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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SAN DIEGO

17 TERRY LEROY JONES,  
on behalf of himself and all others similarly  
18 situated;

19 Petitioner/Plaintiff,

20 vs.

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

22 Respondent/Defendant.  
23  
24  
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CASE NO:  
**Assigned for All Purposes to Judge:**

**CLASS ACTION**

**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)

1 **I. INTRODUCTION**

2 1. Plaintiff/Petitioner Terry Leroy Jones (“Plaintiff”) brings this petition and complaint to  
3 seek urgent habeas, mandamus, and injunctive relief to protect people incarcerated in the San Diego  
4 County jails from the actions or inaction of Respondent/Defendant Sheriff William D. Gore (“Sheriff  
5 Gore” or “Defendant”). This is an issue with enormous implications for all San Diegans. As of March  
6 8, 2021, there are 4,129 people in San Diego jails with tens of thousands of friends and family members  
7 in San Diego County who are undoubtedly anxious for their loved ones’ safety, with good reason.

8 2. Sheriff Gore has denied and continues to violate the constitutional and statutory right  
9 to reasonable safety and adequate medical care for thousands of incarcerated people in the custody of  
10 the San Diego Sheriff’s Department, who are at heightened risk for contracting and dying of COVID-  
11 19 based on the conditions Defendant has created. Defendant, through his policies and practices, has  
12 jeopardized Plaintiff’s and other similarly situated people’s safety by filling the jails to the point where  
13 social distancing is impossible. He refuses to exercise his authority to immediately release people who  
14 pose minimal risk to the community. He transfers people between facilities throughout his jail system  
15 without taking minimal precautions that could help prevent transmission of the virus, thus ensuring  
16 the continued free and unbridled transmission of the virus throughout the San Diego County jails  
17 system now that it has gained a foothold there. By this action, Plaintiff, on behalf of himself and all  
18 similarly situated people incarcerated in the San Diego County jails, seeks injunctive, declaratory,  
19 habeas, and mandamus relief to ensure their safety, before more unnecessary deaths occur.

20 3. San Diego County is at a crossroads. We are in the midst of an extended period of  
21 previously unimaginable suffering disproportionately borne by segments of our community already  
22 disadvantaged in terms of health care, housing, and economic opportunity, who are also  
23 disproportionately incarcerated. More than half-a-million lives throughout the country have been lost  
24 in less than a year. Moreover, we are starting to learn of ever more virulent and potentially deadly  
25 variants of the virus that causes COVID-19—including the California strain which reportedly spreads  
26 more easily than its predecessors—that show some resistance to antibodies generated by COVID-19  
27 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. The failure to take them will have  
4 predictably deadly consequences. In late February, 2021, the CDC warned that the recent decline in  
5 COVID-19 cases appeared to be leveling off, and stated that the situation was tenuous, as we face “a  
6 very concerning shift in the trajectory.” In early March, 2021, the CDC announced that infection rates  
7 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 specifically,  
15 from further ravages of the deadly novel coronavirus. The obligation to provide this protection is  
16 especially pronounced when considering that Plaintiff and the people he seeks to represent, who the  
17 government has taken into 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,” even 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 Plaintiff’s and class members’ rights under the Constitution of the State of  
20 California, as well as California law.

21 10. Plaintiff seeks 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 take  
23 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 Plaintiff is or was detained in the San Diego County jails

1 (“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 Plaintiff 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 the  
10 medical housing unit, 8C, of the San Diego Central Jail. He has been in custody since approximately  
11 July, 2019. Plaintiff has a variety of medical ailments. He uses a prosthetic leg after losing his leg in  
12 an accident, which requires consistent access to a shower and must be regularly cleaned to avoid  
13 infection. He also has type 2 diabetes. He has had asthma since approximately 2001 and requires  
14 regular access to his asthma inhaler, which has to be replaced every few months.

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

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

24 17. In December, 2020, a man was transferred from George Bailey Detention Center into  
25 the medical unit where Plaintiff was then housed. This person was given a COVID-19 test after a week  
26 or two in the unit, but Defendant kept him in the medical unit in close contact with medically  
27 vulnerable people for approximately three days while waiting for the test results. He was then told that  
28 he had tested positive for COVID-19 and only then did Defendant move him into an isolation cell. A

1 few days later, jail staff started administering COVID-19 tests to everyone in the unit, but failed to  
2 isolate people who were tested. After a few more days, Plaintiff and others in the unit learned that  
3 nearly everyone in the unit had tested positive for COVID-19, including Plaintiff. The few people who  
4 received negative test results were transferred out of the unit.

