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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 Jason Fenty, Brian Stepter, Douglas
14 Crough, Edward Reason, Jesus Tequida,
15 Ramon Avenenti, Anthony Scroggins,
16 Dale Perez, and Tamara Ochoa on behalf
17 of themselves and those similarly situated,

18 Plaintiff-Petitioners,

19 Puente Human Rights Movement,

20 Plaintiff,

21 v.

22 Sheriff Paul Penzone, in his official
23 capacity, and Maricopa County, a
24 municipal entity,

25 Defendants.

Case No.

CLASS ACTION

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

IMMEDIATE RELIEF SOUGHT

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28 **Admitted pursuant to Ariz. Sup. Ct. R. 38(f)

1 **INTRODUCTION**

2 1. The COVID-19 pandemic has taken hold at Maricopa County’s five jails, and
3 the virus is spreading rapidly. In just two weeks, the number of positive COVID-19 cases
4 has skyrocketed from six to 313—an exponential increase of more than 5,000 percent.¹ As
5 of June 9, 2020, only 870 tests had been administered in the jails since the start of the
6 pandemic, despite the jails having an incarcerated population of around 4,500.² Even this
7 figure is deceiving, as the testing number includes people both currently and previously
8 incarcerated at the jails.

9 2. While Maricopa County and Maricopa County Sheriff Paul Penzone have
10 claimed to be implementing measures sufficient to contain the virus at the facilities—4th
11 Avenue Jail, Estrella, Saguaro, Lower Buckeye Jail, and Towers—the exploding number of
12 infections tells a different story. In fact, Defendants have not instituted even the most basic
13 safeguards for incarcerated persons and staff. Known dangerous and deadly conditions
14 across the jails include:

- 15 a. inadequate COVID-19 testing or screening of newly booked detainees, and
- 16 failure to properly implement routine intake cohorting;
- 17 b. inadequate COVID-19 testing or screening of incarcerated persons with
- 18 symptoms or those exposed to someone known or suspected to be infected with
- 19 COVID-19 and failure to implement proper cohorting and quarantine;

20
21
22 ¹ *MCSO jails have more COVID-19 cases than all Arizona prisons*, THE ASSOCIATED
23 PRESS (June 12, 2020), <https://ktar.com/story/3276059/mcso-jails-have-more-covid-19-cases-than-all-arizona-prisons/> (reporting 313 cases as of June 12, 2020); *Correctional Health Services and MCSO Respond to a Rise in COVID-19 Cases in County Jails*,
24 MARICOPA COUNTY NEWSROOM (June 4, 2020),
25 <https://www.maricopa.gov/CivicAlerts.aspx?AID=1399> (reporting 6 cases as of May 30, 2020).

26 ² Lauren Castle, *Maricopa County Considers Mass Testing in Jails After Confirmed*
27 *COVID-19 Cases Spike*, AZ CENTRAL (June 10, 2020), <https://cutt.ly/nufiuy1>. The 870
28 tests administered may not correlate to the number of individuals tested because
individuals may be tested multiple times.

- 1 c. inadequate protections for medically vulnerable and disabled incarcerated
- 2 persons;
- 3 d. failure to institute appropriate social distancing practices in the jails, including at
- 4 booking, in dormitory bunk arrangements, recreational areas, meal waiting lines,
- 5 holding cells, restroom and shower facilities, and during transportation;
- 6 e. inadequate cleaning, hygiene, decontamination, and disinfecting supplies and
- 7 procedures, both for incarcerated people and staff;
- 8 f. failure to provide adequate personal protective equipment (“PPE”) to
- 9 incarcerated people and failure to mandate the use and regular replacement of
- 10 such equipment by both staff and people incarcerated in the jails, particularly
- 11 equipment designed for single use (such as single-use disposable surgical masks);
- 12 and
- 13 g. failure to timely and adequately educate people incarcerated in the jails about the
- 14 virus and prevention methods.

15 3. Absent intervention from this Court to align the operation of Maricopa
16 County jails with public health principles—first and foremost, through the release of as
17 many medically vulnerable detainees as reasonable, but also through improved social
18 distancing, testing, treatment, education, hygiene and sanitation protocols for all others—
19 incarcerated persons, jail staff, and the community will face devastating, and in some cases
20 deadly, irreparable harm.³ The dramatic outbreak at the Maricopa County jails proves the
21 need for immediate and significant public health interventions.

22 4. Accordingly, Plaintiffs—persons and a local grassroots organization seeking
23 to represent classes incarcerated at the jails—bring this emergency action pursuing two
24 distinct vehicles for relief: 1) a habeas petition seeking immediate release of a limited subset
25 of medically vulnerable and disabled pretrial detainees held on unaffordable bonds and a
26

27 ³ See Sandra E. Garcia, U.S. Prison Population Remained Stable as Pandemic Grew, N.Y.
28 Times (May 14, 2020), <https://cutt.ly/VyVvEwu>.

1 process to determine the appropriateness of release for other medically vulnerable prisoners;
2 and 2) a class action seeking implementation of critical measures to stem the spread of the
3 virus for all remaining Plaintiffs.⁴ This relief is being sought pursuant to: 22 U.S.C. § 2241,
4 42 U.S.C. § 1983, the Americans with Disabilities Act, and the Rehabilitation Act, all of
5 which Defendants are violating.

6 5. These measures are necessary to ensure the health and safety of incarcerated
7 persons, Maricopa County Sheriff's Office staff, and the wider Arizona community. Given
8 the rapid and ongoing exponential spread of COVID-19 at the jails, there is no time to spare.

9 **JURISDICTION AND VENUE**

10 6. This Court has subject-matter jurisdiction over this action pursuant to 28
11 U.S.C. § 2241 (habeas corpus); 42 U.S.C. § 12131 *et seq.* and 29 U.S.C. § 794 (disability
12 discrimination); 42 U.S.C. § 1983 (civil rights action); and 28 U.S.C. § 1331 (federal
13 question).

14 7. This Court may grant relief under 28 U.S.C. §§ 2241 (habeas corpus), 2201-
15 02 (declaratory relief), and 1651 (All Writs Act); Federal Rules of Civil Procedure 65
16 (injunctive relief) and 23 (class action); as well as the Fourteenth and Eighth Amendments
17 to the U.S. Constitution.

18 8. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 2241(d)
19 because the Plaintiffs and all other class members are in custody in this judicial district and
20 venue. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the
21 events or omissions giving rise to Plaintiffs' claims occurred in this district.

22
23
24 ⁴ Alternatively, this Court may order release of the medically vulnerable and/or disabled
25 pending resolution of the Plaintiffs' habeas petition in the form of enlargement, a remedy
26 sometimes referred to as "release" or "bail," in which an individual remains in custody,
27 but the place of custody is enlarged by the Court. *See Declaration of Professor Judith*
28 *Resnik*, filed in *Money, et al. v. Jeffreys*, Case No. 20-cv-02094 (N.D. Ill.), Dkt. No. 24-3,
available at
https://law.yale.edu/sites/default/files/area/center/liman/2020.04.08_declaration_of_prof._judith_resnik_-_money_v._jeffreys.pdf; *see also Land v. Deeds*, 878 F.2d 318 (9th Cir. 1989).

PARTIES

1
2 9. Plaintiff Jason Fenty is a 48-year-old man who has been in pretrial custody
3 since July 1, 2018 and is currently housed at the Towers Jail. He has not been convicted of
4 the crime for which he is imprisoned and is presumed innocent. He has the following
5 medical conditions: stage 2 hypertension; adjustment disorder with anxiety; PTSD; and
6 chest pain. He is at risk of serious illness or death should he contract COVID-19. He was
7 arrested because of an accusation that he created a fake identification. If released, Mr. Fenty
8 would be able to self-quarantine in Maricopa County. He appears on behalf of himself and
9 all other medically vulnerable and disabled detained persons held pretrial in Defendants’
10 custody at the Maricopa County jails who are at high risk of severe illness and death due to
11 COVID-19. Mr. Fenty is a person with a disability as defined under the ADA and Section
12 504 of the Rehabilitation Act (“Section 504”).

13 10. Plaintiff Brian Stepter is a 61-year-old man who has been in pretrial custody
14 since approximately September 18, 2019 and is currently housed at the Lower Buckeye Jail.
15 He has not been convicted of the crime for which he is imprisoned and is presumed
16 innocent. Mr. Stepter has chronic respiratory problems that result in difficulty breathing
17 and requires oxygen treatments to clear his lungs. He also has high blood pressure that
18 requires medication. These conditions, and his age, make him extremely vulnerable to
19 serious illness or death should he contract a viral respiratory infection like COVID-19. Mr.
20 Stepter was arrested for failure to return rental property and for possessing a small amount
21 of cocaine. If released, he could stay in Phoenix, Arizona, and practice social distancing
22 and take other preventative measures to protect himself from contracting COVID-19. He
23 appears on behalf of himself and all other medically vulnerable and disabled detained
24 persons held pretrial in Defendants’ custody at the Maricopa County jails who are at high
25 risk of severe illness and death due to COVID-19. Mr. Stepter is a person with a disability
26 as defined under the ADA and Section 504.

27 11. Plaintiff Douglas Crough is a 55-year-old man who has been in pretrial
28 custody since February 26, 2020 and is currently housed in the Lower Buckeye Jail. Mr.

1 Crough has a heart condition, chronic obstructive pulmonary disease (COPD), hepatitis,
2 and chest pain caused by stable angina. He is at risk of serious illness and death should he
3 contract COVID-19 due to these chronic health issues. He has not been convicted of the
4 crime for which he is imprisoned and is presumed innocent. He was arrested for drug
5 possession. If released, he plans to self-quarantine where necessary and practice other
6 recommended measures to protect his health, including social distancing, in Tempe,
7 Arizona. He appears on behalf of himself and all other medically vulnerable and disabled
8 detained persons held in pretrial detention at the Maricopa County jails. Mr. Crough is a
9 person with a disability as defined under the ADA and Section 504.

10 12. Plaintiff Edward Reason is a 62-year-old man who has been in custody at the
11 Maricopa County jails since May 4, 2020, and is currently housed at the Saguaro Jail. Mr.
12 Reason has severe asthma, which is a respiratory condition known to heighten the danger
13 of serious illness or death posed by a COVID-19 infection, especially given his age. He
14 pled guilty to a probation violation and is serving a 60-day sentence. If released, he would
15 be able to self-quarantine where necessary and practice other recommended measures,
16 including social distancing, to protect his health. He appears on behalf of himself and all
17 detained persons held post-conviction at the Maricopa County jails. Mr. Reason is a person
18 with a disability as defined under the ADA and Section 504.

19 13. Plaintiff Jesus Tequida is a 64-year-old man who has been in custody since
20 February 19, 2020. He is currently housed at the Lower Buckeye Jail. He is awaiting
21 sentencing after conviction for drug possession. Mr. Tequida has serious health issues,
22 including high blood pressure, kidney failure, cardiomyopathy, cardiomegaly, heart failure,
23 hepatitis, as well as liver and prostate problems. These conditions leave him at high risk of
24 serious illness or death from COVID-19 infection. If released, he would be able to self-
25 quarantine and practice other recommended measures, in Litchfield Park, AZ. Mr. Tequida
26 appears on behalf of himself and all other medically vulnerable and disabled detained
27 persons held post-conviction at the Maricopa County jails. Mr. Tequida is a person with a
28 disability as defined under the ADA and Section 504.

1 14. Plaintiff Ramon Avenenti is a 42-year-old man who has been in custody since
2 approximately July 25, 2019 and is currently housed at the 4th Avenue Jail. He is awaiting
3 sentencing after a plea bargain on a series of charges related to drug possession. Mr.
4 Avenenti tested positive for COVID-19 in early June of 2020. He has not received adequate
5 medical treatment. If released, he would be able to self-quarantine and practice other
6 recommended measures, including social distancing, in either Scottsdale or Chandler,
7 Arizona. Mr. Avenenti appears on behalf of himself and all other persons held post-
8 conviction at the Maricopa County jails.

