolation cell. A few days later, jail staff started administering COVID-19 tests to everyone
4 in the unit, but failed to isolate people who were tested. After a few more days, Plaintiff Jones and
5 others in the unit learned that nearly everyone in the unit had tested positive for COVID-19,
6 including Plaintiff Jones. The few people who received negative test results were transferred out
7 of the unit.

8 18. Plaintiff Jones was worried and angry when he learned that he had tested positive,
9 because he thought that the outbreak could have been prevented if the Jails hadn't been
10 transferring people into the unit without confirming they were not infected with COVID-19 first.

11 19. Plaintiff Jones developed COVID-19 symptoms such as a chest cold and shortness
12 of breath, and he got very winded when going up or down stairs.

13 20. After people started to test positive for COVID-19, the medical unit was placed on
14 quarantine, but very little changed, except that staff would take people's temperature and ask
15 about their symptoms. Staff continued to transfer people who were COVID-19-negative into their
16 unit during the quarantine. Plaintiff Jones is uncertain about why the quarantine finally ended,
17 since he never received negative COVID-19 test results.

18 21. Plaintiff Gabriel Campos is a 23-year-old man who is currently incarcerated pre-
19 trial in Module 6C, cell number 145, of the George Bailey Detention Facility. He has been in
20 custody for approximately 23 months.

21 22. In December, 2020, after experiencing symptoms consistent with COVID-19,
22 including head pain and severe body aches, Plaintiff Campos was tested for COVID-19 at the
23 South Bay Detention Facility. Before learning of his test results, Defendant transferred him to the
24 fourth floor of the Central Jail, which he understood to be a quarantine unit.

25 23. On or about December 20, 2020, jail staff told Plaintiff Campos that he had tested
26 positive for COVID-19, as had his cellmate.

27 24. On or about December 24, 2020, Defendant transferred Plaintiff Campos to Module
28 8B on the eighth floor of the Central Jail, without providing another COVID-19 test.

1 25. Jail staff told Plaintiff Campos that Module 8B was a unit for people who tested
2 positive for COVID-19, but who did not have many symptoms. There were approximately sixty
3 people in the Module when Mr. Campos was transferred there.

4 26. Defendant housed Plaintiff Campos in Module 8B until approximately January 7,
5 2021. Defendant introduced new people into the Module on a near-daily basis during his time
6 there. One of the new transfers was upset when he was told that Module 8B was a quarantine unit
7 because nobody had told him that he had contracted COVID-19.

8 27. The transfers into Module 8B upset Plaintiff Campos because he did not know if
9 the quarantine period would reset each time the Sheriff's Department transferred a new person into
10 the module, and because he was afraid that, once he had recovered from COVID-19, he could
11 contract it again from other people incarcerated in the module. When he expressed his concerns to
12 deputies, they told him "COVID is fucked" and "you're all fucked."

13 28. Although jail staff continued to introduce people with confirmed COVID-19 into
14 Module 8B, Defendant transferred Plaintiff Campos to the 5th floor of the Central Jail on or about
15 January 7, 2021 after his symptoms had subsided, without offering him a new COVID-19 test or
16 confirming negative COVID-19 test results. His new cellmate told him that he had never had
17 COVID-19, and had not been tested for the virus.

18 29. While incarcerated at the Central Jail, Defendant confined Plaintiff Campos to his
19 cell for prolonged periods, including one stretch of time lasting approximately ten days. During
20 that time, jail staff did not permit him to shower, which forced him to shower in his cell using the
21 sink. Jail staff permitted him to leave his cell only approximately every other day for brief periods
22 of time, including periods he believes were as short as 15 minutes.

23 30. Defendant transferred Plaintiff Campos to the George Bailey Detention Facility on
24 February 13, 2021.

25 **IV. FACTUAL BACKGROUND AND EVIDENTIARY BASES**

26 **A. The COVID-19 Pandemic**

27 31. We are in the midst of the most dangerous pandemic in generations. The effects of the
28 COVID-19 pandemic have rippled through local communities across the country. COVID-19 is a

1 novel communicable virus that has proved unusually fatal. More than 29 million people have
2 contracted the virus in the United States. More than half a million of them have died, including over
3 59,000 Californians. The virus has taken over 3,500 lives in San Diego County, where more than
4 270,000 people have tested positive. These numbers are likely an underestimate, due to the lack of
5 adequate levels of testing in many parts of the United States.

6 32. The SARS-CoV-2 virus, which causes the COVID-19 coronavirus disease, is highly
7 contagious. The virus spreads through large droplets and through aerosol that can pass from person to
8 person through the air or possibly through contact with contaminated surfaces.

9 33. The best ways to prevent illness are through vaccination and by minimizing the risk
10 of exposure to the virus by avoiding close contact with other people. There is no known cure for
11 COVID-19 at this time.

12 34. Vaccination, social distancing (maximizing social distance between persons to avoid
13 spreading illness), consistent use of personal protective equipment (“PPE”), and a vigilant hygiene
14 regimen, including washing hands frequently and thoroughly with soap and water, are the only known
15 effective measures for reducing the transmission of COVID-19. Because the coronavirus spreads
16 among people who do not show symptoms, until vaccination becomes widespread, medical consensus
17 is that staying away from people is the best way to prevent contracting the virus or spreading it. In
18 other words, absent widespread vaccination, public health requires that everyone (including San Diego
19 County Jails officials) behave as if everyone has the disease.

20 35. The risks of failing to take adequate protective measures are profound. Once
21 contracted, COVID-19 can cause severe damage to lung tissue, including a permanent loss of
22 respiratory capacity, and it can damage tissues in other vital organs, such as the heart and liver.

23 36. Approximately one out of every five people who are infected with COVID-19 becomes
24 seriously ill and develops difficulty breathing. There are currently more than 4,200 people in
25 Defendant’s Jails.

26 37. People who have certain underlying health conditions, including, for example,
27 blood disorders, chronic kidney or liver disease, compromised immune system diabetes, metabolic

1 disorders, hypertension, heart and lung disease and severe obesity, are at heightened risk for
2 severe COVID-19 regardless of their age.

3 38. People of any age who have conditions including, but not limited to, asthma, cystic
4 fibrosis, hypertension, liver disease, pulmonary fibrosis, and type 1 diabetes, might be at increased
5 risk for severe illness from the virus that causes COVID-19.

6 39. But age increases the risk of serious illness and death from COVID-19. For example,
7 when compared to individuals aged 18-29, people aged 40-49 are three to thirteen times more likely
8 to require hospitalization after contracting the virus and people aged 50 and older are four to thirteen
9 times more likely to be hospitalized after contracting COVID-19.

10 40. The symptoms of COVID-19 can be severe for anyone. Many COVID-19 patients
11 experience protracted illness, with what has been described as a “diabolical grab bag of symptoms”
12 including chronic fatigue, shortness of breath, unrelenting fevers, gastrointestinal problems, loss of
13 sense of smell, hallucinations, short-term memory loss, bulging veins, bruising, gynecological
14 problems, and erratic heartbeat. A significant number of people with no known underlying medical
15 conditions who are under forty years old require hospitalization once they are infected with COVID-
16 19, and nearly 90 percent of hospitalized patients report COVID-19 symptoms after two months.

17 41. In serious cases, COVID-19 causes acute respiratory disease syndrome (“ARDS”),
18 which is life-threatening. Among those hospitalized for COVID-19, nearly one in ten progressed to
19 ARDS. Septic shock, and acute renal failure are the leading causes of death in these patients.

20 42. It is not yet clear whether or for how long previous infection with COVID-19 confers
21 protection from reinfection, and the CDC has warned against assuming that the presence of COVID-
22 19 antibodies confers such protection.