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

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

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

15 21. In the last few days of February, 2021, almost 30 new people were transferred into the  
16 medical unit, which housed 48 people as of March 3, 2021. Plaintiff believes that the reason for the  
17 transfer is that the module next door to his unit, unit 8D, is on quarantine. He is concerned about this,  
18 and thinks there is a risk of cross-contamination, because staff move back and forth between the units.  
19 Plaintiff can feel a gust of air hit him when staff go in and out of the door between the units.

20 22. Plaintiff would like vaccines to be made available to people incarcerated in the jails to  
21 help prevent COVID-19 from continuing to spread, especially because of how frequently people are  
22 moved around the facilities. But jail staff have never said anything about the vaccines to him and he  
23 knows about them only because of the news.

#### 24 **IV. FACTUAL BACKGROUND AND EVIDENTIARY BASES**

##### 25 **A. The COVID-19 Pandemic**

26 23. We are in the midst of the most dangerous pandemic in generations. The effects of the  
27 COVID-19 pandemic have rippled through local communities across the country. COVID-19 is a  
28 novel communicable virus that has proved unusually fatal. More than 29 million people have

1 contracted the virus in the United States. More than half a million of them have died, including over  
2 54,000 Californians. The virus has taken over 3,300 lives in San Diego County, where more than  
3 263,000 people have tested positive. These numbers are likely an underestimate, due to the lack of  
4 adequate levels of testing in many parts of the United States.

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

8         25.     The best way to prevent illness is to avoid exposure to the virus that is spread person  
9 to person who are in close contact with one another. There is no known cure for COVID-19 at this  
10 time.

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

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

22         28.     Approximately one out of every five people who are infected with COVID-19 becomes  
23 seriously ill and develops difficulty breathing. There are currently more than 4,000 people in  
24 Defendant’s jails.

25         29.     People who have certain underlying health conditions, including, for example, blood  
26 disorders, chronic kidney or liver disease, compromised immune system diabetes, metabolic disorders,  
27 hypertension, heart and lung disease and severe obesity, are at heightened risk for severe COVID-19  
28 regardless of their age.

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

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

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

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

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

21           35.     In late 2020, the U.S. Food and Drug Administration provided emergency authorization  
22 for two COVID-19 vaccines for general use. The FDA provided emergency authorization for a third  
23 vaccine in late February, 2021. The California Department of Public Health (CDPH) provides  
24 guidance to counties setting priorities for vaccination, though counties have flexibility in setting their  
25 own vaccination schedules. While production and distribution of the vaccines have accelerated  
26 recently, the CDC and White House have advised that it is unlikely that the majority of Americans  
27 will be vaccinated until mid-to-late summer at the earliest. While existing vaccines have proven  
28 effective at preventing hospitalization or death due to COVID-19, there are serious questions about

1 their efficacy against new variants of the virus, which is ever-mutating. It also remains unclear whether  
2 the 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 36. 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 37. 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 38. 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 39. 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 COVID-  
15 19. People in jails have high rates of disabilities, including the disabilities that create particular risk  
16 factors for COVID-19 complications and death. The Bureau of Justice Statistics (“BJS”) reports that  
17 people in jail are four times as likely as the general population to have a disability, and this is almost  
18 certainly an undercount. BJS also reports that people in jail are disproportionately affected by many  
19 of the specific conditions that increase risk of COVID-19 complications or death.

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

25 41. The CDC’s Interim Guidance on Management of Coronavirus Disease 2019 (COVID-  
26 19) in Correctional and Detention Facilities (hereafter “CDC Guidelines”) emphasize “that  
27 incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are  
28 in poorer health than the general population, even at younger ages.”

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

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

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

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

22           46.     Nationally, at least one-in-five people in prison has contracted COVID-19, and more  
23 than 2,400 of them have died of the disease.

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

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1           48.     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           49.     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           50.     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           51.     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. By  
13 January 9, 2021, that number had more than doubled, to 162.

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

17           53.     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           54.     Thus, efforts to ensure that Plaintiff and class members are protected will also benefit  
23 jail staff and the community as a whole.

24           55.     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           56.     The 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. The 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 57. Because of the extraordinary danger that COVID-19 will spread in jails and prisons,  
8 the 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 58. The San Diego jail system is one of the largest in the state. The health and wellbeing  
17 of the over 4,000 people confined inside is a concern not only for them, but for tens of thousands of  
18 San Diegans anxiously awaiting the safe release of their fathers, mothers, spouses, children, and  
19 friends.