9 15. Plaintiff Anthony Scroggins is a 44-year-old male who has been in pretrial
10 custody since December 16, 2019 and is housed at the 4th Avenue Jail. Mr. Scroggins has
11 been diagnosed with, among other things, asthma and schizophrenia. These conditions
12 leave him especially vulnerable to COVID-19. He is charged with resisting arrest,
13 aggravated assault, and unlawful flight. He has not been convicted of the crimes for which
14 he is imprisoned and is presumed innocent. If released during the pendency of his criminal
15 proceedings, he would be able to self-quarantine and practice other recommended measures
16 to protect his health, including social distancing, in Phoenix, Arizona. Mr. Scroggins
17 appears on behalf of himself and all other medically vulnerable and disabled detained
18 persons held pretrial at the Maricopa County jails. Mr. Scroggins is a person with a
19 disability as defined under the ADA and Section 504.

20 16. Plaintiff Dale Perez is a 36-year-old man who has been in pretrial custody
21 since May 11, 2020 and is housed at the Towers Jail. He is charged with crimes related to
22 drug possession, as well as assault and operating a vehicle under the influence. He has not
23 been convicted of the crimes for which he is imprisoned and is presumed innocent. If
24 released during the pendency of his criminal proceeding, he would be able to self-quarantine
25 and practice other recommended measures to protect his health, including social distancing
26 in Phoenix, Arizona. Mr. Perez appears on behalf of himself and all other persons detained
27 pretrial at the Maricopa County jails.

28

1 17. Plaintiff Tamara Ochoa is a 27-year-old woman who has been in pretrial
2 custody since August 16, 2019, and is housed at the Estrella Jail. She is charged with crimes
3 related to drug possession as well as identity theft. She has not been convicted of the crimes
4 for which she is imprisoned and is presumed innocent. If released during the pendency of
5 her criminal proceeding, she would be able to self-quarantine and practice other
6 recommended measures, including social distancing, at her boyfriend's home in Phoenix,
7 Arizona. Ms. Ochoa appears on behalf of herself and all other persons detained pretrial at
8 the Maricopa County jails.

9 18. Plaintiff Puente Human Rights Movement ("Puente") is a grassroots nonprofit
10 membership organization based in Phoenix, Arizona. Its mission is to promote justice,
11 human dignity, nonviolence and interdependence. Its membership is made up of hundreds
12 of individuals across Arizona, including undocumented and mixed status immigrant
13 households, people who have been incarcerated as well as their impacted families, and
14 youth members. It aims to develop, educate, and empower immigrant communities, to
15 enhance the quality of life of immigrants, and to advocate on behalf of immigrants. Puente
16 provides free English classes, media trainings, know-your-rights workshops, health and
17 wellness training, educational programs for children, and other services to the community.
18 Puente's work also includes programs and advocacy on behalf of detained people across
19 Arizona. As a result of Defendants' failure to adequately protect individuals incarcerated
20 at the Maricopa County jails from the dangers of COVID-19, Puente has launched a full-
21 fledged public campaign to support incarcerated people at the Maricopa County jails and
22 raise public awareness about COVID-19 for incarcerated people and their families. This
23 effort has come at the expense of other programming, requiring Puente to divert resources
24 to this campaign while scaling down other campaigns. Indeed, in mobilizing this campaign,
25 Puente has expended significant time and resources, including by setting up a hotline to
26 monitor conditions inside of the jails and respond to the concerns of incarcerated people
27 and their families, organizing regular protests, creating petitions, drafting letters to public
28 officials, and producing communications materials. Absent Defendants' failure to protect

1 the health of incarcerated persons at the Maricopa County jails, Puente would not need to
2 spend these resources and cut back other programming and staff to support incarcerated
3 people during this pandemic. Puente seeks declaratory and injunctive relief in this lawsuit
4 to protect the rights of people incarcerated in the Maricopa County jails.

5 19. Respondent-Defendant Paul Penzone is the Maricopa County Sheriff.
6 Pursuant to A.R.S. §§ 11-441(A)(5) and 31-101, Sheriff Penzone's duty is to oversee the
7 Maricopa County jails and the incarcerated persons in the jails. Sheriff Penzone is the final
8 policymaker for running and administering the Maricopa County jails. Sheriff Penzone has
9 custody over all Plaintiffs. He is sued in his official capacity only.

10 20. Respondent-Defendant Maricopa County is a county in Arizona where the
11 five at-issue jails are located. Plaintiffs reside in Maricopa County jails operated and
12 maintained by Maricopa County. Maricopa County is a public entity for purposes of the
13 ADA. Maricopa County is a recipient of federal financial assistance for the purposes of
14 Section 504.

15 21. As the facts set forth below demonstrate, Sheriff Penzone and Maricopa
16 County have a policy, practice, or custom of subjecting incarcerated persons in the jails to
17 unconstitutional conditions and/or ratifying constitutional deprivations.

18 **THE CLASSES AND SUBCLASSES**

19 22. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil
20 Procedure on behalf of themselves and classes of similarly situated individuals. This action
21 is brought on behalf of two classes of incarcerated persons at the Maricopa County jails—
22 (1) the Pretrial Class and (2) the Post-Conviction Class—and four subclasses—(a) the
23 Pretrial Medically Vulnerable Subclass, (b) the Pretrial Disability Subclass, (c) the Post-
24 Conviction Medically Vulnerable Subclass, and (d) the Post-Conviction Disability
25 Subclass.

26 23. Plaintiffs Jason Fenty, Brian Stepter, Douglas Crough, Anthony Scroggins,
27 Dale Perez, and Tamara Ochoa each seek to represent all current and future people in
28 pretrial detention at the Maricopa County jails (“Pretrial Class”), including a subclass of

1 persons who, by reason of age or medical condition, are particularly vulnerable to injury or
2 death if they were to contract COVID-19 (“Pretrial Medically Vulnerable Subclass”).
3 Additionally, within the Pretrial Medically Vulnerable Subclass is a subclass of all persons
4 who are medically vulnerable because of a disability as defined by federal disability rights
5 laws (the “Pretrial Disability Subclass”).

6 24. The “Pretrial Medically Vulnerable Subclass” is defined as all current and
7 future people detained at the Maricopa County jails who are aged 50 years or older as well
8 as those of any age with impaired immunity, including chronic diseases and health
9 conditions that place them at heightened risk of severe illness or death from COVID-19,
10 such as (a) lung disease, (b) heart disease, (c) chronic liver or kidney disease (including
11 hepatitis and dialysis patients), (d) diabetes, (e) hypertension, (f) compromised immune
12 systems (such as from cancer, HIV, or autoimmune disease), (g) blood disorders (including
13 sickle cell disease), (h) developmental disability, (i) severe obesity, and/or (j) moderate to
14 severe asthma.⁵

15 _____
16 ⁵ *Coronavirus disease (COVID-19) advice for the public: Myth Busters*, WORLD HEALTH
17 ORG. (accessed June 15, 2020), <https://cutt.ly/dtEiCyc> (“Older people, and people with
18 pre-existing medical conditions (such as asthma, diabetes, heart disease) appear to be
19 more vulnerable to becoming severely ill with the virus.”); *Report of the WHO-China
20 Joint Mission on Coronavirus Disease 2019 (COVID-19)*, WORLD HEALTH ORG. (Feb.
21 28, 2020), <https://cutt.ly/duxRQue> (finding fatality rates for patients with COVID-19 and
22 co-morbid conditions to be: “13.2% for those with cardiovascular disease, 9.2% for
23 diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for
24 cancer”); *People Who Are at Higher Risk for Severe Illness*, CTRS. FOR DISEASE CONTROL
25 & PREVENTION (accessed June 5, 2020), <https://cutt.ly/tyVVKf9>; Safiya Richardson et al.,
26 *Presenting Characteristics, Comorbidities, and Outcomes Among 5700 Patients
27 Hospitalized With COVID-19 in the New York City Area*, JAMA (Apr. 22, 2020),
28 <https://cutt.ly/LyVVZ8m> (examining 5,700 persons hospitalized for COVID-19 and
finding the most common comorbidities were hypertension (3,026; 56.6%), obesity
(1,737; 41.7%), and diabetes (1,808; 33.8%)); *People with Developmental and Behavioral
Disorders*, CTRS. FOR DISEASE CONTROL & PREVENTION (accessed June 15, 2020),
<https://cutt.ly/PyVVVkk> (“Some people with developmental or behavioral disorders may
have difficulties accessing information, understanding or practicing preventative
measures, and communicating symptoms of illness.”); *CS 316182-A, Interim Guidance on
Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention
Facilities*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 27, 2020),
<https://cutt.ly/LyVWfed> (“Note that incarcerated/detained populations have higher
prevalence of infectious and chronic diseases and are in poorer health than the
general population, even at younger ages.”).

1 25. The “Pretrial Disability Subclass” is defined as all current and future pretrial
2 detainees who are people with disabilities as defined under the ADA and Section 504, and
3 whose disabilities put them at increased risk of serious illness or death if they contract
4 COVID-19. The Disability Pretrial Subclass includes all members of the Pretrial Medically
5 Vulnerable Subclass except those vulnerable solely on the basis of age or obesity.

6 26. Plaintiffs Fenty, Stepter, Crough, Scroggins, Perez, and Ochoa can represent
7 the Pretrial Class because each Plaintiff is currently housed at the Maricopa County jails in
8 pretrial custody. Plaintiffs Fenty, Stepter, Crough, and Scroggins can represent the Pretrial
9 Medically Vulnerable Subclass because each Plaintiff is over the age of 50 and/or has been
10 diagnosed with a qualifying medical condition. Plaintiffs Fenty, Stepter, Crough, and
11 Scroggins can also represent the Pretrial Disability Subclass, as each is a person with a
12 disability as defined under the ADA and Section 504.

13 27. Plaintiffs Reason, Tequida, and Avenenti each seek to represent a class of all
14 current and future people in post-conviction detention at the Maricopa County jails (“Post-
15 Conviction Class”), including a subclass of persons who, by reason of age or medical
16 condition, are particularly vulnerable to injury or death if they were to contract COVID-19
17 (“Post-Conviction Medically Vulnerable Subclass”). Additionally, within the Post-
18 Conviction Medically Vulnerable Subclass is a subclass of all persons who are medically
19 vulnerable because of a disability as defined by federal disability rights laws (the “Post-
20 Conviction Disability Subclass”).

21 28. The “Post-Conviction Medically Vulnerable Subclass” is defined as all
22 current and future people in post-conviction detention at the Maricopa County jails who are
23 aged 50 years or older or who have medical conditions that place them at heightened risk
24 of severe illness or death from COVID-19, such as (a) lung disease, (b) heart disease, (c)
25 chronic liver or kidney disease (including hepatitis and dialysis patients), (d) diabetes, (e)
26 hypertension, (f) compromised immune systems (such as from cancer, HIV, or autoimmune
27 disease), (g) blood disorders (including sickle cell disease), (h) developmental disability (i)
28 severe obesity, and/or (j) moderate to severe asthma.

1 29. The “Post-Conviction Disability Subclass” is defined as all current and future
2 post-conviction detainees who are people with disabilities as defined under the ADA and
3 Section 504, and whose disabilities put them at increased risk of serious illness or death if
4 they contract COVID-19. The Post-Conviction Disability Subclass includes all members
5 of the Post-Conviction Medically Vulnerable Subclass except those vulnerable solely on
6 the basis of age or obesity.