23 43. In late 2020, the U.S. Food and Drug Administration (“FDA”) provided emergency
24 authorization for two COVID-19 vaccines for general use. The FDA provided emergency
25 authorization for a third vaccine in late February, 2021. The California Department of Public Health
26 (“CDPH”) provides guidance to counties setting priorities for vaccination, though counties have
27 flexibility in setting their own vaccination schedules. While existing vaccines have proven effective
28 at preventing hospitalization or death due to COVID-19, there are serious questions about their

1 efficacy against new variants of the virus, which is ever-mutating. It also remains unclear whether the
2 vaccines provide protection that can stop people from contracting the virus and transmitting it as
3 asymptomatic carriers. Public health officials therefore continue to urge the public to adhere to the
4 preventative measures they have been advocating for many months.

5 **B. Incarceration and COVID-19**

6 44. Beyond the general public health risks the COVID-19 pandemic presents, people who
7 are incarcerated face a particularly acute threat of illness, permanent injury, and death.

8 45. While COVID-19 has spread through the community, jails, such as the San Diego
9 County Jails, have become hotbeds for COVID-19 cases.

10 46. Incarcerated people face unique vulnerability to COVID-19, by virtue of their
11 disproportionate risk factors for severe illness and death and the dangerous conditions in which they
12 are confined.

13 47. Thousands of people held in California county jails have chronic health conditions,
14 disabilities, and other factors that put them at heightened risk of suffering and death due to
15 COVID-19. People in jails have high rates of disabilities, including the disabilities that create
16 particular risk factors for COVID-19 complications and death. The Bureau of Justice Statistics
17 (“BJS”) reports that people in jail are four times as likely as the general population to have a
18 disability, and this is almost certainly an undercount. BJS also reports that people in jail are
19 disproportionately affected by many of the specific conditions that increase the risk of COVID-19
20 complications or death.

21 48. According to CDC, “Adults of any age with certain underlying medical conditions
22 are at increased risk for severe illness from the virus that causes COVID-19. Severe illness from
23 COVID-19 is defined as hospitalization, admission to the ICU, intubation or mechanical
24 ventilation, or death.” The conditions in San Diego County Jails pose a severe threat to such
25 individuals confined inside.

26 49. CDC’s Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19)
27 in Correctional and Detention Facilities (“CDC Guidelines”) emphasize “that incarcerated/detained
28

1 populations have higher prevalence of infectious and chronic diseases and are in poorer health than
2 the general population, even at younger ages.”

3 50. The prevalence of chronic medical conditions, such as liver disease, lung problems,
4 and heart conditions, is “significantly higher” in incarcerated populations relative to the general
5 population. Studies suggest a “strong link between incarceration and poor health that are statistically
6 independent of prior and current stressful life experiences.”

7 51. The poorer health of people who are incarcerated may be due in part to the conditions
8 inherent to living in correctional facilities, such as overcrowding, isolation, exposure to communicable
9 diseases, inadequate ventilation, poor nutrition, and restricted physical activity.

10 52. The crowded conditions of San Diego County Jails place everyone inside, not just
11 medically vulnerable people, at risk. People in congregate environments live, eat, and sleep in close
12 proximity to one another. This places them at increased danger of contracting COVID-19, as already
13 evidenced by the rapid spread of the virus in jails, cruise ships, and nursing homes across the country.
14 For people who are confined in crowded prisons, jails, and detention centers in particular, it is virtually
15 impossible to engage in the necessary social distancing and hygiene required to mitigate the risk of
16 transmission. Correctional facilities house and move large groups of people together in close
17 proximity. They frequently have insufficient medical care for the population even outside times of
18 crisis. Hot water, soap, and paper towels are often in limited supply. Incarcerated people, rather than
19 professional cleaners, are responsible for cleaning the facilities and often are not given appropriate
20 supplies or training.

21 53. For example, dramatic outbreaks have taken hold in the Cook County Jail in
22 Chicago and San Quentin State Prison in Northern California, the latter of which has seen more
23 than two-thirds of the prison population become infected.

24 54. Nationally, at least 1 in 5 people in prison has contracted COVID-19, and more than
25 2,400 of them have died of the disease.

26 55. Just minutes from San Diego County’s largest jail, Donovan State Prison has
27 experienced one of California’s deadliest outbreaks with over 700 infections and at least 15 deaths.

1 56. Correctional settings further increase the risk of contracting COVID-19 due to the high
2 numbers of people with chronic, often untreated, illnesses housed in a setting with minimal levels of
3 sanitation, limited access to personal hygiene, limited access to medical care, presence of many high-
4 contact surfaces, and no possibility of staying at the necessary distance from others.

5 57. People who are incarcerated must share cells or dorms, common areas, and bathrooms,
6 where opportunities for droplet transmission are plentiful. Jails are often poorly ventilated, “which
7 promotes the highly efficient spread of diseases through droplets.”

8 58. In Chicago, Illinois, within a week of confirming its first coronavirus-positive
9 correctional officer, Cook County Jail had 134 confirmed cases, with nine negative tests, 93
10 outstanding tests, and 12 correctional officers also testing positive.

11 59. In Green Correctional Facility in New York state, there were only two cases of
12 COVID-19 as of October 1, 2020, but the number had risen to 80 approximately three weeks later.
13 By January 9, 2021, that number had more than doubled, to 162.

14 60. These are just two of many examples around the country that demonstrate the
15 potential for the exponential progression of COVID-19 outbreaks, and the rapidity with which the
16 virus can spread and take over a facility.

17 61. The CDC also warns of “community spread” where the virus spreads easily and
18 sustainably within a community where the source of the infection is unknown. Because jail systems,
19 including San Diego County Jails, involve hundreds of staff, vendors, and incarcerated people cycling
20 in and out of the Jails to and from the community on a daily basis, outbreaks in jails threaten not only
21 the lives of people inside the jails but also the broader community.

22 62. Thus, efforts to ensure that Plaintiffs and class members are protected will also benefit
23 jail staff and the community as a whole.

24 63. Numerous public health experts have all strongly cautioned that people booked into
25 and held in jails are likely to face serious, even grave, harm due to the outbreak of COVID-19.

26 64. CDC is a federal agency that is part of the U.S. Department of Health and Human
27 Services. It serves as the national focus for developing and applying disease prevention and control,
28 environmental health, and health promotion and health education activities designed to improve the

1 health of the people of the United States. CDC is responsible for controlling the introduction and
2 spread of infectious diseases and provides consultation and assistance to other nations and
3 international agencies to assist in improving their disease prevention and control, environmental
4 health, and health promotion activities. It also provides program expertise and assistance in responding
5 to Federal, State, local, and private organizations on matters related to disease prevention and control
6 activities.

7 65. Because of the extraordinary danger that COVID-19 will spread in jails and prisons,
8 CDC issued and periodically updates specific guidance for correctional and detention facilities,
9 including local jails. The guidance highlights that incarcerated people are forced to exist “within
10 congregate environments” that “heighten[] the potential for COVID-19 to spread once introduced,”
11 especially given that “[t]here are many opportunities for COVID-19 to be introduced into a
12 correctional or detention facility,” including “daily staff ingress and egress” as well as “high turnover”
13 of “admit[ted] new entrants.”

14 **C. Intolerably High Risk of Severe Illness and Death Due to Unsafe Conditions at the**
15 **San Diego County Jails**

16 66. The San Diego County jail system is one of the largest in the state. The health and
17 wellbeing of the over 4,000 people confined inside is a concern not only for them, but for tens of
18 thousands of San Diegans anxiously awaiting the safe release of their fathers, mothers, spouses,
19 children, and friends.