20 59. 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 Facility  
23 (collectively, the “Jails” or “San Diego County Jails”). Many of the problems prevalent in carceral  
24 facilities generally, *supra*, also plague San Diego County Jails, including unnecessarily crowded  
25 conditions that make adequate social distancing impossible, regular transfers of people among  
26 facilities without adequate protections, unsanitary living and working conditions, poor ventilation,  
27 inadequate identification of people with medical vulnerabilities to COVID-19, and limited access to  
28 medical care.

1           60. 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 Plaintiff and other putative class members, leaving  
6 them detained in unsafe conditions where they are at unreasonable risk of serious illness and death.

7           61. 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, and there were  
12 eight active cases in custody and 89 incarcerated individuals in isolation as of March 1, 2021.

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

16           63. Indeed, on the eve of the filing of this Petition and Complaint, Defendant issued a press  
17 release stating that the outbreak has spiked once again. According to the press release, 106 people  
18 incarcerated in the Jails were tested for COVID-19 after potential contact with an inmate who was  
19 hospitalized after developing symptoms consistent with COVID-19 on February 27, 2021. 46 of those  
20 individuals have since tested positive for COVID-19.

21           64. The inmate who was hospitalized was booked into the San Diego Central Jail on  
22 February 15, 2021. After quarantining for seven days, he was transferred to the George Bailey  
23 Detention Facility. Once at George Bailey, he was transferred to different modules in the same housing  
24 unit. Presumably, he was not administered COVID-19 tests, and did not receive results indicating that  
25 he had not contracted the virus, before any of these transfers.

26           65. 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           66.     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           67.     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           68.     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           69.     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           70.     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.

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1           71.     545 Jail employees have also tested positive for the virus, and there are 55 active  
2 employee cases. At least one employee has died due to COVID-19.

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

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

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

18           75.     More important than the overall number of people currently incarcerated in the Jails as  
19 a whole is the capacity of individual facilities. The California Board of State and Community  
20 Corrections (“BSCC”) provides rated capacity figures for each of the jail facilities. By fall 2020, when  
21 the current outbreak began, four of the seven facilities were operating at higher than 85% BSCC  
22 capacity. As of March 8, 2021, nearly four months *after* the outbreak began, several facilities were  
23 *still* filled nearly to capacity. For example: the San Diego Central Jail was at nearly 95% capacity;  
24 Vista Detention Facility was at more than 80% capacity; and the George Bailey Detention Facility and  
25 Central Jail were both at *more than 99% capacity*. George Bailey has a BSCC rated capacity of 1380,  
26 and was filled with 1369 incarcerated individuals on March 9, while South Bay, which has a BSCC  
27 rated capacity of 386 was filled with 384 incarcerated individuals on the same day. At these population  
28

1 levels, detained individuals, who have no ability to self-isolate, are incapable of maintaining anything  
2 approaching safe social distance.

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

7 77. There are periods of time when lockdowns confine putative class members to their cells  
8 or dormitories for days on end, prevent them from making legal calls, and force them to choose  
9 between spending the few minutes they get outside of their cells or dormitories showering for the first  
10 time in days or making phone calls to family members or lawyers. These extended lockdowns, when  
11 individuals are not permitted to leave their cells at all, can last for three days or longer.

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

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

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

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

1           82. 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           83. Defendant imposes 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           84. 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           85. 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           86. 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.

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1           87.     There is increasing evidence that COVID-19 spreads through fecal matter. This makes  
2 shared bathrooms—like the communal toilets in the Jails—a likely source of transmission, because  
3 flushing a toilet sends a plume of droplets into the air that could be ingested by nearby individuals or  
4 land on surfaces.

5           88.     Defendant requires incarcerated people to perform much of the work of laundry,  
6 cleaning, and food distribution across various jail facilities. Incarcerated workers often move between  
7 facilities and housing units. They may, for example, hand laundry to inmates in COVID-19 quarantine  
8 units, and then go to units housing individuals who have presumably not been exposed to the virus.  
9 Or they may hand meal trays to individuals incarcerated in each type of housing unit, coming within  
10 a foot or two of inmates known to be COVID-19 positive shortly before coming into contact with  
11 individuals presumed to be COVID-19 negative.

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

18           90.     Incarcerated individuals in the Jails are provided with only cloth masks, which are  
19 replaced or laundered only weekly or monthly.

20           91.     Incarcerated individuals are sometimes transported between facilities in buses  
21 containing as many as 10 to 15 people, forcing people to ride mere inches from one another, sometimes  
22 shackled to one another.

23           92.     Defendant has failed to ensure that incarcerated individuals receive a negative COVID-  
24 19 test before being placed on buses, transferred between jail facilities, transported to and from offsite  
25 hospital visits, or introduced into the general population of the Jails.