7 30. Plaintiffs Reason, Tequida, and Avenenti can represent the Post-Conviction
8 Class because each Plaintiff is currently housed at the Maricopa County jails in post-
9 conviction custody. Plaintiffs Reason and Tequida can represent the Post-Conviction
10 Medically Vulnerable Subclass because each Plaintiff is over the age of 50 and/or has a
11 qualifying medical condition. Plaintiffs Reason and Tequida can also represent the Post-
12 Conviction Disability Subclass, as each is a person with a disability as defined under the
13 ADA and Section 504.

14 31. This action has been brought, and may properly be maintained, as a class
15 action under federal law. It satisfies the numerosity, commonality, typicality, and adequacy
16 requirements for maintaining a class action under Federal Rule of Civil Procedure 23(a),
17 and it satisfies the requirements for certification under Rule 23(b)(2) or, in the alternative,
18 23(b)(1).

19 32. Joinder is impracticable because (1) the class members are numerous, (2) the
20 classes include future members, and (3) the class members are incarcerated, rendering their
21 ability to institute individual lawsuits limited, particularly in light of the conditions at the
22 Maricopa County jails and generally reduced legal visitation and court closures instituted
23 by Maricopa County to address COVID-19 concerns.

24 33. There are at least 50 current people detained and an unknowable number of
25 potential future people who will be detained in the proposed Pretrial Class. There are at
26 least 50 current people detained post-conviction and an unknowable number of potential
27 future people who will be detained post-conviction in the proposed Post-Conviction Class.
28 There are at least 50 people in each subclass of the proposed Pretrial and Post-Conviction

1 Classes, including over 300 people who are over the age of 50. People in jails have higher
2 rates of chronic health conditions than people in the general population. According to the
3 Bureau of Justice Statistics, it is estimated that 39.8 percent of people in jail have a chronic
4 health condition, so it is likely there are hundreds if not thousands of individuals in both
5 subclasses.⁶

6 34. Common questions of law and fact exist as to all members of the proposed
7 classes and subclasses. Questions of fact common to all proposed class members include
8 whether the conditions in the Maricopa County jails expose them to an unreasonable risk
9 of contracting COVID-19. Questions of fact and law common to all members of the
10 subclasses include whether the conditions in the Maricopa County jails expose them to an
11 unreasonable risk of serious illness, injury, or death and whether the Maricopa County jails'
12 policies and practices discriminate against people with disabilities in violation of federal
13 disability rights laws. Questions of law common to all proposed class and subclass
14 members include what relief is necessary to mitigate the risks posed by their confinement
15 in the jails.

16 35. Plaintiffs' claims are typical of the class and the subclass members' claims.

17 36. Plaintiffs have the requisite personal interest in the outcome of this action and
18 will fairly and adequately protect the interests of the classes and subclasses.

19 37. Plaintiffs have no interests adverse to the interests of the proposed classes and
20 subclasses.

21 38. Plaintiffs retained pro bono counsel with experience and success in the
22 prosecution of civil rights litigation.

23 39. Counsel for Plaintiffs know of no conflicts among proposed class members
24 or between counsel and proposed class members.

25
26 _____
27 ⁶ See Laura M. Maruschack et al., *Medical Problems of State and Federal Prisoners and*
28 *Jail Inmates, 2011-12*, p. 21, U.S. DEPT. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS,
BUREAU OF JUSTICE STATISTICS (Feb. 2015),
<https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf>.

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

4 41. In the alternative, the requirements of Rule 23(b)(1) are satisfied, because
 5 prosecuting separate actions would create a risk of inconsistent or varying adjudications
 6 with respect to individual class members that would establish incompatible standards of
 7 conduct for the party opposing the proposed classes.

8 **FACTUAL ALLEGATIONS**

9 **I. COVID-19 Poses a Significant Risk of Serious Illness, Injury, and Death.**

10 42. The novel coronavirus that causes COVID-19 has led to a global pandemic.
 11 There are more than 7.8 million reported COVID-19 cases throughout the world, of which
 12 more than 2 million are in the United States.⁷

13 43. More than 431,000 individuals worldwide have died as a result of COVID-
 14 19, including more than 115,000 in the United States.⁸ These numbers are growing, with
 15 almost 137,000 new cases worldwide in the 24-hour period between June 13 and June 14
 16 alone.⁹ Notwithstanding that Arizona ranks 43rd out of the 50 states, D.C. and Puerto Rico
 17 in the number of tests completed per 1000 people, COVID-19 positive cases in Arizona
 18 increased from one as of March 2nd, 2020 to 36,705 as of June 15, 2020, with over half of
 19 them in Maricopa County.¹⁰ In total, 1,194 people have died in Arizona due to COVID-19,
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22 ⁷ *WHO Coronavirus Disease (COVID-19) Dashboard*, WORLD HEALTH ORG. (June 15,
 23 2020), <https://covid19.who.int/>.

24 ⁸ *Id.*

25 ⁹ *Id.*

26 ¹⁰ *See Data Dashboard: Summary*, ARIZONA DEPT. OF HEALTH SERVICES (accessed June
 27 15, 2020), <https://cutt.ly/muxkCB4>; *Data Dashboard: Confirmed COVID-19 Cases by
 28 Day*, ARIZONA DEPARTMENT OF HEALTH SERVICES (accessed June 15, 2020),
[https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-
 epidemiology/covid-19/dashboards/index.php](https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php); *State Health Facts: COVID-19 Testing*,
 KAISER FAMILY FOUNDATION (accessed June 15, 2020), <https://cutt.ly/zuxzHn7>.

1 and 557 people have died in Maricopa County alone.¹¹ Hospitals in Arizona are
2 increasingly stretched thin.¹²

3 44. On March 11, 2020, Governor Doug Ducey declared a state of emergency in
4 Arizona due to COVID-19.¹³ Governor Ducey's most recent executive order directs
5 individuals to socially distance, recommends that the medically vulnerable continue to
6 shelter at home when possible, and requires businesses that are reopening to implement
7 policies that ensure physical distancing and limit congregations to less than 10 people where
8 feasible.¹⁴

9 45. The Maricopa County Board of Supervisors also issued an emergency
10 declaration related to COVID-19 on March 18, 2020.¹⁵

11 46. Importantly, the county and state-wide emergency—while very real and very
12 pressing—pales in comparison to the emergency within the Maricopa County jails. Indeed,
13 the rate of cases amongst the tested population at the Maricopa County jails is five times
14 higher than the rate across Maricopa County. Whereas county-wide 6.6 percent of those
15
16

17 ¹¹ See *Data Dashboard: COVID-19 Deaths*, ARIZONA DEPARTMENT OF HEALTH
18 SERVICES (accessed June 15, 2020), <https://cutt.ly/SuvyYvc>.

19 ¹² See Kristina Fiore, *Banner Health Sounds Alarms on COVID Crisis in Arizona*,
20 MEDPAGETODAY (June 11, 2020), <https://cutt.ly/AuvyWmX>; *Hospital Bed Usage &*
21 *Availability*, ARIZONA DEPARTMENT OF HEALTH SERVICES (accessed June 6, 2020),
22 [https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-](https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php)
23 [epidemiology/covid-19/dashboards/index.php](https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php) (reporting that 76% of ICU beds and 80%
24 of inpatient beds in Arizona were in use); Stephanie Innes, *Arizona's largest health system*
25 *reaches capacity on ECMO lung machines as COVID-19 cases in the state continue to*
26 *climb*, AZ REPUBLIC (June 6, 2020) (reporting that Arizona is experiencing a spike in
27 COVID-19 cases leading to record highs in ICU and ventilator use and the largest health
28 system in the state reached capacity for ventilators), <https://cutt.ly/0uvyk1d>.

24 ¹³ *Declaration of State of Emergency by the Governor of the State of Arizona*, OFFICE OF
25 THE GOVERNOR OF ARIZONA (Mar. 11, 2020),
26 https://azgovernor.gov/sites/default/files/declaraton_0.pdf.

26 ¹⁴ *Executive Order 2020-36, Stay Healthy, Return Smarter, Return Stronger*, STATE OF
27 ARIZONA (May 12, 2020), <https://cutt.ly/puvySww>.

27 ¹⁵ *Proclamation of Local Emergency Maricopa County*, MARICOPA COUNTY BOARD OF
28 SUPERVISORS (March 18, 2020), <https://cutt.ly/0y3xvQM>.

1 tested for COVID-19 have tested positive,¹⁶ 33 percent of those tested for COVID-19
2 among the Maricopa County jail population have tested positive as of June 9, 2020.¹⁷

3 47. The rapid rate of spread inside the close quarters of the Maricopa County jails
4 is the result of the virus being highly contagious and known to spread from person to person
5 through respiratory droplets, close personal contact, and from contact with contaminated
6 surfaces and objects.¹⁸

7 48. A high percentage of individuals with COVID-19 are either asymptomatic or
8 pre-symptomatic—meaning they can rapidly yet unknowingly spread the virus to others
9 before developing any symptoms themselves.¹⁹

10 49. Since COVID-19 spreads silently among people who do not show symptoms,
11 universal testing in correctional facilities to identify COVID-19 infections early—even
12 among individuals experiencing no symptoms—and medically isolating all individuals
13 infected with COVID-19 are key to preventing COVID-19 from spreading.

14 50. Other prison systems throughout the country have recognized the particular
15 risks to incarcerated persons and staff alike of COVID-19 spread and offered universal or
16 mass testing of all incarcerated persons in correctional facilities, finding as a result that the
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20 ¹⁶ *Data Dashboard: Deaths*, ARIZONA DEPARTMENT OF HEALTH SERVICES (accessed June
21 15, 2020), [https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-](https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php)
[disease-epidemiology/covid-19/dashboards/index.php](https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php).

22 ¹⁷ Lauren Castle, *Maricopa County considers mass testing in jails after confirmed*
23 *COVID-19 cases spike*, AZ CENTRAL (June 10, 2020),
[https://www.azcentral.com/story/news/local/phoenix/2020/06/10/maricopa-county-](https://www.azcentral.com/story/news/local/phoenix/2020/06/10/maricopa-county-considers-mass-testing-jails-after-confirmed-covid-19-cases-spike-aclu/5334150002/)
24 [considers-mass-testing-jails-after-confirmed-covid-19-cases-spike-aclu/5334150002/](https://www.azcentral.com/story/news/local/phoenix/2020/06/10/maricopa-county-considers-mass-testing-jails-after-confirmed-covid-19-cases-spike-aclu/5334150002/).

25 ¹⁸ *Interim Infection Prevention and Control Recommendations for Patients with Suspected*
or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings, CTRS. FOR
26 DISEASE CONTROL & PREVENTION (May 18, 2020), <https://cutt.ly/ztRAo0X>.

27 ¹⁹ Roz Plater, *As Many as 80 Percent of People with COVID-19 Aren't Aware They Have*
the Virus, HEALTHLINE (May 28, 2020), <https://cutt.ly/uyVOSi7> (“In [a Journal of the
28 American Medical Association] study, researchers reported that 42 percent of people who
tested positive for COVID-19 were without symptoms.”).

1 virus was far more widespread than they had identified when simply testing based on
2 symptoms or direct contact with persons who were known to have been infected.²⁰

3 51. Once contracted, COVID-19 can cause severe damage to lung tissue,
4 including a permanent loss of respiratory capacity, and it can damage tissues in other vital
5 organs, such as the heart and liver.²¹

6 52. People who are 50 years of age and older face a greater risk of serious illness
7 or death from COVID-19.²² For example, data collected from 14 states showed that
8 COVID-19-associated hospitalizations in the United States are highest among older adults,
9 with the jump in increased rates of hospitalizations beginning at ages 50-64.²³ In April, a
10 study showed that rates of hospitalization for COVID-19 infections jumped significantly at
11 age 50: while the hospitalization rate was 2.5% for adults aged 18-49, it was three times as
12 high, at 7.4%, for adults aged 50-64.²⁴

13 53. People of any age who have certain disabilities, defined by federal law,
14 including lung disease, heart disease, chronic liver or kidney disease (including hepatitis
15 and dialysis patients), diabetes, hypertension, compromised immune systems (such as from
16 cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease),
17 developmental disabilities, severe obesity and moderate to severe asthma, face an elevated
18 risk from COVID-19.²⁵

19
20 ²⁰ Cart Aspinwall, *These Prisons Are Doing Mass Testing For COVID-19—And Finding*
21 *Mass Infections*, MARSHALL PROJECT (April 24, 2020), <https://cutt.ly/vuxm8sM>.