20 67. The San Diego County jail system consists of seven facilities: the San Diego Central
21 Jail, Las Colinas Detention & Reentry Facility, Vista Detention Facility, George Bailey Detention
22 Facility, South Bay Detention Facility, East Mesa Reentry Facility, and Facility 8 Detention
23 Facility. Many of the problems prevalent in carceral facilities generally, *supra*, also plague San Diego
24 County Jails, including unnecessarily crowded conditions that make adequate social distancing
25 impossible, regular transfers of people among facilities without adequate protections, unsanitary living
26 and working conditions, poor ventilation, inadequate identification of people with medical
27 vulnerabilities to COVID-19, and limited access to medical care.

1 68. Defendant is aware of these conditions and the risks they create. But his response to
2 the pandemic has been inadequate to prevent the rampant spread of COVID-19 through the San Diego
3 County Jails, where detained individuals have no way to protect themselves from a virus that is easily
4 transmitted in close quarters. Defendant has deliberately chosen not to take reasonable actions to
5 address these conditions and mitigate the risks to Plaintiffs and other putative class members, leaving
6 them detained in unsafe conditions where they are at unreasonable risk of serious illness and death.

7 69. Unsurprisingly, Defendant's actions have led to a massive outbreak in the Jails,
8 resulting in many incarcerated people being hospitalized due to COVID-19. At one point, as of
9 December 28, 2020, there were 527 active cases in custody. By January 19, 2021, the Jails had 139
10 individuals in isolation as a COVID-19 precaution. By March 6, 2021, there were over 1,200
11 cumulative positive cases since the start of the pandemic. The outbreak is ongoing, with 33
12 incarcerated individuals in isolation as of March 30, 2021.

13 70. However, because Defendant does not administer COVID-19 tests to the general
14 population of the Jails on any regular basis, the numbers for some of the above categories are likely to
15 be considerably higher than Defendant has reported.

16 71. Recent history illustrates that the ongoing outbreak can flare up again at any time. On
17 March 9, 2021, Defendant issued a press release stating that the outbreak had spiked once again.
18 According to the press release, 106 people incarcerated in the Jails were tested for COVID-19 after
19 potential contact with an inmate who was hospitalized after developing symptoms consistent with
20 COVID-19 on February 27. Forty-six of those individuals then tested positive for COVID-19.

21 72. The inmate who was hospitalized was booked into the San Diego Central Jail on
22 February 15. After quarantining for seven days, he was transferred to the George Bailey Detention
23 Facility. Once at George Bailey, he was transferred to different modules in the same housing unit.
24 Presumably, he was not administered COVID-19 tests, and did not receive results indicating that he
25 had not contracted the virus, before any of these transfers.

26 73. Defendant's press release refers to measures allegedly taken in response to the
27 pandemic, but says nothing about limiting transfers or creating conditions that would allow for social
28 distancing.

1 74. Edel Corrales Loredo is the first person Defendant has acknowledged as having died
2 after contracting COVID-19 while incarcerated in the San Diego County Jails, under Defendant’s care.
3 He died on November 22, 2020, after contracting the virus at the George Bailey Detention Facility
4 and complaining of shortness of breath and fever earlier that month. Yet, it was not until February 26,
5 2021, *more than three months later*, that Defendant publicly acknowledged his death or its cause.

6 75. This is consistent with a recent Sheriff Department policy or practice of failing to
7 announce jail deaths until investigations are completed, which can take months or longer. One result
8 of this policy or practice is that the public may not learn of the tragic consequences of Defendant’s
9 actions or inactions in time to advocate for better and life-saving policies and practices when they are
10 most needed. Because Defendant has been slow to improve his policies without public pressure, the
11 intentional delay in acknowledging COVID related deaths has allowed dangerous policies to continue
12 for longer than they might have otherwise.

13 76. According to reports, Defendant’s failure to report Mr. Corrales Loredo’s death to the
14 state’s jail oversight board lasted more than a month after the county’s public health department had
15 apparently counted it among the county’s COVID-19 death toll.

16 77. Mr. Corrales Loredo was living with asthma, diabetes mellitus, and hypertension when
17 he contracted COVID-19. The Sheriff Department’s press release about Mr. Corrales Loredo’s death
18 referenced the Medical Examiner’s determination that the cause of death “was determined to be
19 natural.” However, the press release did not address any of the far from natural conditions in the Jails
20 that imperiled a medically vulnerable detainee, placing him at heightened risk for contracting the novel
21 coronavirus at the height of the pandemic.

22 78. Similarly, Defendant has denied responsibility for the death of Mark Armendo, whose
23 family alleges that he died after contracting COVID-19 at the Vista jail in June, 2020. According to
24 the *San Diego Union Tribune*, Defendant does not count Mr. Armendo among the county’s in-custody
25 deaths because he was technically released from custody while hospitalized, even though he never left
26 the hospital after being taken there from the Vista jail.

27 79. Five hundred and fifty-six Jail employees have also tested positive for the virus as of
28 March 29, 2021, and at least one employee has died due to COVID-19.

1 80. Even before the onset of the pandemic, Defendant proved incapable of safeguarding
2 the lives of people incarcerated in facilities under his control. More than 150 people have died in
3 Sheriff Department’s custody since 2009, and San Diego County Jails have the highest overall jail
4 mortality rate of any of California’s largest county jail systems, while also leading the state in inmate
5 suicide rates.

6 81. Defendant’s decisions have placed people incarcerated in the San Diego County Jails
7 at risk since the outset of the pandemic, when Defendant continued to incarcerate people for low level
8 quality of life offenses. Even after the County imposed a sweeping social-distancing order to combat
9 the virus, one in four jail bookings were for public intoxication and other misdemeanors.

10 82. Eventually, the population of the Jails as a whole was reduced early in the pandemic,
11 from just over 5,200 in March, 2020 to closer to 3,500 later that summer. However, Defendant has
12 permitted the population to swell again in recent months, once again surpassing 4,000 in February,
13 2021. This increase and the crowding that necessarily followed contributed to the current outbreak and
14 exacerbated its spread. Defendants’ failure to decrease the population after the outbreak began has
15 caused it to persist far longer than it might have otherwise.

16 83. More important than the overall number of people currently incarcerated in the Jails as
17 a whole is the capacity of individual facilities. The California Board of State and Community
18 Corrections (“BSCC”) provides rated capacity figures for each of the jail facilities. By fall 2020, when
19 the current outbreak began, four of the seven facilities were operating at higher than 85% BSCC
20 capacity. As of March 8, 2021, nearly four months *after* the outbreak began, several facilities were
21 *still* filled nearly to capacity. For example: San Diego Central Jail was at nearly 95% capacity; Vista
22 Detention Facility was at more than 80% capacity; and the George Bailey Detention Facility and the
23 South Bay Detention Facility were both at *more than 99% capacity*. George Bailey has a BSCC rated
24 capacity of 1380, and was filled with 1369 incarcerated individuals on March 9, while South Bay,
25 which has a BSCC rated capacity of 386, was filled with 384 incarcerated individuals on the same
26 day. At these population levels, detained individuals, who have no ability to self-isolate, are incapable
27 of maintaining anything approaching safe social distance.

1 84. Rather than maintain population levels that would allow people who are incarcerated
2 in the Jails to protect themselves, Defendant attempted to address COVID-19 risk by imposing
3 draconian “lockdowns” for significant portions of the pandemic, allowing many individuals out of
4 their cells for 30 or 50 minutes a day, at most.