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

28

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

6           95.     Defendant has ostensibly adopted a policy requiring inmates incarcerated at Facility 8  
7 to receive two negative tests before returning to other jail facilities. However, if such a policy exists,  
8 Defendant's staff regularly violate it, and people are transferred back from Facility 8 without having  
9 received a second, or even a first, negative test.

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

15          97.     Jails staff regularly ignore or fail to respond to medical requests, including requests  
16 concerning COVID-19.

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

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

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

28

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

3           101. While Defendant has adopted some policies in response to COVID-19, he has refused  
4 to take critical and reasonable measures he is aware can prevent outbreaks and transmission of the  
5 virus at the Jails and the likely severe illnesses and deaths that have accompanied, and continue to  
6 accompany, outbreaks in congregate living facilities. A successful and adequate response to this  
7 pandemic cannot be accomplished with half-measures that undermine any positive changes. One step  
8 forward cannot be credited as anything more than cosmetic when it is accompanied by two steps  
9 backward. Defendant has, thus, willfully and wantonly ignored the public health threat caused by this  
10 global pandemic.

11           102. Courts, public health experts, and corrections professionals agree that significantly  
12 downsizing jail populations is the most important tool to combat the spread of COVID-19 among  
13 residents, staff, and the greater community.

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

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

26           105. Dr. Jaimie Meyer, Assistant Professor of Medicine at Yale School of Medicine and  
27 former Infectious Disease physician for York Correctional Institution in Connecticut, also reviewed  
28 the spread of COVID-19 in many facilities came to the same conclusion: “Reducing the size of the

1 population in jails and prisons is crucially important to reducing the level of risk both for those within  
2 those facilities and for the community at large.” Dr. Meyer emphasized the risks that inmates like  
3 Plaintiff and proposed class members would contract COVID-19, and the risk that they would suffer  
4 serious illness and death from the infection. Because of the “significantly higher risk” to inmates, Dr.  
5 Meyer writes that, “from a public health perspective,” she is “strongly of the opinion that individuals  
6 who are already in those facilities should be evaluated for release.”

7         106. The New England Journal of Medicine published, “Flattening the Curve for  
8 Incarcerated Populations—Covid-19 in Jails and Prisons,” which advocates for “releasing as many  
9 people as possible, focusing on those who are least likely to commit additional crimes, but also on the  
10 elderly and infirm[.]” Decarceration “will help to flatten the curve of Covid-19 cases among  
11 incarcerated populations and limit the impact of transmission both inside correctional facilities and in  
12 the community after incarcerated people are released. Such measures will also reduce the burden on  
13 the correctional system in terms of stabilizing and transferring critically ill patients, as well as the  
14 burden on the community health care system to which such patients will be sent.” “To promote public  
15 health, we believe that efforts to decarcerate, which are already under way in some jurisdictions, need  
16 to be scaled up; and associated reductions of incarcerated populations should be sustained. The  
17 interrelation of correctional-system health and public health is a reality not only in the United States  
18 but around the world.”

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

28

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

4           109. By declining to implement appropriate measures, Defendant is not only putting  
5 Plaintiff and class members at risk, along with Jails employees and contractors. He is also jeopardizing  
6 the health and lives of the communities surrounding the Jails.

7           110. There are a number of reasonable actions Defendant can take to provide for the safety  
8 of individuals whose incarceration he oversees, while providing for the public safety. Most  
9 importantly, Defendant is vested with the statutory authority or mandatory duty to remove incarcerated  
10 individuals to “a safe and convenient place” or to “release them” in emergencies that endanger their  
11 lives. Cal. Gov’t Code Section 8658. Defendant has refused to exercise this authority to protect people  
12 incarcerated in San Diego jails.

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

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

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

28

1           113. To date, Defendant has failed to offer a COVID-19 vaccination to the vast majority of  
2 people incarcerated in the Jails.

3           114. Nor has Defendant provided any clear timeline for when he will make such an offer.  
4 Instead, as late as March 8, 2021, Defendant responded to a Public Records Act request by citing a  
5 document on the Sheriff Department’s website that references an outdated CDPH phase and tier  
6 system. The document states that people incarcerated in the San Diego county jails “will qualify to  
7 receive the vaccine when Phase 1B (Tier Two) is approved.” There is, however, no Phase 1B (Tier  
8 Two) in the current CDPH plan. Defendant’s reliance on a defunct public health plan betrays a lack of  
9 urgency consistent with his overall response to the pandemic.

10           115. Defendant’s staff have told incarcerated individuals that they will be the last in line to  
11 receive a vaccine.