22 ²¹ See *Coronavirus Disease 2019 (COVID-19): Clinical Care Guidance*, CTRS. FOR
23 DISEASE CONTROL & PREVENTION (June 2, 2020), <https://cutt.ly/etRPVRI>.

24 ²² Xianxian Zhao, et al., *Incidence, Clinical Characteristics and Prognostic Factor of*
25 *Patients with COVID-19: A Systematic Review and Meta-Analysis*, MEDRXIV (Mar. 20,
26 2020), <https://cutt.ly/etRAkmt>.

27 ²³ Shika Garg et al., *Hospitalization Rates and Characteristics of Patients Hospitalized*
28 *with Laboratory-Confirmed Coronavirus Disease 2019—COVID-NET, 14 States, March*
1–30, 2020, CTRS. FOR DISEASE CONTROL & PREVENTION MORBIDITY AND MORTALITY
WEEKLY REPORT, Vol. 69, No. 15 458 (April 17, 2020), <https://cutt.ly/jt4nzXp>.

²⁴ *Id.*

²⁵ See *supra*, note 5.

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

9 55. In serious cases, COVID-19 causes acute respiratory disease syndrome
10 (“ARDS”), which is life-threatening: even with proper medical care, individuals with
11 ARDS have a 30% mortality rate.²⁶ And even in non-ARDS cases, COVID-19 can severely
12 damage lung tissue, which requires an extensive period of rehabilitation, and in some cases,
13 causes permanent loss of breathing capacity.²⁷ COVID-19 may also target the heart,
14 causing a medical condition called myocarditis, or inflammation of the heart muscle.
15 Myocarditis can reduce the heart’s ability to pump.²⁸ This reduction can lead to rapid or
16 abnormal heart rhythms in the short term, and heart failure limiting a person’s capacity to
17 work and exercise in the long term.

18 56. COVID-19 can also trigger an over-response of the immune system and result
19 in widespread damage to other organs, including permanent injury to the kidneys.²⁹
20 Complications from COVID-19 can manifest at an alarming pace. Patients can show the
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23 ²⁶ *Letter from Faculty at Johns Hopkins School of Medicine, School of Nursing, and*
24 *Bloomberg School of Public Health to Hon. Larry Hogan, Gov. of Maryland* (Mar. 25,
2020), <https://cutt.ly/stERiXk>.

25 ²⁷ Panagis Galiatsatos, *What Coronavirus Does to the Lungs*, JOHNS HOPKINS MED. (Apr.
13, 2020), <https://cutt.ly/PyVsWxP>.

26 ²⁸ Erin Donnelly Michos, *Can Coronavirus Cause Heart Damage?*, JOHNS HOPKINS MED.
27 (Apr. 24, 2020), <https://cutt.ly/KyVsnmf>.

28 ²⁹ C. John Sperati, *Coronavirus: Kidney Damage Caused by COVID-19*, JOHNS HOPKINS
MED. (May 14, 2020), <https://cutt.ly/EyVscWm>.

1 first symptoms of infection in as little as two days after exposure, and their condition can
2 seriously deteriorate in as little as five days or sooner.³⁰

3 57. Younger and healthier people are not immune. Some who contract COVID-
4 19 will have severe cases and require supportive care, which includes supplemental oxygen,
5 positive pressure ventilation, and in extreme cases, extracorporeal mechanical
6 oxygenation.³¹

7 58. There is currently no vaccine against COVID-19, nor is there any established
8 medical treatment for COVID-19.³²

9 59. The need for care, including intensive care, and the likelihood of death, is
10 much higher from COVID-19 infection than from influenza. According to recent estimates,
11 the fatality rate of people infected with COVID-19 is about ten times higher than a severe
12 seasonal influenza, even in advanced countries with highly effective health care systems.
13 For people in the highest risk populations, the mortality rate of COVID-19 infection is about
14 13.2 percent.

15 60. Patients who do not die from serious cases of COVID-19 may face prolonged
16 recovery periods, including extensive rehabilitation from neurologic damage, loss of digits,
17 and loss of respiratory capacity.

18 61. Social distancing—deliberately keeping at least six feet of space between
19 persons to avoid spreading illness³³—and a vigilant hygiene regimen, including frequent
20

21 ³⁰ See *Interim Clinical Guidance for Management of Patients with Confirmed*
22 *Coronavirus Disease (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 2,
2020), <https://cutt.ly/etRPVRI>.

23 ³¹ Lara S. Shekerdemian, Nabihah R, Mahmood, Katie K., et al., *Characteristics and*
24 *Outcomes of Children with Coronavirus Disease 2019 (COVID-19) Infection Admitted to*
25 *US and Canadian Pediatric Intensive Care Units*, JAMA PEDIATRICS (May 11, 2020),
<https://jamanetwork.com/journals/jamapediatrics/fullarticle/2766037>.

26 ³² *Coronavirus*, WORLD HEALTH ORG. (accessed June 4, 2020), <https://cutt.ly/ztWyf7e>
27 (“At this time, there are no specific vaccines or treatments for COVID-19.”).

28 ³³ *CS 316182-A, Interim Guidance on Management of Coronavirus Disease 2019*
(COVID-19) in Correctional and Detention Facilities, CTRS. FOR DISEASE CONTROL &
PREVENTION (Mar. 23, 2020), <https://cutt.ly/LyVWfed>.

1 hand-washing, use of alcohol-based hand sanitizers, frequent cleaning and disinfecting of
2 any surfaces touched by any person, and the use of personal protective equipment (“PPE”)
3 such as masks, are the only known effective measures for protecting against transmission
4 of COVID-19.³⁴

5 62. While hand washing and disinfecting surfaces are advised, social
6 distancing—remaining physically separated from known or potentially infected
7 individuals—is the main strategy to prevent infection.

8 **II. The Maricopa County Jails Are in the Midst of an Explosion of COVID-19**
9 **Cases Because of Defendants’ Failure to Take Reasonable Steps to Protect**
10 **Those in the Jails, Which Puts All County Residents at Risk.**

11 63. Persons incarcerated at the Maricopa County jails face a particularly acute
12 threat of infection, illness, permanent injury, and death from COVID-19. This is because
13 the Maricopa County jails are breeding grounds for infectious diseases, due to such factors
14 as close quarters that hinder social distancing; shared cells, bathrooms, telephones, eating
15 spaces, and common areas; high rates of turnover and mixing, both among the detained
16 population and between detained persons and staff, who may be infected by persons outside
17 the facility; poor ventilation; inadequate access to proper and sufficient hygiene supplies;
18 insufficient cleaning and access to cleaning supplies; and substandard medical services.

19 64. In two weeks, six positive cases in the Maricopa County jails have exploded
20 to 313.³⁵ Put another way, the spike in the number of confirmed cases of COVID-19 in the
21 Maricopa County jails not only increased more than 5,000 percent in two weeks, but now
22
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24 ³⁴ *Coronavirus Disease 2019 (COVID-19): Protect Yourself*, CTRS. FOR DISEASE
25 CONTROL & PREVENTION (accessed June 4, 2020), <https://cutt.ly/GyVELfw>.

26 ³⁵ *MCSO jails have more COVID-19 cases than all Arizona prisons*, THE ASSOCIATED
27 PRESS (June 12, 2020), <https://ktar.com/story/3276059/mcso-jails-have-more-covid-19-cases-than-all-arizona-prisons/>; *Correctional Health Services and MCSO Respond to a Rise in COVID-19 Cases in County Jails*, MARICOPA COUNTY NEWSROOM (June 4, 2020),
28 <https://www.maricopa.gov/CivicAlerts.aspx?AID=1399>.

1 eclipses the “252 confirmed cases among the nearly 41,000 inmates in Arizona’s [state-run]
2 prisons,” even though the state-wide prison population is nearly ten-times bigger.³⁶

3 65. The exponential growth of COVID-19 cases comes despite Maricopa County
4 jails’ purported implementation of a COVID-19 policy under Standard Operating Procedure
5 (“SOP”) J-B-02-023. The policy itself fails to meet the most basic public health guidelines
6 and, even in its most rudimentary form, is not reliably implemented in the jails. Neither the
7 Sheriff nor the County has adequately supervised jail staff to ensure compliance with public
8 health guidance to address the risk of COVID-19 transmission, or even with this inadequate
9 policy. As a result, Plaintiffs and other people detained at the Maricopa County jails live
10 under an ongoing threat of contracting a potentially fatal infection, as they are prevented
11 from protecting themselves from contracting and falling ill with the virus.

12 66. Cognizant of the heightened risks of COVID-19 in custodial settings,
13 the Centers for Disease Control and Prevention (“CDC”) issued specific guidance on March
14 23, 2020 for dealing with COVID-19 in correctional facilities, including local jails (the
15 “CDC Guidelines”).³⁷ The initial CDC Guidelines acknowledge that incarcerated people
16 are often forced to exist “within congregate environments” that “heighten[] the potential for
17 COVID-19 to spread once introduced[,]” especially given that “[t]here are many
18 opportunities for COVID-19 to be introduced into a correctional or detention facility,”
19 including “daily staff ingress and egress” as well as “high turnover” of “admit[ted] new
20 entrants.”³⁸ In light of these concerns, the CDC Guidelines recommend that detention
21 facilities “explore strategies to prevent over-crowding of correctional and detention
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24 ³⁶ *MCSO jails have more COVID-19 cases than all Arizona prisons*, THE ASSOCIATED
25 PRESS (June 12, 2020), <https://ktar.com/story/3276059/mcso-jails-have-more-covid-19-cases-than-all-arizona-prisons/>.

26 ³⁷ *CS 316182-A, Interim Guidance on Management of Coronavirus Disease 2019*
27 *(COVID-19) in Correctional and Detention Facilities*, CTRS. FOR DISEASE CONTROL &
PREVENTION (Mar. 23, 2020), <https://cutt.ly/LyVWfed>.

28 ³⁸ *Id.*

1 facilities during a community outbreak.”³⁹ On May 6, 2020, after 86 percent of jurisdictions
2 reported at least one laboratory-confirmed case of COVID-19 from a total of 420
3 correctional and detention facilities, the CDC published a report entitled “COVID-19 in
4 Correctional and Detention Facilities — United States, February–April 2020.” The Report
5 advises that: “Prompt identification of COVID-19 cases and consistent application of
6 prevention measures, such as symptom screening and quarantine, are critical to protecting
7 incarcerated and detained persons and staff members.”⁴⁰

8 67. The CDC Guidelines also recommend a number of steps that correctional
9 facilities can take to attempt to mitigate the risk of the spread of the virus.⁴¹ These include:

- 10 a. Perform pre-intake screening and temperature checks for all new entrants,
11 “enforce increased space between individuals” in waiting areas during intake,
12 and “consider quarantining all new intakes for 14 days before they enter the
13 facility’s general population,” making sure to avoid mixing people in this
14 routine intake cohorted population with people who might otherwise be
15 quarantined due to exposure to COVID-19;
- 16 b. Adopt and enforce social distancing strategies to increase space between
17 individuals, including by rearranging bunking to ensure that beds are at a
18 minimum six feet apart in all directions, increasing space in lines and waiting
19 areas, staggering meals and rearranging seating so that detainees are sitting
20 on only one side of the table and are separated with adequate space;
- 21 c. Avoid unnecessary movements of incarcerated persons and staff, including
22 by “rearrang[ing] scheduled movements to minimize mixing of individuals
23
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25 ³⁹ *Id.*

26 ⁴⁰ *COVID-19 in Correctional and Detention Facilities — United States, February–April*
27 *2020*, CTRS. FOR DISEASE CONTROL & PREVENTION MORBIDITY & MORTALITY WKLY.
28 REP. (May 6, 2020), <https://cutt.ly/4yVWTOE>.