5 85. There have been periods of time when lockdowns have confined putative class
6 members to their cells or dormitories for days on end, preventing them from making legal calls, and
7 forcing them to choose between spending the few minutes they get outside of their cells or dormitories
8 showering for the first time in days or making phone calls to family members or lawyers. These
9 extended lockdowns, when individuals are not permitted to leave their cells at all, lasted for three days
10 or longer.

11 86. The suffering entailed in imposing these lockdowns cannot be justified as meaningful
12 COVID-19 safety precautions because they occur in environments that Defendant’s policies rendered
13 fundamentally unsafe in other regards.

14 87. Moreover, people in the San Diego County Jails are regularly housed in dormitory style
15 barracks or in multiple-person cells with bunk beds stacked three high, with nearly every bunk
16 occupied, where they are forced to sleep within arm’s reach of other people. Units that are designed
17 to hold no more than 50 people are regularly filled with at least 35 people, sleeping within arms-length
18 of each other, forced to share each other’s air.

19 88. People in multi-person cells sleep in similarly close proximity, and with even less air
20 circulating among them. Even persons who are detained in single or double-bunked cells often remain
21 constantly in close proximity and air space with others in their modules.

22 89. Staggeringly, there were at least eight reported deaths of people in Defendant’s custody
23 in the two months between early October 2020, when the first signs of the current outbreak began, and
24 early December 2020, far outpacing any other comparable period. Even if some of the deaths were not
25 directly caused by a COVID-19 infection, the timing of the spate of deaths corresponding to the
26 outbreak suggests that the conditions Defendant has imposed upon incarcerated people during the
27 pandemic have placed their lives at unnecessary risk.

1 90. For example, transfers between the facilities under Defendant’s control creates
2 conditions that exacerbate the risk to people incarcerated in those facilities, as well as to staff and the
3 broader community. The San Diego County Jails consist of seven separate facilities operating
4 “collectively as one system.” There is constant movement of staff and incarcerated people among each
5 of the seven facilities, widening the circles of potential outbreak and exposure. As Defendant
6 acknowledges, incarcerated individuals “may be moved fluidly within the system as their individual
7 housing needs dictate.”

8 91. Defendant conducts these transfers on a daily basis, despite CDC guidelines strongly
9 discouraging the practice and recommending that jails “[s]uspend all transfers of incarcerated/detained
10 persons to and from other jurisdictions and facilities,” unless necessary for medical reasons or to
11 prevent overcrowding. When Defendant transfers people in his custody from one facility to another,
12 he does not isolate, quarantine, or even test them prior to the transfer, greatly increasing the risk that
13 asymptomatic carriers bring the virus with them into the new facilities.

14 92. Defendant’s indifferent and unreasonable refusal to suspend transfers or take even the
15 most basic steps to limit their risks caused the current outbreak to spread more quickly throughout the
16 Jails, placing lives at risk unnecessarily.

17 93. Housing units in the Jails generally lack adequate ventilation, a factor that facilitates
18 the likelihood of airborne transmission of COVID-19. Because poor ventilation and airflow in
19 confined spaces make it more likely that the virus will linger in the air for prolonged periods, increased
20 social distancing beyond six feet may be necessary.

21 94. Some cells have open bars and many open directly into communal day rooms where
22 incarcerated people congregate in groups, often in numbers too large for social distancing. For those
23 who would otherwise wish to avoid the crowds, staying in their cells that are open and adjacent to the
24 day room provides insufficient protection. In the common areas, incarcerated people have to line up
25 to share phones, and also share communal shower spaces. Many must also share communal toilets.

26 95. There is increasing evidence that COVID-19 spreads through fecal matter. This makes
27 shared bathrooms—like the communal toilets in the Jails—a likely source of transmission, because

1 flushing a toilet sends a plume of droplets into the air that could be ingested by nearby individuals or
2 land on surfaces.

3 96. Defendant requires incarcerated people to perform much of the work of laundry,
4 cleaning, and food distribution across various jail facilities. Incarcerated workers often move between
5 facilities and housing units.

6 97. Many of these individuals, who travel between facilities and housing units for their
7 jobs, have tested positive for COVID-19. Others have been tested because they are suspected close
8 contacts of people who have tested positive for COVID-19, but are still required to work before their
9 test results have returned. Still others are permitted to travel to and from jail facilities on a daily basis
10 for work without being tested at all, even if they work in units holding people confirmed positive with
11 COVID-19.

12 98. Incarcerated individuals in the Jails are provided with only cloth masks, which are
13 replaced or laundered only weekly or monthly.

14 99. Incarcerated individuals are sometimes transported between facilities in buses
15 containing as many as 10 to 15 people, forcing people to ride mere inches from one another, sometimes
16 shackled to one another.

17 100. Defendant has failed to ensure that incarcerated individuals receive a negative COVID-
18 19 test before being placed on buses, transferred between jail facilities, transported to and from offsite
19 hospital visits, or introduced into the general population of the Jails.

20 101. Facility 8 is being used as a COVID-19 quarantine facility. Individuals are transferred
21 to Facility 8 to isolate them when they have contracted or been exposed to COVID-19.

22 102. Incarcerated workers in other facilities in the Jail system are bused and/or transported
23 to and from Facility 8 on a daily basis to clean and perform other duties in close proximity to people
24 detained in Facility 8. Defendant has not provided adequate training to these workers regarding how
25 to protect themselves from COVID-19. Defendant does not test or isolate these workers prior to
26 introducing them back into their own housing facilities.

27 103. Defendant has ostensibly adopted a policy requiring inmates incarcerated at Facility 8
28 to receive two negative tests before returning to other jail facilities. However, if such a policy exists,

1 Defendant's staff regularly violate it, and people are transferred back from Facility 8 without having
2 received a second, or even a first, negative test.

3 104. Incarcerated individuals at the Jails have remained in their housing units without being
4 isolated or quarantined, even after complaining about symptoms consistent with COVID-19. At times,
5 incarcerated workers have even continued to serve meals to other inmates after complaining of
6 symptoms consistent with COVID-19 and being tested for the virus, before test results have been
7 returned.

8 105. Jails staff regularly ignore or fail to respond to medical requests, including requests
9 concerning COVID-19.

10 106. Staff at the Jails do not administer COVID-19 tests after incarcerated individuals are
11 transferred between facilities or to and from offsite medical appointments, and do not administer mass
12 testing to the incarcerated population.

13 107. When Jails staff decide to administer COVID-19 tests, they may require the tested
14 individuals to remain in their housing units with other presumably COVID-19-negative inmates, until
15 test results come back. This is true even when individuals complain of symptoms consistent with
16 COVID-19, including loss of taste or smell.

17 108. And yet, despite all of the above, Defendant has disavowed responsibility for the threat
18 that the virus poses to people that our community has entrusted to his care. While he has acknowledged
19 that he is "well aware of the authority under Government Code [Section] 8658 to release inmates in
20 cases where it is necessary to do so to avoid imminent danger," he has expressly declined to do so.

21 **D. The Urgent Need to Reduce the Number of People Incarcerated in San Diego**
22 **County Jails**

23 109. While Defendant has adopted some policies in response to COVID-19, he has refused
24 to take critical and reasonable measures he is aware can prevent outbreaks and transmission of the
25 virus at the Jails and the likely severe illnesses and deaths that have accompanied, and continue to
26 accompany, outbreaks in congregate living facilities. A successful and adequate response to this
27 pandemic cannot be accomplished with half-measures that undermine any positive changes. One step
28 forward cannot be credited as anything more than cosmetic when it is accompanied by two steps

1 backward. Defendant has, thus, willfully and wantonly ignored the public health threat caused by this
2 global pandemic.