12           116. Defendant, has, however, recognized the threat that COVID-19 poses to people who  
13 work in the facilities under his control. Nurses and other healthcare workers in the jails were offered  
14 vaccines, and trained to administer them, in early January, 2021. Defendant explained that “it was  
15 important to protect our staff, who come back and forth into our jail facilities every day, to get them  
16 vaccinated.”

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

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

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

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

7           121. The California Department of Corrections and Rehabilitation (“CDCR”) has  
8 vaccinated approximately 40% of the imprisoned people in its custody in addition to tens of thousands  
9 of staff, and almost 70% of the people incarcerated under CDCR authority who have been offered a  
10 COVID-19 vaccine have accepted it.

11           122. In San Diego County itself, people in federal custody at the Otay Mesa Detention  
12 Center have started to be vaccinated, reportedly from doses obtained from San Diego County health  
13 officials.

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

19           124. On information and belief, none of the people incarcerated in San Diego County jails  
20 were offered early vaccinations under the “zero-waste plan.”

21           125. Courts in other jurisdictions have ordered vaccination or release to preempt harm from  
22 COVID-19 to people who are incarcerated. *See, e.g.: Maney v. Brown*, No. 6:20-CV-00570-SB, 2021  
23 WL 354384, at \*17 (D. Or. Feb. 2, 2021) (ordering the Governor of the State of Oregon and officials  
24 at the Oregon Department of Corrections (“ODOC”) to offer a COVID-19 vaccine to all adults in  
25 custody housed in ODOC facilities); *People ex rel. Stoughton on behalf of Little et al. v. Brann*, Index  
26 No. 260154/2020 (Sup. Ct., Bronx Cty. March 25, 2020) (releasing 106 individuals held at Rikers  
27 Island jail on parole violations who are particularly vulnerable to illness or death if infected by  
28 COVID-19); *In re Request to Commute or Suspend County Jail Sentences*, Docket No. 084230 (N.J.

1 Mar. 22, 2020) (ordering, based on the dangers posed by COVID-19, release of any inmate in New  
2 Jersey serving a county jail sentence as a condition of probation or as a result of a municipal court  
3 conviction). In addition, many courts have ordered release of people from immigration detention,  
4 including here in San Diego County.

5 126. Defendant must prioritize the safety of all incarcerated persons, including but not  
6 limited to those with medical vulnerabilities and disabilities.

7 127. To prevent further infections and unnecessary suffering or fatalities, Defendant must  
8 align the San Diego County Jails operations with public health principles by releasing or transferring  
9 to alternative custody a sufficient number of individuals to ensure that everyone incarcerated in the  
10 Jails is able to maintain safe social distance at all times and is otherwise capable of taking all necessary  
11 precautions to protect themselves from the novel coronavirus. These reduced populations must be  
12 maintained until Defendant offers the vaccine to all incarcerated individuals and fully vaccinates a  
13 sufficient percentage of incarcerated individuals to ensure the safety of everyone in the jails. For those  
14 who do not accept the vaccine, Defendant must provide appropriate educational materials and access  
15 to vaccination information from trusted sources. If the percentage of incarcerated individuals who  
16 have been vaccinated is insufficient to protect the incarcerated population at the jails, Defendant must  
17 maintain reduced population levels that allow safe social distancing.

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

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

5           130. Plaintiff and current class members are imprisoned and restrained of their liberty in the  
6 San Diego County Jails. Plaintiff has not filed prior petitions for state habeas corpus related to the  
7 allegations in this action.

8           131. Through the acts and omissions alleged herein, Defendant has subjected Plaintiff and  
9 current class members to unlawful confinement in violation of rights guaranteed to Petitioner and all  
10 class members, including under Article I, Sections 7 and 17 of the California Constitution, and  
11 Government Code Sections 8658 and 11135, including as further set forth below.

12           132. Defendant has a statutory duty to “keep the jail and the prisoners in it.” Cal. Gov’t Code  
13 § 26605. He must exercise that duty in a manner that does not derogate the constitutional rights of  
14 others. Failure to exercise his duties in a constitutional manner is an abuse of discretion.

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

18           134. Defendant’s actions and inactions result in the confinement of the Classes and  
19 Subclasses in crowded facilities where Plaintiff and class members cannot maintain social distancing  
20 and endure deplorable conditions, while Defendant refuses to take reasonable measures to prevent  
21 COVID-19 outbreaks, in violation of Plaintiff’s and class members’ rights to adequate medical care  
22 under the Constitution of the State of California.