⁴¹ CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 33.

- 1 from different housing areas” and “restricting movement in and out of the
2 facility”;
- 3 d. Implement “intensified cleaning and disinfecting procedures” that clean and
4 disinfect high-touch surfaces and objects “[s]everal times per day,” and
5 “[e]nsure adequate supplies to support intensified cleaning and disinfection
6 practices”;
- 7 e. “Thoroughly clean and disinfect all areas where the confirmed or suspected
8 COVID-19 case spent time,” and ensure that people “performing cleaning
9 wear recommended PPE”;
- 10 f. “[E]nsure that incarcerated/detained individuals receive medical evaluation
11 and treatment at the first signs of COVID-19 symptoms,” including an
12 evaluation “to determine whether COVID-19 testing is indicated” and
13 medically isolate persons known or suspected to have COVID-19;
- 14 g. Quarantine close contacts of confirmed or suspected COVID-19 cases, with
15 close monitoring of symptoms and temperature checks twice per day,
16 restrictions of quarantined individuals from leaving the facility, and both staff
17 and incarcerated persons wearing face masks at all times if feasible and where
18 individual quarantine space is not available;
- 19 h. When quarantining close contacts of confirmed or suspected COVID-19 cases
20 in groups, “be especially mindful of those who are at higher risk of severe
21 illness from COVID-19. Ideally, they should not be cohorted with other
22 quarantined individuals. If cohorting is unavoidable, make all possible
23 accommodations to reduce exposure risk for the higher-risk individuals. (For
24 example, intensify social distancing strategies for higher-risk individuals.)”;
- 25 i. Suspend co-pays for incarcerated people seeking medical evaluation for
26 respiratory symptoms;
- 27 j. Ensure sufficient stocks of hygiene and cleaning supplies, no-cost access to
28 soap (liquid soap where possible), including tissues; paper towels; alcohol-

1 based hand sanitizer; cleaning supplies effective against the coronavirus; and
2 recommended personal protective equipment like face masks, disposable
3 medical gloves, and N95 respirators;

4 k. Conduct verbal symptom check and temperature check for all staff daily upon
5 entry into the facility; and

6 l. Provide “clear information” to incarcerated persons and staff about COVID-
7 19, including by posting signage throughout the facility communicating
8 COVID-19 symptoms, proper procedures for incarcerated persons/staff
9 experiencing symptoms, and hand hygiene instructions, educating
10 incarcerated persons/staff about the presence of COVID-19 cases within a
11 facility and the need to increase social distancing and maintain hygiene
12 precautions, and training staff on “the need to enforce social distancing and
13 encourage hygiene precautions”.

14 68. The Maricopa County jails do not adequately provide the mitigation measures
15 that public health experts and the CDC recommend.

16 69. Specifically, Defendants’ failure to adopt and implement adequate policies
17 and procedures include:

18 ***Hazardous Intake Processes and Conditions***

19 70. Persons taken into custody at the Maricopa County jails are at risk of
20 contracting COVID-19 from the moment they arrive.

21 71. Although average daily bookings at the Maricopa County jails have been
22 reduced in light of the pandemic, Maricopa County is still processing a large number of
23 people into the jails on a daily basis, with approximately 100-150 bookings per day.⁴²

24 72. The Maricopa County jails describe their booking process as involving
25 property intake, medical screening, fingerprinting, photographing, and a warrants check,
26

27 ⁴² Lauren Castle, *Maricopa County considers mass testing in jails after confirmed*
28 *COVID-19 cases spike*, AZ CENTRAL (June 10, 2020), <https://cutt.ly/luxS6Gk>.

1 followed by a potential interview by Pretrial Services Agency and potential appearance at
2 Initial Appearance Court or before a Magistrate. The entire process of arrest, transfer to the
3 jail, and booking can take between 2-15 hours, and incarcerated persons must make their
4 first appearance before a magistrate within 24 hours.⁴³

5 73. Defendants have not implemented effective and necessary measures to
6 address the risk of the spread of COVID-19 during booking, including a failure to
7 implement social distancing measures during processing. Indeed, after a rudimentary
8 screening process, individuals are then put in a holding “tank,” sometimes for more than a
9 day and a half, with anywhere between 20 and 40 people.

10 74. Individuals also sit shoulder to shoulder on a bench at various times, waiting
11 to be booked.

12 75. Few of the individuals in the “tank” receive masks.

13 76. Many detention officers do not wear masks during this process.

14 77. With the recent influx of arrestees—including 200 in a single night⁴⁴—the
15 risks are multiplied.

16 78. Individuals admitted into the jails are not tested for COVID-19 upon their
17 arrival, unless they are showing a limited number of symptoms or report having had direct
18 contact with someone known to have tested positive for COVID-19.

19 79. The screening does not cover the full range of symptoms associated with the
20 virus, which also include tiredness, loss of taste or smell, and headache, as well as less
21 common symptoms including rash, nausea, vomiting, and diarrhea.⁴⁵

22
23 _____
24 ⁴³ *Initial Appearance*, MCSO (accessed May 27, 2020),
<https://www.mcso.org/Victim/InitialAppearance>.

25 ⁴⁴ Jessica Goodman, *Police arrest 200 adults, 10 juveniles during Sunday protests in Phoenix*, CBS 5 (June 1, 2020), <https://cutt.ly/LuxDDbP>.

26 ⁴⁵ *Coronavirus Disease 2019 (COVID-19) – Symptoms and Causes*, MAYO CLINIC
27 (accessed June 4, 2020), <https://cutt.ly/RyVTJFu>; *Coronavirus Disease 2019 (COVID-19)*
28 *– Symptoms of Coronavirus*, CTRS. FOR DISEASE CONTROL & PREVENTION (accessed May
13, 2020), <https://cutt.ly/byVTCfo>.

1 80. Persons coming into jails with COVID-19 can be pre-symptomatic at intake
2 only to become symptomatic later during incarceration, or can even remain asymptomatic,
3 and nevertheless spread the virus to others.

4 81. Limiting testing to people who are symptomatic or who know they were in
5 contact with someone with COVID-19 prior to their incarceration fails to identify people
6 who may have COVID-19—and can infect other incarcerated persons and jail staff—but
7 are pre-symptomatic, asymptomatic, or were unaware that they had contact with someone
8 with COVID-19.

9 82. People who are not released and not identified at booking as either
10 symptomatic or having had contact with someone with COVID-19 prior to their
11 incarceration are then placed into a housing pod by classification. They are then supposed
12 to begin a 14-day cohorting period once the pod reaches a certain capacity.

13 83. As of late May, however, at least some newly admitted persons were being
14 assigned directly to housing units without having completed any cohorting period.

15 84. Without testing, the cohort group inherently mixes a group of people whose
16 COVID-19 status is unknown and who may be pre-symptomatic or asymptomatic spreaders
17 of COVID-19 with individuals who may not yet be infected. People with COVID-19 may
18 transmit the disease to non-infected members of the group at any time while cohorted
19 together, during the 14 days, and thus non-infected individuals may contract the virus and
20 become symptomatic or remain contagious after they have been placed into the general
21 population. Members of the cohort are not tested before being discharged from the intake
22 cohort unit.

23 85. The Maricopa County jails have also failed to prevent individuals in the
24 routine intake cohort from mixing with people outside the cohort. This includes mixing
25 people from the routine intake cohort during court transport with incarcerated persons who
26 are in quarantine for having had contact with infected individuals and who have not been
27 tested to determine if they are infected.

28

1 86. Additionally, when people already detained in the jails have recently been
2 rebooked on new or different charges, they have been taken to the intake booking facility,
3 where they have spent up to 24 hours in close proximity to individuals undergoing initial
4 intake before being returned to their original unit within the jails. Upon return, jail staff
5 have not screened them for COVID-19.

6 ***Insufficient Social Distancing In General Population***

7 87. Defendants have failed to implement or even attempt reasonable measures to
8 implement social distancing at the Maricopa County jails, and they have failed to make
9 reasonable and necessary modifications to practices, plans, or protocols to enable social
10 distancing. Indeed, social distancing is not occurring in any of the facilities with respect to
11 housing, meals, recreation, or any other aspect of life inside the Maricopa County jails.

12 88. Even with the reduction in the population of incarcerated individuals, the
13 Maricopa County jails still fail to comply with the CDC's recommendation for people to
14 remain six feet apart at all times due to the way Defendants are currently choosing to house
15 the incarcerated.

16 89. In Towers Jail, approximately 45 persons are housed in each pod. At 4th
17 Avenue and Lower Buckeye, there are approximately 70 persons per pod, and at Estrella,
18 open dorms house up to 99 women. The pods house individuals in close quarters, well
19 under the distance of six feet apart that the CDC recommends. Within each pod, most
20 individuals share small cells with two or three persons per cell. Two or three bunk beds are
21 usually stacked less than six feet apart.

22 90. For example, individuals at Towers share a small cell with two other people.
23 The cell contains three beds, approximately two to three feet apart. At Lower Buckeye,
24 individuals share an approximately 6x10 feet cell with another person; their bunks are only
25 three-to-four feet apart. At Towers, a 6x12 feet cell is usually shared with two other
26 individuals. The three bunks in the cell are stacked on top of each another, approximately
27 three feet apart.

28

1 91. At Saguaro, 10 beds are jammed into single rooms no bigger than 10x12 feet
2 in size. Social distancing is impossible in such close quarters.

3 92. At Estrella, women sleep in dormitories that house up to 99 women at a time,
4 with three-tiered bunks positioned so that they are in contact with each other, and so
5 separation from others can be only a matter of inches.

6 93. Although the Maricopa County jails may be below capacity, incarcerated
7 persons are sleeping in units that are nearly full, and staff make no effort to order bed
8 assignments that maximize or increase spacing.

9 94. Units are frequently on security override due to staffing shortages and are on
10 lockdown for count several times per day, which means that incarcerated persons are kept
11 at their beds inches from others, or in cells with cellmates without social distancing, for
12 extended periods of time.

13 95. When not in their cells, incarcerated persons use common spaces together,
14 sharing tables, telephones, video terminals, and showers, all within far less than six feet of
15 each other. Defendants do not stagger dayroom access, and shared day rooms are not large
16 enough to allow for the large number of people to maintain distance.

17 96. At meal time, meals are not staggered, which results in incarcerated persons
18 being forced to stand close to each other waiting in line for food, and having to sit close
19 together at crowded tables.

20 97. At the Lower Buckeye Jail, the same staff members who distribute the meals
21 travel from pod to pod within the jail, increasing the risk of transmission of the virus from
22 one unit to another. The dining area is often crowded. Mealtimes occur two times a day
23 and are not staggered, so individuals are forced to congregate together at the few communal
24 tables and chairs where individuals are able to eat.

25 98. The dining room at the 4th Avenue Jail has six tables with 4 chairs each, all
26 of which do not meet health guidelines for social distancing.

27 99. At Towers, each pod of 45 individuals are required to dine together, but
28 because there is only seating for 24 people, the tables are packed. In at least one unit at

1 Towers, detention officers do not hand out sacks of food and instead have incarcerated
2 persons select a sack out of a large container with bare hands, allowing them to sometimes
3 return a sack they touched to obtain a different one. The containers with remaining sacks
4 that have been potentially touched by multiple people are then brought to other pods.