3 110. Courts, public health experts, and corrections professionals agree that vaccination and
4 significantly downsizing jail populations are the most important tools to combat the spread of COVID-
5 19 among residents, staff, and the greater community.

6 111. Dr. Marc Stern, the former Assistant Secretary of Health Care for the Washington State
7 Department of Corrections puts it plainly: “Downsizing jail populations serves two critical public
8 health aims: (1) targeting residents who are at elevated risk of suffering from severe symptoms of
9 COVID-19 and (2) allowing those who remain incarcerated to better maintain social distancing and
10 avoid other risks associated with forced communal living.”

11 112. After reviewing the specific conditions in numerous jails and prisons, Dr. Stern was
12 “firmly convinced that downsizing the inmate population as much as possible will reduce the risk of
13 contraction and transmission of COVID-19—and the attendant risks of serious harm and death.” In
14 Dr. Stern’s expert opinion, downsizing jail populations will “help to ‘flatten the curve’ overall—both
15 within the jail setting and without.” That is because, given the churn of people—residents, staff,
16 visitors—through jail facilities, the outbreak of COVID-19 in jails is impossible to confine to the jail
17 facilities.

18 113. Dr. Jaimie Meyer, Assistant Professor of Medicine at Yale School of Medicine and
19 former Infectious Disease physician for York Correctional Institution in Connecticut, also reviewed
20 the spread of COVID-19 in many facilities and came to the same conclusion: “Reducing the size of
21 the population in jails and prisons is crucially important to reducing the level of risk both for those
22 within those facilities and for the community at large.” Dr. Meyer emphasized the risks that inmates
23 like Plaintiffs and proposed class members would contract COVID-19, and the risk that they would
24 suffer serious illness and death from the infection. Because of the “significantly higher risk” to
25 inmates, Dr. Meyer writes that, “from a public health perspective,” she is “strongly of the opinion that
26 individuals who are already in those facilities should be evaluated for release.”

27 114. The New England Journal of Medicine published, “Flattening the Curve for
28 Incarcerated Populations—Covid-19 in Jails and Prisons,” which advocates for “releasing as many

1 people as possible, focusing on those who are least likely to commit additional crimes, but also on the
2 elderly and infirm[.]” Decarceration “will help to flatten the curve of Covid-19 cases among
3 incarcerated populations and limit the impact of transmission both inside correctional facilities and in
4 the community after incarcerated people are released. Such measures will also reduce the burden on
5 the correctional system in terms of stabilizing and transferring critically ill patients, as well as the
6 burden on the community health care system to which such patients will be sent.” “To promote public
7 health, we believe that efforts to decarcerate, which are already under way in some jurisdictions, need
8 to be scaled up; and associated reductions of incarcerated populations should be sustained. The
9 interrelation of correctional-system health and public health is a reality not only in the United States
10 but around the world.”

11 115. Recognizing the dangers of incarceration during the pandemic, jails and prisons all over
12 the country and world are releasing or have released people with the aim of preventing massive
13 outbreaks of severe illness and death from COVID-19. The following U.S. states and counties have
14 made or are making efforts to reduce their jail and prison populations: Jefferson County Jail in
15 Kentucky, Mobile County Metro Jail and three other counties in Alabama, Spokane, Washington,
16 Mercer County, Ohio, Jefferson County, Texas, Hillsborough County, Texas, Mecklenburg County,
17 North Carolina, Cook County Jail in Illinois, Sacramento, California, Alameda County, California,
18 New York City, Allegheny County, Pennsylvania, Lexington County, South Carolina, Jefferson
19 County, Colorado, New Jersey, Iowa, North Dakota, Rhode Island, Colorado, California, and
20 Washington County, Oregon.

21 116. For similar reasons, the United States Department of Justice has expedited transfer of
22 Federal prisoners to home detention because “‘emergency conditions’ created by the coronavirus have
23 affected the ability of the [Bureau of Prisons] to function.”

24 117. By declining to implement appropriate measures, Defendant is not only putting
25 Plaintiffs and class members at risk, along with Jails employees and contractors. He is also
26 jeopardizing the health and lives of the communities surrounding the Jails.

27 118. There are a number of reasonable actions Defendant can take to provide for the safety
28 of individuals whose incarceration he oversees, while providing for the public safety. Most

1 importantly, Defendant is vested with the statutory authority or mandatory duty to remove incarcerated
2 individuals to “a safe and convenient place” or to “release them” in emergencies that endanger their
3 lives. Cal. Gov’t Code Section 8658. Defendant has refused to exercise this authority to protect people
4 incarcerated in San Diego Jails.

5 119. Across the world, country, and state of California, extraordinary and unprecedented
6 measures affecting every aspect of life are being taken in the name of protecting people from this
7 pandemic. Those measures should not stop at the jailhouse door. Indeed, because Plaintiffs’ and class
8 members’ incarceration strips from them the ability to protect themselves, it is Defendant’s duty to
9 protect them and those similarly situated, including the likely high number of medically vulnerable
10 people currently in custody. Because of the particular threats to Plaintiffs’ and class members’ health
11 are caused by the conditions Defendant knows increase this risk, he must provide the adequate care
12 recommended by health experts, including their release, if necessary. Defendant cannot continue to
13 leave people in the Jails under these conditions to excessive risk of suffering and death.

14 **E. The Urgent Need for Vaccinations**

15 120. Significant reduction in the San Diego Jail population is necessary and must be
16 maintained until a sufficient number of people incarcerated in San Diego Jails have been offered and
17 received vaccinations for COVID-19. Vaccinations are the single best hope for building herd
18 immunity, slowing the spread, and lessening the severity of the COVID-19 virus. There is no
19 reasonable dispute about the importance of vaccines and the urgent need for prompt vaccination.

20 121. Until recently, Defendant had failed to offer a COVID-19 vaccination to the vast
21 majority of people incarcerated in the Jails, and his most recently reported data indicate that he has
22 offered the vaccine to fewer than 1,400 incarcerated people, or less than 1/3 of the current incarcerated
23 population.

24 122. Nor has Defendant provided any clear timeline for when enough incarcerated
25 individuals will have been offered the vaccine to make herd immunity possible. As late as March 31,
26 2021, Defendant’s website still linked to a vaccination plan that references an outdated CDPH phase
27 and tier system. The document states that people incarcerated in the San Diego county Jails “will
28 qualify to receive the vaccine when Phase 1B (Tier Two) is approved.” At the time, however, there

1 was no Phase 1B (Tier Two) in the then-current CDPH plan. Defendant’s reliance on a defunct public
2 health plan betrays a lack of urgency consistent with his overall response to the pandemic.

3 123. Defendant, has, however, recognized the threat that COVID-19 poses to people who
4 work in the facilities under his control. Nurses and other healthcare workers in the Jails were offered
5 vaccines, and trained to administer them, in early January, 2021. Defendant explained that “it was
6 important to protect our staff, who come back and forth into our jail facilities every day, to get them
7 vaccinated.”

8 124. San Diego County has also recognized this threat, as has the Federal judiciary. On
9 February 22, 2021, Chief Judge Dana Sabraw of the Southern District of California wrote a letter,
10 addressed to “Vaccine Centers,” advocating for vaccinations to be offered to lawyers funded under the
11 Criminal Justice Act, and arguing, among other things, that criminal defense lawyers are in danger for
12 being exposed to the virus because they have to go into the Jails, and should therefore be considered
13 “front line workers.” Judge Sabraw wrote a similar letter on behalf of prosecutors in the U.S.
14 Attorney’s office.