23           135. By operating the Jails without taking reasonable, known measures to prevent a COVID-  
24 19 outbreak, Defendant, as a direct participant, and the ultimate policy maker for the Jails, has violated  
25 the rights of the Classes and Subclass members under the Constitution of the State of California.

26           136. Plaintiff is entitled to a writ of mandate requiring Defendant to conform his conduct to  
27 the requirements of the California Constitution and other applicable state law.

28



1           145.    The second class is a class of all current and future individuals incarcerated in pre-trial  
2 custody at the San Diego County jails, including people detained for alleged violations of probation  
3 or parole, while San Diego County is in the moderate, substantial, or widespread risk tiers established  
4 by the State of California, (“Pre-Trial Class”).

5           146.    Plaintiff also seeks to represent a subclass of the Pre-Trial Class consisting of members  
6 of the Pre-Trial Class who by reason of age or medical condition, are particularly vulnerable to illness,  
7 injury or death if they were to contract COVID-19 (“Pre-Trial Medically Vulnerable Subclass”).

8           147.    The Post-Conviction Medically Vulnerable Subclass is defined as all members of the  
9 Post-Conviction Class who are over the age of 55, and/or who experience (a) lung disease, including  
10 asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic  
11 conditions 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) hypertension;  
14 (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow  
15 transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including  
16 sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental  
17 disability; (l) obesity; and/or (m) a current or recent (last two weeks) pregnancy.

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

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1           149. The third class is a class of all current and future individuals incarcerated in the San  
2 Diego County jails who are vulnerable to illness, injury, or death due to COVID-19 because of a  
3 disability as defined under California disability rights laws (“Disability Class”). The Disability Class  
4 includes all members of the Pre-Trial and Post-Conviction Medically Vulnerable Subclasses except  
5 those who are vulnerable solely by reason of age or current or recent pregnancy. People with all other  
6 conditions listed in the preceding paragraph are people with disabilities and members of the Disability  
7 Class.

8           150. The proposed classes are sufficiently numerous. Everyone incarcerated in the San  
9 Diego County jails post-conviction, or who will be incarcerated post-conviction during the COVID-  
10 19 pandemic, is a proposed Post-Conviction Class member. There are at least hundreds of such  
11 individuals, and countless others will enter the Jails, and therefore the class, in the future.

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

15           152. Everyone incarcerated in the Jails, or who will be incarcerated in the Jails during the  
16 COVID-19 pandemic, who has one of the listed conditions or is over 55 is a proposed member of  
17 either the Post-Conviction Medically Vulnerable Subclass or the Pre-Trial Medically Vulnerable  
18 Subclass. On information and belief, there are at least several dozen members of each of these  
19 subclasses among the thousands held in the custody of the San Diego county jails, and countless others  
20 will enter the Jails, and therefore the class, in the future. Most Pre-Trial and Post-Conviction Medically  
21 Vulnerable Subclass members are also expected to be members of the Disability Class.

22           153. Proceeding as a class is superior to proceeding individually because (1) the classes and  
23 subclasses are numerous; (2) the classes and subclasses include future members, and (3) the current  
24 class and subclass members are incarcerated, rendering their ability to institute individual lawsuits  
25 limited.

26           154. In addition, common questions of law and fact exist as to all members of the proposed  
27 classes: all are at unreasonable risk of serious harm from contracting COVID-19 due to the conditions  
28 in the Jails and Defendant’s failure to take reasonable measures to assure their safety from the disease,

1 and all have a right to receive adequate COVID-19 prevention and/or treatment in the form of release,  
2 vaccination, and/or other protective measures.

3 155. Questions of fact common to all proposed class members include whether the  
4 conditions in the Jails expose them to heightened risk of contracting COVID-19, and heightened risk  
5 of serious illness, injury, or death.

6 156. Questions of law and fact common to all proposed Post-Conviction Class and Subclass  
7 members include whether the Jail's policies and practices violate their rights to be free from cruel and  
8 unusual punishment.

9 157. Questions of law and fact common to all proposed Pre-Trial Class and Subclass  
10 members include whether the Jail's policies and practices violate their due process rights.

11 158. Questions of law and fact common to all proposed Disability Class members include  
12 whether the Jail's policies and practices discriminate against people with disabilities in violation of  
13 California disability rights laws.

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

18 160. Plaintiff has claims that are typical of the claims by the class members and the subclass  
19 members. Defendant has placed him at significant risk of harm by failing to take appropriate steps to  
20 remove him from the serious threat of COVID-19 in the Jails.