5 100. At Estrella, some of the tables are cafeteria style, with persons seated elbow-
6 to-elbow.

7 101. At Lower Buckeye, the eight tables seat eight persons each and are always
8 full at mealtimes.

9 102. Recreation spaces are packed, with detention officers doing nothing to
10 encourage or allow social distancing. At 4th Avenue, for example, there are 10 to 20 people
11 confined to a very small space during recreation. At Towers, multiple pods typically go to
12 recreation together at once, resulting in dozens of people crowded in a small space.
13 Detention officers conduct searches of all incarcerated persons on the way out for recreation
14 time, using gloves to check the bottoms of the individuals' feet, the insides of their waist
15 bands, and the insides of their shirts. After searching one person, the officers do not
16 disinfect or switch gloves before checking the next person. At Lower Buckeye Jail, the
17 recreational space is about 15x20 feet. At Estrella, the majority of the women in a 70-
18 person dorm go out in a space that is about half the size of a basketball court.

19 103. Social distancing is not at all encouraged by the staff.

20 104. Incarcerated persons are also told to line up immediately next to each other
21 when jail staff come to housing units to distribute medications.

22 105. Similarly, incarcerated persons are transported between jails and to court in
23 vehicles with packed seating and no social distancing, regularly chained together, sitting
24 shoulder to shoulder without masks and without having their temperatures or vital signs
25 taken before transport. Incarcerated persons are also transported with others displaying
26 obvious symptoms of infection (such as coughing).

27 106. Once in the holding tanks at the courthouse, there is no social distancing.
28 Incarcerated persons are mixed with people from other units and, at times, other facilities,

1 increasing the risk of the virus spreading throughout the jails. Few of the incarcerated
2 people are given masks or other PPE. After appearing in court, they are then transported
3 again in crowded vehicles without social distancing and returned to their pods.

4 ***Lack of Personal Protective Equipment (PPE) and Cleaning***

5 107. Individuals incarcerated at the Maricopa County jails do not receive adequate
6 products to maintain proper hygiene, and there is no attempt by Defendants to ensure
7 adequate cleaning to prevent transmission of the virus.

8 108. The Lower Buckeye, 4th Avenue, Towers, and Estrella Jails all rely entirely
9 on incarcerated persons to clean facilities. Jail trustees (who are also incarcerated) travel
10 between jails and individual pods to clean showers once per week and rarely perform other
11 cleaning in the housing units.

12 109. The jails rely on incarcerated persons within their respective units to perform
13 all other cleaning, including common areas and individual cells. They are left to create—
14 or not— their own systems to organize who will do the cleaning and when, with no
15 supervision by jail staff to ensure that cleaning is done at all, let alone that it is done safely
16 and adequately to kill the virus. They are generally not provided with sufficient protective
17 equipment, such as gloves, to conduct such cleaning.

18 110. Incarcerated persons share numerous high-touch surfaces for which the jails
19 have not implemented any system to ensure that they are cleaned multiple times per day or
20 between uses.

21 111. Telephones—which are generally not six feet apart—are not wiped down
22 after each use.

23 112. At a pod in Lower Buckeye Jail, six telephones, three video phones, and six
24 showers are shared by approximately 70 detained persons without any regular cleaning.

25 113. At a pod in Towers, approximately 35 people share three telephones, two
26 video phones, and five showers. At 4th Avenue Jail, incarcerated persons in a unit can share
27 four telephones, four video phones and six showers.

28

1 114. In Estrella, people regularly refill water bottles by placing them directly in
2 contact with the faucets on the sinks, but those surfaces are rarely cleaned.

3 115. In most units, individual tablets used for various functions, including email
4 and internet access, are distributed to incarcerated persons randomly on a daily basis but are
5 not cleaned overnight.

6 116. Incarcerated persons at all facilities also share high touch items such as tables,
7 chairs, and railings, without any provision by the jails to ensure they are regularly cleaned.

8 117. Twice a day, individuals in a unit are provided a 32 oz. bottle of watered-
9 down disinfectant—or in some instances, a citrus-scented disinfectant—and a bottle of glass
10 cleaner to be shared amongst them to clean the common surfaces of the entire unit and their
11 cells. In some units, officers typically provide two bottles of glass cleaner and no
12 disinfectant.

13 118. This insufficient supply runs out well before each member of the pod can use
14 it, and Maricopa County jail staff frequently refuse to provide additional supplies when
15 asked.

16 119. Although the disinfectant requires that it remain wet on a surface for 5-10
17 minutes in order to properly work, staff do not reliably instruct incarcerated persons of those
18 instructions and incarcerated persons often wipe off the disinfectant immediately after
19 applying. Detention officers do nothing to ensure proper use of the disinfectant.

20 120. Incarcerated persons are not given paper towels and instead clean with toilet
21 paper, sanitary napkins, or personal towels. Any available rags or towels that are used to
22 wipe down the various surfaces are laundered just once a week.

23 121. At Estrella, members of the cleaning crew are issued just one rag, which is
24 used to clean eight toilets and showers.

25 122. Individuals incarcerated at the Maricopa County jails also lack access to
26 sufficient personal hygiene products. No hand sanitizer is available, and neither are paper
27 towels. Incarcerated persons must use their bathing towel for all purposes.

28

1 123. Incarcerated persons are given one set of clothes and towels for an entire
2 week, bed sheets are washed every other week, and blankets are laundered just once a month
3 or longer.

4 124. The post-COVID-19 cleaning routine remains identical to the pre-COVID-19
5 procedure.

6 125. No incarcerated person is required to wear a mask.

7 126. Incarcerated persons generally receive only one thin, disposable paper mask
8 each and are told it would be the only mask they would be given, even if their mask is lost,
9 soiled, or breaks. They are not given anything in which to store their masks to prevent them
10 from becoming soiled or damaged. Masks easily become dirty and soiled, leading them to
11 stop wearing masks, but jail staff have refused to provide new masks despite numerous
12 requests, and even after months of use.

13 127. Moreover, staff at the jails do not consistently wear masks. Even in units on
14 quarantine because they had held an incarcerated person who had tested positive for
15 COVID-19, guards often do not wear masks when having contact with the incarcerated
16 population.

17 ***Lack of Appropriate Safeguards Employed After Suspected and Known Infected***
18 ***Persons are Identified and General Inadequacy of Testing***

19 128. Maricopa County’s written policy, as of April 9, 2020, is that “COVID-19
20 testing is reserved for symptomatic patients, at provider discretion”⁴⁶ and withholds testing
21 to asymptomatic incarcerated persons who had direct contact with other people who
22 contracted COVID-19. Rather than testing anyone who had direct contact with other people
23 who had been infected, the written policy calls for quarantining such incarcerated persons.

24 129. In practice, such asymptomatic people have not been quarantined
25 individually, but instead have been quarantined in groups. For example, if a person tests
26

27 _____
28 ⁴⁶ SOP J-B-02-23, Management Plan for Novel/Coronavirus Disease (COVID-19),
C(f)(iii).

1 positive in a pod, the entire pod is placed on quarantine. When testing is not conducted,
2 any asymptomatic people in the pod who contracted COVID-19 are not identified and
3 instead are left in the pod to potentially infect people who had not yet been infected, thereby
4 creating an unreasonable risk of multiplying the spread of the virus to all persons within the
5 pod.

6 130. More recently on June 5, the Maricopa County jails' Medical Director stated
7 to the media that the county is now also testing asymptomatic direct contacts of people who
8 have tested positive for COVID-19.⁴⁷ However, this has not actually been implemented.
9 For example, incarcerated persons in Towers 2A—a pod containing quarantined individuals
10 who had direct contact with a person with COVID-19—were removed from quarantine on
11 June 9 without ever being tested. On June 10, incarcerated persons in Towers 2A went to
12 recreation with another pod, and that other pod was then quarantined the next day. As of
13 today, Towers 2A has not been placed back on quarantine or tested despite their direct
14 contact with people from the other pod.

15 131. Primarily relying on symptoms-based testing is particularly problematic in
16 light of Defendants' failure to consider the full scope of COVID-19 symptoms, as described
17 above. Incarcerated persons have informed prison or medical staff they were suffering from
18 known symptoms of COVID-19, but were not tested because they did not meet Defendants'
19 limited criteria. In addition, other incarcerated persons have reported symptoms to jail staff
20 that meet Defendants' symptom criteria for testing and are nevertheless denied testing.

21 132. Primarily relying on symptoms-based testing is also problematic because
22 incarcerated persons are deterred from reporting symptoms to staff due to the conditions
23 Defendants impose on them if they report their symptoms. When a person is symptomatic
24 and is tested for COVID-19 or tests positive for COVID-19 at Maricopa County jails, they

25
26 ⁴⁷ Lauren Castle, *ACLU demands Maricopa County test all inmates for COVID-19,*
27 *release results*, AZ CENTRAL (June 5, 2020), <https://cutt.ly/SuxGR0n>; *see also* Press
28 Statement of Grant Phillips (June 5, 2020), <https://www.youtube.com/watch?v=GzogmTMA8mA> (containing video clip of statement made by Dr. Phillips).

1 are placed into an isolation pod that individuals have likened to punitive segregation (“the
2 hole”). They are confined in their cells 24 hours per day and allowed to leave their cells for
3 1 hour every 3 days to shower or take a walk. Their belongings are taken from them. They
4 are fed the usual two meals per day provided at the facility, but the food is almost entirely
5 lacking in nutritional value, making it more difficult for them to fight off infection. Nor are
6 they allowed to supplement the small portions given with commissary items, resulting in
7 their feeling hungry much of the day. Medical care is inadequate—incarcerated persons
8 kept in their isolation units see staff who are not necessarily medically trained once per day
9 at most for a limited symptoms and temperature check. A symptoms check is not
10 appropriate for patients diagnosed with, or suspected to have, COVID-19. Patients with
11 known COVID-19 diagnoses should receive clinical monitoring of their condition given the
12 risk of rapid clinical deterioration post infection.

13 133. One incarcerated person with COVID-19 had to wait 3 ½ days for medical
14 staff to provide him with Tylenol for his headache.

15 134. Another received virtually no medical attention since testing positive for
16 COVID-19. No nurse, doctor, or other medical staff member has come to his cell. Someone
17 in a hazmat suit conducted a pulse oximeter test on June 8, and others took his temperature
18 three times over the course of a week, but no one has clinically assessed his condition or
19 symptoms, checked any other vital signs, or provided any information about what he should
20 do to mitigate the impact of the disease or prevent it from worsening.

21 135. These conditions are known by the incarcerated population throughout the
22 Maricopa County jails. They learned of these conditions from other people who
23 experienced the conditions in these isolation pods. They and many others are reluctant to
24 reveal any symptoms for fear of likewise being placed in these punitive conditions.

25 136. Other incarcerated persons who have experienced symptoms associated with
26 COVID-19 have declined to seek attention in the medical units because of the associated
27 expenses and the jails’ refusal to waive co-pays for COVID-related screening or treatment.
28

1 137. The new policy announced by Maricopa County would be dangerously
2 inadequate even if it were implemented. Under the announced policy, testing is only
3 implemented for those who have contact with an incarcerated person who has a positive
4 COVID-19 test. Up to 30 percent of COVID-19 tests result in false negative results.
5 Because of this false negative rate, even if the jail were now testing asymptomatic known
6 contacts of people who have tested positive for COVID-19, such a policy will not result in
7 the testing of people who have contact with an infected person who nevertheless has a false
8 negative test result.

9 138. Given the congregate setting at the Maricopa County jails, anything short of
10 offering testing for every individual creates an unreasonable risk of transmission and spread
11 of a potentially fatal infection and disease. This is evident given the exponential growth of
12 COVID-19 positive cases at the Maricopa County jails in just the past two weeks.