15 125. Shortly after Judge Sabraw sent these letters, county health officials determined that
16 more than 2,000 county employees, including 1,200 court workers, 968 employees of the District
17 Attorney’s Office and approximately 400 employees of the Office of the Public Defender, are eligible
18 to get the vaccine. Meanwhile, other officials throughout the state and region have recognized the
19 urgency of vaccinating people who are incarcerated.

20 126. The Contra Costa County Health Services Department COVID-19 Committee has
21 supported expanding vaccinations to “[d]etention inmates and staff working inside county detention
22 facilities who are unable [to] mitigate their risk of exposure.”

23 127. The Shasta County jail received vaccine doses for incarcerated individuals in January,
24 and started administering them in mid-February, 2021, recognizing that vaccination “is going to
25 significantly help our mitigation strategy at the facility.”

26 128. The California Department of Corrections and Rehabilitation (“CDCR”) has
27 vaccinated approximately forty percent of the imprisoned people in its custody, in addition to tens of
28

1 thousands of staff, and almost 70% of the people incarcerated under CDCR authority who have been
2 offered a COVID-19 vaccine have accepted it.

3 129. In San Diego County itself, people in federal custody at the Otay Mesa Detention
4 Center have started to be vaccinated, reportedly from doses obtained from San Diego County health
5 officials.

6 130. According to the *San Diego Union-Tribune*, in order to ensure that no vaccine is
7 wasted, Cal Fire San Diego partnered with the county to provide vaccines, and coordinated with
8 vaccination centers to notify law enforcement agencies throughout the county that officers could be
9 vaccinated through a so-called “zero-waste plan.” Hundreds of police officers took advantage of this
10 plan to receive vaccinations before they were officially eligible, starting in mid-January, 2021.

11 131. On information and belief, none of the people incarcerated in San Diego County Jails
12 were offered early vaccinations under the “zero-waste plan.”

13 132. Courts in other jurisdictions have ordered vaccination or release to preempt harm from
14 COVID-19 to people who are incarcerated. *See, e.g., Maney v. Brown*, No. 6:20-CV-00570-SB, 2021
15 WL 354384, at *17 (D. Or. Feb. 2, 2021) (ordering the Governor of the State of Oregon and officials
16 at the Oregon Department of Corrections (“ODOC”) to offer a COVID-19 vaccine to all adults in
17 custody housed in ODOC facilities); *People ex rel. Stoughton on behalf of Little et al. v. Brann*, Index
18 No. 260154/2020 (Sup. Ct., Bronx Cty. Mar. 25, 2020) (releasing 106 individuals held at Rikers Island
19 jail on parole violations who are particularly vulnerable to illness or death if infected by COVID-19);
20 *In re Request to Commute or Suspend County Jail Sentences*, Docket No. 084230 (N.J. Mar. 22, 2020)
21 (ordering, based on the dangers posed by COVID-19, release of any inmate in New Jersey serving a
22 county jail sentence as a condition of probation or as a result of a municipal court conviction). In
23 addition, many courts have ordered release of people from immigration detention, including here in
24 San Diego County.

25 133. Defendant must prioritize the safety of all incarcerated persons, including but not
26 limited to those with medical vulnerabilities and disabilities.

27 134. To prevent further infections and unnecessary suffering or fatalities, Defendant must
28 align the San Diego County Jails operations with public health principles by releasing or transferring

1 to alternative custody a sufficient number of individuals to ensure that everyone incarcerated in the
2 Jails is able to maintain safe social distance at all times and is otherwise capable of taking all necessary
3 precautions to protect themselves from the novel coronavirus. These reduced populations must be
4 maintained until Defendant offers the vaccine to all incarcerated individuals and fully vaccinates a
5 sufficient percentage of incarcerated individuals to ensure the safety of everyone in the Jails. For those
6 who do not accept the vaccine, Defendant must provide appropriate educational materials and access
7 to vaccination information from trusted sources. If the percentage of incarcerated individuals who
8 have been vaccinated is insufficient to protect the incarcerated population at the Jails, Defendant must
9 maintain reduced population levels that allow safe social distancing.

10 135. This Petition/Complaint follows a state-wide mandamus action addressing COVID-19
11 conditions in jails and juvenile facilities, filed in the California Supreme Court by organization
12 plaintiffs. The California Supreme Court declined to exercise jurisdiction on a statewide basis but did
13 so “without prejudice to the institution of actions raising similar claims . . . in the superior courts of
14 appropriate counties.” Despite the jurisdictional issues, the Court acknowledged that the substantive
15 issues raised call for “prompt attention,” and directed lower courts to “give the matter expedited
16 consideration.” That was almost a year ago, before the San Diego County Jails began to experience
17 the current and ongoing COVID-19 outbreak.

18 136. California Penal Code Section 1473 and Article I, Section 11 of the California
19 Constitution permit a person unlawfully imprisoned or restrained of his or her liberty, under any
20 pretense, to prosecute a writ of habeas corpus. This includes the ability to vindicate rights to which
21 a prisoner is entitled while in confinement.

22 137. Plaintiffs and current class members are imprisoned and restrained of their liberty
23 in the San Diego County Jails. Plaintiffs have not filed prior petitions for state habeas corpus
24 related to the allegations in this action.

25 138. Through the acts and omissions alleged herein, Defendant has subjected Plaintiffs and
26 current class members to unlawful confinement in violation of rights guaranteed to Petitioner and all
27 class members, including under Article I, sections 7 and 17 of the California Constitution, and
28 Government Code Sections 8658 and 11135, including as further set forth below.

1 139. Defendant has a statutory duty to “keep the jail and the prisoners in it.” Cal. Gov’t
2 Code § 26605. He must exercise that duty in a manner that does not derogate the constitutional
3 rights of others. Failure to exercise his duties in a constitutional manner is an abuse of discretion.

4 140. Without widespread vaccination of incarcerated people in the San Diego County
5 Jails, the Jails have neither the capacity nor ability to employ adequate COVID-19 prevention at
6 current population levels and cannot provide for the safety of the Classes and Subclasses.

7 141. Defendant’s actions and inactions result in the confinement of the Classes and
8 Subclasses in crowded facilities where Plaintiffs and class members cannot maintain social distancing
9 and endure deplorable conditions, while Defendant refuses to take reasonable measures to prevent
10 COVID-19 outbreaks, in violation of Plaintiffs’ and class members’ rights to adequate medical care
11 under the Constitution of the State of California.

12 142. By operating the Jails without taking reasonable, known measures to prevent a COVID-
13 19 outbreak, Defendant, as a direct participant, and the ultimate policy maker for the Jails, has violated
14 the rights of the Classes and Subclass members under the Constitution of the State of California.

15 143. Plaintiffs are entitled to a writ of mandate requiring Defendant to conform his conduct
16 to the requirements of the California Constitution and other applicable state law.

17 144. Defendant further has a statutory duty to exercise his authority to remove “if
18 possible,” or release detainees when an emergency that endangers their lives is imminent or
19 occurring. Cal. Gov’t Code § 8658. Defendant’s failure to release or transfer medically
20 vulnerable and disabled individuals out of the Jails is an abrogation of that duty in light of the
21 significant threat posed by the extensive outbreak of COVID-19 in the Jail.

22 145. Plaintiffs are entitled to a writ of mandate requiring Defendant to conform his
23 conduct to the requirements of California Government Code Section 8658.

24 146. There is an actual controversy between Plaintiffs and Defendant concerning their
25 respective rights and duties, in that Plaintiffs contend that the acts of Defendant, as described
26 herein, are in violation of state law, and Defendant contends in all aspects to the contrary.