21 161. Plaintiff also has the requisite personal interest in the outcome of this action and will  
22 fairly and adequately protect the interests of the class. He has no interests adverse to the interests of  
23 the proposed classes and subclasses he seeks to represent, and he seeks no relief on behalf of himself  
24 different than what he seeks for the classes and subclasses. Plaintiff retained pro bono counsel with  
25 experience and success in the prosecution of civil rights litigation. Counsel for Plaintiff know of no  
26 conflicts among proposed class members or between counsel and proposed class members.

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1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

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

4 **(Due Process; Pre-Trial Class and Pre-Trial Medically Vulnerable Subclass)**

5 ***Plaintiff And All Others Similarly Situated***

6 162. Plaintiff and class members incorporate by reference each of the preceding paragraphs  
7 and allegations as if fully set forth herein.

8 163. Under Article I, Section 7 of the California Constitution, Defendant is required to  
9 provide for the reasonable health and safety of persons in pre-trial custody. As part of the right, the  
10 government must provide people held pre-trial with reasonable safety and address serious medical  
11 needs that arise in jail, under the same objective deliberate indifference standard that applies to failure-  
12 to-protect claims brought by people held pre-trial. Regardless of the subjective intent of Defendant,  
13 his objective deliberate indifference to the serious risk that COVID-19 poses to members of the Pre-  
14 Trial Class and Pre-Trial Medically Vulnerable Subclass violates this right.

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

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

25 166. Defendant's actions and inactions result in the confinement of the Pre-Trial Class,  
26 including the Pre-Trial Medically Vulnerable Subclass, in crowded facilities where said class members  
27 cannot maintain social distancing and endure deplorable conditions, while Defendant refuses to take  
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1 reasonable measures to prevent COVID-19 outbreaks, in violation of Plaintiff's constitutional rights  
2 to adequate medical care.

3 167. Defendant has taken insufficient steps to comply with public health guidelines to  
4 manage the outbreak of COVID-19 that is currently facing the San Diego County jails, and must take  
5 further protective steps, including releasing members of the Pre-Trial class, including the Pre-Trial  
6 Medically Vulnerable Subclass, or rehousing them in safe institutions. Defendant's actions and  
7 inactions result in the confinement of members of the Pre-Trial Class, including the Pre-Trial  
8 Medically Vulnerable Subclass, in facilities at population levels where Defendant is incapable of  
9 preventing or managing COVID-19 outbreaks without widespread vaccination. This violates Pre-Trial  
10 Class and the Pre-Trial Medically Vulnerable Subclass members' rights to treatment and adequate  
11 medical care.

12 168. 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 Pre-Trial Class members, including the Pre-Trial Medically Vulnerable Subclass, under  
15 Article I, Section 7 of the California Constitution

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

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

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1 171. Accordingly, the members of the Pre-Trial Class, including the Pre-Trial Medically  
2 Vulnerable Subclass, are confined in violation of Article I, Section 7 of the California Constitution.

3 172. The Pre-Trial Class and the Pre-Trial Medically Vulnerable Subclass will suffer  
4 irreparable harm absent the relief requested, and they are entitled to immediate injunctive relief and  
5 release.

6 **SECOND CAUSE OF ACTION**

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

8 **(Cruel and Unusual Punishment; Post-Conviction Class and**  
9 **Post-Conviction Medically Vulnerable Subclass)**

10 ***Plaintiff And All Others Similarly Situated***

11 173. Plaintiff and class members incorporate by reference each of the preceding paragraphs  
12 and allegations as if fully set forth herein.

13 174. Under Article I, Section 17 of the California Constitution, Defendant must not impose  
14 cruel or unusual punishment on the Post-Conviction Class, including the Post-Conviction Medically  
15 Vulnerable Subclass. As part of this right, Defendant must provide incarcerated persons with  
16 reasonable safety and address serious medical needs that arise in jail. Deliberate indifference to the  
17 serious risk that COVID-19 poses to members of the Post-Conviction Class, including the Post-  
18 Conviction Medically Vulnerable Subclass, infringes on the protection from cruel and unusual  
19 punishment. Defendant violates this right by subjecting members of the Post-Conviction Class,  
20 including the Post-Conviction Medically Vulnerable Subclass, to conditions of confinement that do  
21 not ensure their safety and health.

22 175. Defendant has acted with deliberate indifference and/or failed to comply with public  
23 health guidelines to manage the outbreak of COVID-19. Defendant has therefore failed to provide for  
24 the safety of the Post-Conviction Class, including the Post-Conviction Medically Vulnerable Subclass.

25 176. Defendant's actions and inactions result in the confinement of members of the Post-  
26 Conviction Class, including the Post-Conviction Medically Vulnerable Subclass, in a jail or jails where  
27 they have failed to prevent or manage COVID-19 outbreaks, which violates Plaintiff's and Class and  
28 Subclass members' rights to treatment and adequate medical care.