13 139. Absent universal testing, Defendants cannot identify those who are infected,
14 and timely initiate medical monitoring and treatment for them. Given the well-known and
15 obvious risks that patients infected with COVID-19 can deteriorate rapidly, and can infect
16 others, Defendants' failure to implement universal testing has already created an
17 unreasonable risk of transmission of COVID-19.

18 140. In addition to the failure to test asymptomatic direct contacts, Defendants
19 have failed to take other well-known protective measures to reduce the risk of spread within
20 quarantined pods containing these individuals. In weeks of quarantine at one unit, medical
21 staff came to a quarantine unit for asymptomatic direct contacts only a single time to check
22 symptoms and temperatures, contrary to CDC guidelines requiring close monitoring of
23 symptoms twice a day.

24 141. Medical staff check temperatures without replacing gloves between uses and
25 utilize the same oral thermometer on all of the incarcerated people, simply replacing the
26 plastic tip protector without sterilizing the thermometer in between uses. No social
27 distancing is encouraged or facilitated in the quarantined pod, and people in quarantined
28 pods mix with others from non-quarantined pods during visits to the medical unit. Pretrial

1 detainees are still transported to court with people from other units. No additional masks
2 or cleaning supplies are provided separate and apart from the inadequate supplies provided
3 to individuals in pods without a confirmed exposure to COVID-19. No special cleaning is
4 conducted for the cells or bed spaces of the people who were removed from the unit due to
5 confirmed or suspected COVID-19.

6 142. In Estrella, openings in the doors between a quarantine unit and a dorm
7 directly across the hall permit air to flow freely between them. Such a quarantine procedure
8 is extremely dangerous to the people housed within the quarantine unit, particularly the
9 medically vulnerable, the staff that work in the unit, and to the communities where the staff
10 live.

11 ***Lack of Protections for the Medically Vulnerable***

12 143. Defendants have failed to implement policies or procedures to address the
13 substantial risks of serious illness or death from COVID-19 infection to those who are
14 medically vulnerable by reason of age or pre-existing chronic health condition/disability.

15 144. Defendants have not engaged in a process to release medically vulnerable
16 incarcerated persons from the jails during this time where the congregate conditions inside
17 detention facilities are inherently dangerous to the medically vulnerable and pose an
18 unreasonable risk to them of serious illness or death. Many medically vulnerable people
19 are currently housed in the jails, including Plaintiffs in the Medically Vulnerable and
20 Disability Subclasses.

21 145. Despite clear guidance from public health authorities and the CDC that these
22 prisoners are at a significant risk, Defendants have not taken any specific steps to reduce
23 the risks for the medically vulnerable population that they have chosen to continue to detain.

24 146. Defendants have housed people who are medically vulnerable with persons
25 of unknown COVID-19 status.

26 147. Defendants have not regularly screened medically vulnerable incarcerated
27 persons for symptoms and fevers, even where they were exposed to someone with COVID-
28 19 or have even tested positive for COVID-19.

1 148. Defendants have failed to place medically vulnerable incarcerated persons in
2 a separate quarantine unit when they have been in close contact with a known or suspected
3 COVID-19 case.

4 149. Defendants have not universally tested this population, prohibited housing
5 this medically vulnerable population in open dormitory housing units ensuring that they are
6 housed in single cells, or implemented long-term staff assignment by test-confirmed
7 negative staff to prevent staff-prisoner transmission.

8 ***Lack of Information and Education***

9 150. Public health authorities and the CDC have made clear that education of both
10 staff and people who are incarcerated is critical to help prevent the spread of COVID-19.

11 151. Defendants have failed to provide the basic information about COVID-19
12 prevention recommended by the CDC and public health authorities to all persons
13 incarcerated within the jails.

14 152. Incarcerated persons have only been provided with instructions on hand
15 washing and, in limited instances, how to wash their paper masks.

16 153. Incarcerated persons have not been provided with information on what
17 symptoms to look for or instructions on social distancing, even in quarantined units.

18 154. Defendants have not taken steps to ensure that incarcerated persons with
19 psychiatric or intellectual disabilities are educated about the disease and able to take the
20 steps necessary to protect themselves.

21 155. Aside from basic hand washing and mask washing, individuals have learned
22 about the coronavirus through their attorneys, families, or persons other than Defendants'
23 employees. This is despite the fact that Defendants publicly claim to have posted
24 information on COVID-19 in the jails.

25 ***Lack of Testing or Screening of Staff***

26 156. There is inadequate testing of correctional and civilian staff who have contact
27 with incarcerated persons at the Maricopa County jails. Staff who work in the congregate
28 environment of the jails, who travel to and from their homes and communities for work, are

1 at risk of transmitting the virus to people incarcerated in the jails, to fellow staff, and to
2 persons in their communities.

3 157. There is no policy requiring that testing be offered to all officers or other staff
4 or requiring even screening staff for symptoms when they enter the facility. Instead, staff
5 are “instructed to stay home if they are sick with fever, cough, or difficulty breathing and
6 contact their healthcare provider.”⁴⁸ Defendants’ policies do not describe criteria for
7 offering testing to correctional and civilian staff who have contact with incarcerated people
8 at the Maricopa County jails.

9 158. Detention officers routinely move between pods or units within the jails and
10 do not change or disinfect gloves before entering a pod and often do not wear masks.

11 **CLAIMS FOR RELIEF**

12 **First Claim For Relief**

13 **Unconstitutional Conditions of Confinement in Violation of the**
14 **Fourteenth Amendment to the United States Constitution 42 U.S.C. § 1983**

15 **[On Behalf of All Pretrial Class Plaintiffs and Puente]**

16 159. Plaintiffs repeat and re-allege the preceding paragraphs as if fully set forth in
17 this Count.

18 160. The Due Process Clause of the Fourteenth Amendment governs the treatment
19 of state pretrial detainees.

20 161. Persons in pretrial custody are presumed innocent and therefore have greater
21 protections against unconstitutional treatment than those convicted of crimes. As part of
22 these protections, the government must provide persons detained pretrial with reasonably
23 safe conditions of confinement and address serious medical needs that arise in jail.

24 162. The government violates these obligations by showing objective deliberate
25 indifference to unsafe conditions of confinement.

26
27 ⁴⁸ *COVID-19 FAQ*, MARICOPA COUNTY SHERIFF’S OFFICE (May 4, 2020),
28 <https://www.mcso.org/Multimedia/PressRelease/FAQ%20Covid-19-5.4.20.pdf>.

1 163. Defendants have shown objective deliberate indifference to the Pretrial Class
2 Plaintiffs in violation of the Fourteenth Amendment.

3 164. Defendants have made an intentional decision regarding the conditions under
4 which the Pretrial Class have been confined and regarding the denial of medical care.

5 165. Defendants have not taken reasonable available measures to abate or reduce
6 the risk of serious harm from COVID-19, even though a reasonable custodian under the
7 circumstances would have understood the high degree of risks involved—making the
8 consequences of Defendants’ conduct obvious.

9 166. Defendants have subjected the Pretrial Class to conditions of confinement that
10 place Plaintiffs at substantial risk from COVID-19, a disease for which there is no known
11 vaccine, treatment, or cure.

12 167. By not taking such measures, Defendants have placed the Pretrial Class at
13 risk of irreparable harm or even death.

14 168. As a result of Defendants’ unconstitutional actions and omissions, the
15 Pretrial Class members have suffered—and likely will continue to suffer—irreparable
16 injury.

17 **Second Claim For Relief**

18 **Unconstitutional Conditions of Confinement in Violation of the**
19 **Eighth Amendment to the United States Constitution 42 U.S.C. § 1983**

20 **[On Behalf of All Post-Conviction Plaintiffs and Puente]**

21 169. Plaintiffs incorporate herein the allegations set forth in the preceding
22 paragraphs of this complaint.

23 170. The Eighth Amendment to the United States Constitution protects Plaintiffs
24 from “cruel and unusual punishments.” As part of this right, the government must protect
25 incarcerated persons from a substantial risk of serious harm to their health and safety. *See*
26 *Farmer v. Brennan*, 511 U.S. 825, 832-33 (1994).

1 171. Defendants have shown and continue to show deliberate indifference to a
2 substantial risk of serious harm to Post-Conviction Plaintiffs in violation of the Eighth
3 Amendment.

4 172. COVID-19 infection poses a risk of serious harm, including death, to all
5 incarcerated persons housed at the Maricopa County jails.

6 173. Defendants have acted with deliberate indifference to the risks posed to Post-
7 Conviction Plaintiffs due to the presence and spread of COVID-19 at the Maricopa County
8 jails.

9 174. Defendants know of the risks that COVID-19 poses to Post-Conviction
10 Plaintiffs.

11 175. The risks posed by COVID-19 are and have been obvious to Defendants.

12 176. Defendants have disregarded the substantial risk of serious harm to Plaintiffs
13 from Post-Conviction COVID-19.

14 177. As a result of Defendants' actions, Post-Conviction Plaintiffs have suffered—
15 and likely will continue to suffer—irreparable injury.

16
17 **Third Claim For Relief**

18 **Unconstitutional Punishment in Violation of the Fourteenth Amendment
to the United States Constitution 42 U.S.C. § 1983**

19 **[On Behalf of All Pretrial Subclass Plaintiffs and Puente]**

20 178. Plaintiffs incorporate herein the allegations set forth in the preceding
21 paragraphs of this complaint.

22 179. Under the Fourteenth Amendment, persons in pretrial custody cannot be
23 punished as part of their detention. Punishment is established if the jailer's conduct either
24 is not rationally related to a legitimate, non-punitive, government purpose or is excessive in
25 relation to that scope.

26 180. Defendants have subjected Plaintiffs to unlawful punishment through acts and
27 omissions that are not reasonably related to a legitimate non-punitive government purpose
28

1 or are excessive in relation to that purpose. No legitimate government purpose is served by
2 unnecessarily subjecting pretrial detainees to an excessive risk of exposure to and
3 contracting COVID-19. Nor is any legitimate government purpose served by failing to
4 address these risks. Exposing pretrial detainees to an excessive risk of contracting COVID-
5 19, and of serious illness and death for those who are medically vulnerable, is not rationally
6 related to the purpose of pretrial confinement, which is to ensure the presence of a detainee
7 at trial, and safe and orderly operation of detention facilities that hold them.

8
9 **Fourth Claim For Relief**

10 **Petition for a Writ of Habeas Corpus**
11 **for Confinement in Violation of the**
12 **Fourteenth Amendment to the United States Constitution**
13 **28 U.S.C. § 2241**

14 **[On Behalf of All Pretrial Medically Vulnerable Subclass Plaintiffs]**

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

17 182. In light of COVID-19, continuing to detain the Pretrial Medically Vulnerable
18 Subclass is punitive, not rationally related to a legitimate purpose, and/or excessive in
19 relation to any legitimate purpose, in addition to being objectively deliberately indifferent.
20 Thus, their continued confinement violates their rights under the Fourteenth Amendment.

21 183. Members of the Pretrial Medically Vulnerable Subclass are particularly
22 susceptible to infection, injury and death from COVID-19.

23 184. As a result of their specific characteristics, there are no conditions of
24 confinement that will adequately protect members of the Pretrial Medically Vulnerable
25 Subclass from the risk of infection, serious injury and death from COVID-19. As such, the
26 fact of their confinement violates the Fourteenth Amendment.

27 185. In order to protect the people with the greatest vulnerability to COVID-19
28 from becoming infected with the virus, and also allow for greater risk mitigation for people
held or working in a jail and the broader community, public health experts recommend the
rapid release from custody of people most vulnerable to COVID-19.

1 186. Release or enlargement is needed to prevent irreparable harm to members of
2 the Pretrial Medically Vulnerable Subclass and reduce the incarcerated population at the
3 Maricopa County jails to enable proper social distancing to reduce transmission for all class
4 members and the wider public.