27
28

1 conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease,
2 congestive heart failure and coronary artery disease; (c) chronic liver or kidney disease (including
3 hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension;
4 (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow
5 transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including
6 sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental
7 disability; (l) obesity; and/or (m) a current or recent (last two weeks) pregnancy.

8 155. The Pre-Trial Medically Vulnerable SubClass is defined as all members of the Pre-
9 Trial Class who are over the age of 55, and/or who experience (a) lung disease, including asthma,
10 chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions
11 associated with impaired lung function; (b) heart disease, such as congenital heart disease,
12 congestive heart failure and coronary artery disease; (c) chronic liver or kidney disease (including
13 hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f)
14 hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or
15 bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood
16 disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k)
17 a developmental disability; (l) obesity; and/or (m) a current or recent (last two weeks) pregnancy.

18 156. The third class is a class of all current and future individuals incarcerated in the San
19 Diego County Jails who are vulnerable to illness, injury, or death due to COVID-19 because of a
20 disability as defined under California disability rights laws (“Disability Class”). The Disability
21 Class includes all members of the Pre-Trial and Post-Conviction Medically Vulnerable SubClasses
22 except those who are vulnerable solely by reason of age or current or recent pregnancy. People
23 with all other conditions listed in the preceding paragraph are people with disabilities and
24 members of the Disability Class. Plaintiff Jones seeks to represent the Disability Class.

25 157. The proposed classes are sufficiently numerous. Everyone incarcerated in the San
26 Diego County Jails post-conviction, or who will be incarcerated post-conviction during the COVID-
27 19 pandemic, is a proposed Post-Conviction Class member. There are at least hundreds of such
28 individuals, and countless others will enter the Jails, and therefore the class, in the future.

1 158. Everyone incarcerated in the Jails pre-trial, or who will be incarcerated pre-trial during
2 the COVID-19 pandemic, is a proposed Pre-Trial Class member. There are at least hundreds of such
3 individuals, and countless others will enter the Jails, and therefore the class, in the future.

4 159. Everyone incarcerated in the Jails, or who will be incarcerated in the Jails during the
5 COVID-19 pandemic, who has one of the listed conditions or is over 55 is a proposed member of
6 either the Post-Conviction Medically Vulnerable SubClass or the Pre-Trial Medically Vulnerable
7 SubClass. On information and belief, there are at least several dozen members of each of these
8 subclasses among the thousands held in the custody of the San Diego county Jails, and countless others
9 will enter the Jails, and therefore the class, in the future. Most Pre-Trial and Post-Conviction Medically
10 Vulnerable SubClass members are also expected to be members of the Disability Class.

11 160. Proceeding as a class is superior to proceeding individually because (1) the classes and
12 subclasses are numerous; (2) the classes and subclasses include future members, and (3) the current
13 class and subclass members are incarcerated, rendering their ability to institute individual lawsuits
14 limited.

15 161. In addition, common questions of law and fact exist as to all members of the proposed
16 classes: all are at unreasonable risk of serious harm from contracting COVID-19 due to the conditions
17 in the Jails and Defendant's failure to take reasonable measures to assure their safety from the disease,
18 and all have a right to receive adequate COVID-19 prevention and/or treatment in the form of release,
19 vaccination, and/or other protective measures.

20 162. Questions of fact common to all proposed class members include whether the
21 conditions in the Jails expose them to heightened risk of contracting COVID-19, and heightened risk
22 of serious illness, injury, or death.

23 163. Questions of law and fact common to all proposed Post-Conviction Class and SubClass
24 members include whether the jail's policies and practices violate their rights to be free from cruel and
25 unusual punishment.

26 164. Questions of law and fact common to all proposed Pre-Trial Class and Subclass
27 members include whether the jail's policies and practices violate their due process rights.

1 165. Questions of law and fact common to all proposed Disability Class members include
2 whether the jail's policies and practices discriminate against people with disabilities in violation of
3 California disability rights laws.

4 166. Questions of law common to all proposed class and subclass members include whether
5 relief in the form of release and/or vaccination is necessary to mitigate the risk posed by their
6 confinement in the Jails and whether Defendant's policies violate their right to reasonable safety while
7 in his custody.

8 167. Plaintiffs have claims that are typical of the class and the subclass members' claims.
9 Defendant has placed them at significant risk of harm by failing to take appropriate steps to remove
10 them from the serious threat of COVID-19 in the Jails.

11 168. Plaintiffs also have the requisite personal interest in the outcome of this action and will
12 fairly and adequately protect the interests of the classes they seek to represent. They have no interests
13 adverse to the interests of the proposed classes and subclasses they seek to represent, and they seek no
14 relief on behalf of themselves different than what they seek for the classes and subclasses. Plaintiffs
15 retained pro bono counsel with experience and success in the prosecution of civil rights litigation.
16 Counsel for Plaintiffs know of no conflicts among proposed class members or between counsel and
17 proposed class members.

18 **VI. CLAIMS FOR RELIEF**

19 **I. FIRST CAUSE OF ACTION**

20 **Violation of Cal. Const. Art. I, § 7**

21 **(Due Process)**

22 ***Plaintiffs, Pre-Trial Class and Pre-Trial Medically Vulnerable Subclass***

23 169. Plaintiffs and class members incorporate by reference each of the preceding
24 paragraphs and allegations as if fully set forth herein.

25 170. Under Article I, Section 7 of the California Constitution, Defendant is required to
26 provide for the reasonable health and safety of persons in pre-trial custody. As part of the right, the
27 government must provide people held pre-trial with reasonable safety and address serious medical
28 needs that arise in jail, under the same objective deliberate indifference standard that applies to

1 failure-to-protect claims brought by people held pre-trial. Regardless of the subjective intent of
2 Defendant, his objective deliberate indifference to the serious risk that COVID-19 poses to
3 members of the Pre-Trial Class and Pre-Trial Medically Vulnerable SubClass violates this right.

4 171. Specifically, Defendant has been presented with materials, including but not
5 necessarily limited to the December 21, 2020 letter from attorney Bardis Vakili, making him
6 aware that his actions described herein, individually and together, significantly increase the risk of
7 serious harm for people in his custody, yet he has deliberately refused to take reasonable measures
8 to abate that risk such as releasing sufficient number of people to allow social distancing, until
9 such time that he can provide the vaccine to everyone in custody who wants one.

10 172. Without widespread vaccination of incarcerated people in the San Diego County Jails,
11 the Jails have neither the capacity nor ability to employ adequate COVID-19 prevention at current
12 population levels and cannot provide for the safety of the Pre-Trial Class or the Pre-Trial Medically
13 Vulnerable Subclass.

14 173. Defendant's actions and inactions result in the confinement of the Pre-Trial Class,
15 including the Pre-Trial Medically Vulnerable Subclass, in crowded facilities where said class
16 members cannot maintain social distancing and endure deplorable conditions, while Defendant
17 refuses to take reasonable measures to prevent COVID-19 outbreaks, in violation of Plaintiffs'
18 constitutional rights to adequate medical care.

19 174. Defendant has taken insufficient steps to comply with public health guidelines to
20 manage the outbreak of COVID-19 that is currently facing the San Diego County Jails, and must
21 take further protective steps, including releasing members of the Pre-Trial class, including the Pre-
22 Trial Medically Vulnerable Subclass, or rehousing them in safe institutions. Defendant's actions
23 and inactions result in the confinement of members of the Pre-Trial Class, including the Pre-Trial
24 Medically Vulnerable Subclass, in facilities at population levels where Defendant is incapable of
25 preventing or managing COVID-19 outbreaks without widespread vaccination. This violates Pre-
26 Trial Class and the Pre-Trial Medically Vulnerable Subclass members' rights to treatment and
27 adequate medical care.