1 177. Accordingly, the members of the Post-Conviction Class, including the Post-Conviction  
2 Medically Vulnerable Subclass, are confined in violation of Article I, Section 17 of the California  
3 Constitution.

4 178. The Post-Conviction Class, including the Post-Conviction Medically Vulnerable  
5 Subclass, will suffer irreparable harm absent the relief requested, and they are entitled to immediate  
6 injunctive relief and release.

7 **THIRD CAUSE OF ACTION**

8 **Violation of Cal. Gov't Code § 8658**

9 **(All Classes and Subclasses)**

10 ***Plaintiff And All Others Similarly Situated***

11 179. Plaintiff and class members incorporate by reference each of the preceding paragraphs  
12 and allegations as if fully set forth herein.

13 180. Plaintiff and all class members are confined or will be confined in violation of  
14 California Government Code Section 8658.

15 181. Section 8658 provides that where an emergency is endangering the lives of inmates of  
16 a county correctional institution, the person in charge of the institution “shall, if possible, remove” the  
17 inmates “to a safe and convenient place and there confine them as long as may be necessary to avoid  
18 the danger, or, if that is not possible, may release them.”

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

22 183. Defendant has failed to exercise his mandatory authority under Section 8658. Plaintiff  
23 and class members have neither been removed to as safe or convenient place, nor released as Section  
24 8658 requires. Accordingly, Plaintiff and class members are confined in violation of Section 8658.  
25 Plaintiff and the class members he represents will suffer irreparable harm absent the relief requested,  
26 and they are entitled to immediate injunctive relief requiring Defendant to exercise his duty under  
27 Section 8658.

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1 **FOURTH CAUSE OF ACTION**

2 **Violation of Cal. Gov't Code § 11135**

3 **(Disability Class)**

4 ***Plaintiff And All Others Similarly Situated***

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

7 185. Section 11135 prohibits entities that receive state financial assistance from unlawfully  
8 denying benefits to or discriminating against any person on the basis of age, physical or mental  
9 disability, or medical condition.

10 186. The San Diego County Sheriff's Department and County jails receive financial  
11 assistance from the state within the meaning of Section 11135.

12 187. Section 11135 or its implementing regulations require Defendant to avoid unnecessary  
13 policies, practices, criteria or methods of administration that have the effect of excluding or  
14 discriminating against persons with disabilities and to make reasonable modifications in policies,  
15 practices, or procedures when the modifications are necessary to avoid discrimination on the basis of  
16 disability.

17 188. Plaintiff is a protected individual permitted to bring his claim under Section 11135 and  
18 is otherwise qualified to do so.

19 189. The Disability Class is illegally confined in violation of Section 11135 or its  
20 implementing regulations through Defendant's failure to make the reasonable modifications necessary  
21 to ensure equal access to adjudication, jail services, and release for people with disabilities who face  
22 high risk of complications or death in the event of COVID-19 infection. The Disability Class is further  
23 confined in violation of Section 11135 or its implementing regulations given Defendant's employing  
24 methods of administration (including a policy of non-release even in the face of COVID-19) that tend  
25 to discriminate against people with disabilities by placing them at heightened risk of severe illness and  
26 death.

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

5 5. following immediate release of all members of the Pretrial and Post-  
6 Conviction Medically Vulnerable Subclasses as necessary, provide a plan, to be  
7 immediately submitted to the Court and overseen by a qualified public health expert,  
8 which outlines specific mitigation efforts, in line with CDC guidelines to prevent, to  
9 the degree possible, contraction of COVID-19 by all Class and Subclass Members not  
10 immediately released;

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

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

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

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

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

21 F. Award Plaintiff attorney fees and costs under California Code of Civil Procedure  
22 section 1021.5; and

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

24 DATED: March 10, 2021

25 Respectfully submitted,

26 By:                   /s/ Jonathan Markovitz                    
27 JONATHAN MARKOVITZ  
28 Attorney for PETITIONER/PLAINTIFF

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**VERIFICATION**

I am an attorney admitted to practice in the State of California. I represent Petitioner/Plaintiff TERRY LEROY JONES herein. I am authorized to file this petition on his behalf. I make this verification because Petitioner/Plaintiff is incarcerated, and it is not safe to visit him 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: March 10, 2020

ACLU FOUNDATION OF SAN DIEGO &  
IMPERIAL COUNTIES

By:           /s/ Jonathan Markovitz            
JONATHAN MARKOVITZ  
Attorneys for PETITIONER/PLAINTIFF