5 187. Release or enlargement of the most vulnerable people from custody also
6 reduces the burden on the region's health care infrastructure by reducing the likelihood that
7 an overwhelming number of people will become seriously ill from COVID-19 at the same
8 time.

9 188. The only way to way to remove the unacceptable risk posed to the Pretrial
10 Medically Vulnerable Subclass by COVID-19 is to remove these class members from the
11 jail via release or enlargement.

12
13 **Fifth Claim For Relief**

14 **Unconstitutional Conditions of Confinement in Violation of the Eighth**
15 **and Fourteenth Amendments**
16 **42 U.S.C. § 1983**

17 **[On Behalf of the Pretrial Medically Vulnerable Subclass, the Post-Conviction**
18 **Medically Vulnerable Subclass and Puente]**

19 189. Plaintiffs repeat and re-allege the preceding paragraphs as set forth in the
20 preceding paragraphs of this Complaint.

21 190. Members of the Pretrial Medically Vulnerable Subclass and Post-Trial
22 Medically Vulnerable Subclass are particularly susceptible to infection, injury and death
23 from COVID-19.

24 191. As a result of their specific characteristics, no conditions of confinement at
25 the Maricopa County jails will adequately protect members of these Medically Vulnerable
26 Subclasses from the risk of infection, serious injury and death.

27 192. Because the Maricopa County jails are not overcapacity, the injury suffered
28 by these Medically Vulnerable Subclasses is not the result of overcrowding.

193. Defendants are therefore holding members of these Medically Vulnerable
Subclasses in custody in violation of the Eighth Amendment's right to be free from cruel

1 and unusual punishment for people who are post-conviction and the Due Process Clause of
2 the Fourteenth Amendment for people who are pretrial.

3 194. Plaintiffs seek injunctive and declaratory relief against Defendant to prevent
4 the continued violation of the rights of Plaintiffs and the classes they represent.

5 **Sixth Claim For Relief**

6 **Discrimination on the Basis of Disability in Violation of Title II of the Americans
7 with Disabilities Act (“ADA”) 42 U.S.C. § 12131 *et seq.***

8 **[On Behalf of the Pretrial Disability Subclass Plaintiffs, the Post-Conviction
9 Disability Subclass Plaintiffs and Puente]**

10 195. Plaintiffs incorporate herein the allegations set forth in the preceding
11 paragraphs of this complaint.

12 196. People in the Disability Subclasses are medically vulnerable because of their
13 disabilities.

14 197. Under Title II of the ADA, “no qualified individual with a disability shall, by
15 reason of such disability, be excluded from participation in or be denied the benefits of the
16 services, programs, or activities of a public entity, or be subjected to discrimination by any
17 such entity.” 42 U.S.C. § 12132.

18 198. Title II of the ADA requires that public entities avoid policies, practices,
19 criteria, or methods of administration that have the effect of excluding or discriminating
20 against persons with disabilities in the entity’s programs, services, or activities. 28 C.F.R.
21 § 35.130(a), (b)((3), (8).

22 199. A public entity must “make reasonable modifications in policies, practices, or
23 procedures when the modifications are necessary to avoid discrimination on the basis of
24 disability, unless the public entity can demonstrate that making the modifications would
25 fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. §
26 35.130(b)(7)(i).

27 200. Plaintiffs and the Disability Subclass members are protected people with
28 disabilities under the ADA. *See* 42 U.S.C. § 12102. The Disability Subclasses include
everyone in the Medically Vulnerable Subclasses except those vulnerable solely because of

1 age or obesity. All other conditions that increase risk for COVID-19 complications or death
2 are disabilities under federal disability rights laws. People with all of these conditions are
3 people with physical and/or mental impairments that substantially limit one or more major
4 life activities, including but not limited to chronic diseases and health conditions, including
5 lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis
6 patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from
7 cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease),
8 inherited metabolic disorders, stroke, developmental disabilities, and moderate to severe
9 asthma.

10 201. Members of the Disability Subclasses are “qualified” for the programs,
11 services, and activities being challenged herein. 42 U.S.C. § 12131(2).

12 202. Maricopa County is a municipal corporation organized under the laws of the
13 State of Arizona and is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131.

14 203. Defendants are violating Title II of the ADA by failing to make the reasonable
15 modifications necessary to provide Disability Subclass members an equal opportunity to
16 benefit from the jail’s “services, programs, or activities,” including medical care, meals,
17 and rehabilitative programming. Failure to make these modifications places members of the
18 Disability Subclasses at high risk of severe infection or death from COVID-19, and this risk
19 is excluding them from equal access to life in jail, and from an equal opportunity to
20 adjudicate their cases for those who are pretrial. Defendants are further violating the ADA
21 by employing methods of administration that tend to discriminate against people with
22 disabilities.

23 204. Defendants are required to take affirmative steps to ensure equal access for
24 people with disabilities, including by making reasonable modifications. But Defendants
25 have failed to make modifications to ensure that high-risk people with disabilities can avoid
26 contracting—and possibly dying from—COVID-19. Exposing disabled persons to a virus
27 that can sicken or kill them denies them the ability to benefit from Maricopa County jails’
28 programs, services, and activities.

1 205. For the Disability Subclasses, the only reasonable modification in the face of
2 the unprecedented risks of COVID-19 is removal from the jail, whether through release or
3 enlargement.

4 206. To the extent it is unreasonable to remove any members of the Disability
5 Subclasses from the jails, the Defendants must make modifications within the jails,
6 including but not limited to: separate living spaces rather than high-capacity shared rooms
7 and dorms with people in close proximity; universal testing and screening for COVID-19;
8 free distribution of adequate cleaning supplies, including soap; frequent cleaning of
9 common areas; free distribution of adequate personal protective equipment, including
10 masks and gloves; education on COVID-19 risks and prevention; suspension and waiver of
11 co-payments and charges for medical treatments and visits; and staggered access to
12 bathrooms, meals, and other shared resources.

13 207. Defendants are further violating the ADA by employing methods of
14 administration that tend to discriminate against people with disabilities. The ADA prohibits
15 covered entities like the Maricopa County jails from using methods of administration that
16 defeat or impair the accomplishment of the objectives of the public entity's program. For
17 disabled individuals facing criminal charges or participating in post-trial proceedings, the
18 Maricopa County jails' main purpose and objectives are to provide required safety and
19 health services while ensuring an individual's appearance at trial or post-trial proceedings.
20 For disabled individuals serving a criminal sentence, the jail's primary service is to detain
21 them for the duration of their sentence. A person who is sickened, unconscious, or killed
22 by COVID-19 will be unable to make court appearances; those who die of COVID-19 will
23 not complete their sentences. By setting up a system where mass infection and resulting
24 harm and death will disproportionately fall on people with disabilities, Defendants have
25 failed to establish methods of administration that do not discriminate against people with
26 disabilities.

27 208. Defendants' actions and inactions in the face of COVID-19 constitute
28 disability discrimination that injure the Disability Subclasses.

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Seventh Claim For Relief

**Discrimination on the Basis of Disability in Violation of
504 of the Rehabilitation Act 29 U.S.C. § 794**

**[On Behalf of the Pretrial Disability Subclass Plaintiffs, the Post-Conviction
Disability Subclass Plaintiffs and Puente]**

209. Plaintiffs incorporate herein the allegations set forth in the preceding paragraphs of this complaint.

210. Section 504 states that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of [] disability, be excluded from the participation in, be denied the benefits of, or be subject[] to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).

211. Defendants Penzone and Maricopa County receive federal financial assistance for services, programs, or activities. *See* 29 U.S.C. § 794(a).

212. Section 504 requires entities such as the Maricopa County jails to make reasonable modifications to ensure that people with disabilities have equal access to its programs and services.

213. The regulations implementing Section 504 require that entities receiving federal financial assistance avoid unnecessary policies, practices, criteria or methods of administration that have the effect of discriminating against persons with disabilities. 28 C.F.R. § 41.51(b)(3)(i).

214. Members of the Disability Subclasses are individuals with disabilities under Section 504.

215. Section 504 imposes parallel requirements as the ADA. *See Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001). Disability Subclass members incorporate by reference the allegations laid out in their Sixth Claim for relief, *see supra*, paragraphs 195-208.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- 1 a. Certify this petition as a class action and appoint named Plaintiffs as class and
2 subclass representatives and the undersigned counsel as class counsel;
- 3 b. Issue a temporary restraining order and/or writ of habeas corpus requiring
4 Defendants to produce promptly a list of all members of the Pretrial and Post-
5 Conviction Medically Vulnerable and Disability Subclasses detained at the
6 Maricopa County jails;
- 7 c. Issue a temporary restraining order and/or writ of habeas corpus requiring
8 Defendants to immediately release the members of the Pretrial Medically
9 Vulnerable Subclass and Pretrial Disability Subclass who are incarcerated
10 solely due to their inability to afford a financial condition of release, or whose
11 release Defendants do not object to;
- 12 d. Issue a temporary restraining order, preliminary and permanent injunction,
13 and/or writ of habeas corpus imposing a process—to be determined by the
14 Court—to consider the release or enlargement of all remaining Pretrial
15 Medically Vulnerable Subclass and Pretrial Disability Subclass members not
16 released pursuant to Paragraph c within two weeks, and members of the Post-
17 Conviction Medically Vulnerable Subclass, considering:
 - 18 i. the deprivation of the petitioner’s federal rights posed by the COVID-
19 19 outbreak (including the disability discrimination for Pretrial and
20 Post-Conviction Disability Subclass members and the necessity of
21 providing modifications including release);
 - 22 ii. any competent evidence that the individual poses a serious risk of
23 flight or danger to others;
 - 24 iii. the length of the remaining sentence to be served by members of the
25 Post-Conviction Medically Vulnerable Subclass; and
 - 26 iv. whether, by clear and convincing evidence, any present risk of flight
27 of danger outweighs the threat to the petitioner’s health and safety
28 posed by their exposure to COVID-19 in the Maricopa County jails,

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- after considering alternative conditions for release or enlargement to manage the risk(s) presented;
- e. Issue injunctive relief or a temporary restraining order implementing public health and safety measures for all Plaintiffs in the Maricopa County jails sufficient to abate the risk of the spread of COVID-19, including but not limited to measures to remedy the deficiencies outlined in this complaint, on the grounds that the current conditions of confinement for all Plaintiffs violate the Fourteenth and Eighth Amendments of the U.S. Constitution,
 - f. Issue injunctive relief or a temporary restraining order requiring any reasonable modifications necessary—including, but not limited to, any public health and safety measures sufficient to abate the risk of the spread of COVID-19, including but not limited to measures to remedy the deficiencies outlined in this complaint—on the grounds that the current conditions of confinement violate the ADA and Section 504;
 - g. Issue an order requiring Defendants to provide to Plaintiffs and the Court, at intervals the Court deems proper, information regarding the ongoing COVID-19 outbreak at the Maricopa County jails;
 - h. If immediate release is not granted on the basis of this petition alone, then expedited review of the petition, including oral argument, via telephonic or videoconference if necessary;
 - i. Issue a judgment declaring that the conditions under which Defendants have confined Plaintiffs and the Maricopa County jails class members violate the Due Process Clause of the Fourteenth Amendment with respect to the Pretrial Class; the Eighth Amendment’s prohibition against cruel and unusual punishment with respect to the Post-Conviction Class; the ADA and Section 504 with respect to the Pretrial and Post-Conviction Disability Subclasses;

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- j. Grant Plaintiffs their reasonable attorneys’ fees and expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; 42 U.S.C. §§ 1988, 12205; and other applicable law; and
- k. Grant all further relief as this Court deems just and proper to ensure proper social distancing and other reasonable protection of Plaintiffs.

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RESPECTFULLY SUBMITTED this 16th day of June, 2019.

STINSON LLP

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