1 175. By operating the Jails without taking reasonable, known measures to prevent a COVID-
2 19 outbreak, Defendant, as a direct participant, and the ultimate policy maker for the Jails, has violated
3 the rights of Pre-Trial Class members, including the Pre-Trial Medically Vulnerable Subclass, under
4 Article I, Section 7 of the California Constitution

5 176. Additionally, under Article I, Section 7 of the California Constitution, persons in
6 pre-trial custody have greater due process protections than those convicted and therefore cannot be
7 punished as part of their detention. Punishment is established if the jailer's conduct is either not
8 rationally related to a legitimate, nonpunitive, government purpose or excessive in relation to that
9 purpose.

10 177. Even assuming the San Diego County Jails' spacing and provision of medical
11 services inside the facilities normally serves the legitimate, nonpunitive purpose of maintaining
12 the health and safety of detained persons, Defendant has failed to comply with public health
13 guidelines to manage the outbreak of COVID-19. Therefore, continuing to detain Pre-Trial Class
14 members, including the Pre-Trial Medically Vulnerable Subclass, who are exposed to a heightened
15 threat of COVID-19 because of its spread through the Jails is not rationally related to, and
16 excessive in relation to, that purpose.

17 178. Accordingly, the members of the Pre-Trial Class, including the Pre-Trial Medically
18 Vulnerable Subclass, are confined in violation of Article I, Section 7 of the California
19 Constitution.

20 179. The Pre-Trial Class and the Pre-Trial Medically Vulnerable Subclass will suffer
21 irreparable harm absent the relief requested, and they are entitled to immediate injunctive relief
22 and release.

23 **II. SECOND CAUSE OF ACTION**

24 **Violation of Cal. Const. Art. I, § 17**

25 **(Cruel and Unusual Punishment)**

26 ***Plaintiff Jones, Post-Conviction Class, and Post-Conviction Medically Vulnerable Subclass***

27 180. Plaintiffs and class members incorporate by reference each of the preceding
28 paragraphs and allegations as if fully set forth herein.

1 186. Plaintiffs and Class members incorporate by reference each of the preceding
2 paragraphs and allegations as if fully set forth herein.

3 187. Plaintiffs and all Class members are confined or will be confined in violation of
4 California Government Code Section 8658.

5 188. California Government Code Section 8658 provides that where an emergency is
6 endangering the lives of inmates of a county correctional institution, the person in charge of the
7 institution “shall, if possible, remove” the inmates “to a safe and convenient place and there
8 confine them as long as may be necessary to avoid the danger, or, if that is not possible, may
9 release them.”

10 189. The novel coronavirus causing COVID-19 infection is an emergency that is
11 endangering the lives of Plaintiffs and all Class members, as set forth in the preceding paragraphs,
12 which are incorporated by reference as if fully set forth herein.

13 190. Defendant has failed to exercise his mandatory authority under Government Code
14 Section 8658. Plaintiffs and Class members have neither been removed to as safe or convenient place,
15 nor released as Government Code Section 8658 requires. Accordingly, Plaintiffs and class members
16 are confined in violation of Government Code Section 8658. Plaintiffs and the class members they
17 represent will suffer irreparable harm absent the relief requested, and they are entitled to immediate
18 injunctive relief requiring Defendant to exercise his duty under Section 8658.

19 **IV. FOURTH CAUSE OF ACTION**

20 **Violation of Government Code § 11135**

21 ***Plaintiff Jones and Disability Class***

22
23 191. Plaintiffs and Class members incorporate by reference each of the preceding
24 paragraphs and allegations as if fully set forth herein.

25 192. The Disability Class is confined in violation of Government Code Section 11135
26 and/or its implementing regulations, which are actionable under Government Code Section 11139.

1 A. Order Certification of this Petition/Complaint as a Class Action and appoint named
2 Plaintiffs as representatives of the classes and subclasses they seek to represent and undersigned
3 counsel as class counsel;

4 B. Grant injunctive relief requiring Defendant to:

5 1. promptly identify all Pre-Trial Medically Vulnerable Subclass, Post-
6 Conviction Medically Vulnerable Subclass, and Disability Class Members and report
7 this information to the Court;

8 2. until or unless the percentage of incarcerated individuals who have been
9 vaccinated is sufficient to protect the incarcerated population at the Jails, reduce the
10 inmate population at each facility within the Jails – whether through release,
11 enlargement, exercise of authority pursuant to Government Code Section 8658, or any
12 other measure the Court deems suitable – to levels that will enable everyone
13 incarcerated at any and all of the Jails’ facilities to maintain social distance at all times,
14 eliminate extended harsh lockdowns as a method for reducing risks from COVID-19,
15 and otherwise take all necessary precautions to provide for their safety;

16 3. maintain such reduced population levels until Defendant has offered and
17 provided COVID-19 vaccinations to all Class or Subclass members then in custody
18 who accept vaccinations, ensured that the percentage of incarcerated individuals who
19 have been vaccinated is sufficient to protect the incarcerated population at the Jails,
20 and thereafter offer COVID-19 vaccinations to all individuals entering Defendant’s
21 custody who have not already been fully vaccinated upon admission;

22 4. provide ongoing reporting as to the future members of the Class and
23 Subclasses, and divert Class and Subclass members not charged with violent crimes
24 from incarceration at the Jails for as long as San Diego County is in the moderate,
25 substantial, or widespread COVID-19 risk tiers established by the State of California;

26 5. following immediate release of all members of the Pretrial and Post-
27 Conviction Medically Vulnerable Subclasses as necessary, provide a plan, to be
28 immediately submitted to the Court and overseen by a qualified public health expert,

1 which outlines specific mitigation efforts, in line with CDC guidelines to prevent, to
2 the degree possible, contraction of COVID-19 by all Class and Subclass Members not
3 immediately released;

4 6. offer regular COVID-19 testing to all detained persons at the Jails and to all
5 staff; and

6 7. such other relief as the Court finds just and supported by the evidence.

7 C. Enter a declaratory judgment that Defendant violated Plaintiffs' and all Class and
8 Subclass Members' state constitutional rights and other rights under state law by failing to adequately
9 safeguard their health and safety in the midst of an outbreak of a contagious, infectious disease;

10 D. Issue a Writ of Mandate requiring Defendant to exercise his authority to release a
11 sufficient number of individuals to render them and the remaining incarcerated population safe;

12 E. Issue a Writ of Habeas Corpus requiring Defendant to release a sufficient number of
13 individuals to render them and the remaining incarcerated population safe;

14 F. Award Plaintiffs attorney fees and costs under California Code of Civil Procedure
15 section 1021.5; and

16 G. Provide any further relief this Court deems appropriate.

17
18 DATED: April 2, 2021

19 Respectfully submitted,

20 By: /s/ Jonathan Markovitz
21 JONATHAN MARKOVITZ
22 Attorney for PETITIONER/PLAINTIFF
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VERIFICATION

I am an attorney admitted to practice in the State of California. I represent
Petitioners/Plaintiffs TERRY LEROY JONES and GABRIEL CAMPOS herein. I am authorized
to file this petition on their behalf. I make this verification because Petitioners/Plaintiffs are
incarcerated, and it is not safe to visit them during the pandemic under conditions addressed in this
petition and complaint.

I have read the foregoing petition and am familiar with its contents. I am informed,
believe, and allege that the contents of the foregoing petition are true.

DATED: April 2, 2021

ACLU FOUNDATION OF SAN DIEGO &
IMPERIAL COUNTIES

By: /s/ Jonathan Markovitz
JONATHAN MARKOVITZ
Attorneys for PETITIONERS/PLAINTIFFS