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25 NORTHERN CALIFORNIA

26 Plaintiffs / Petitioners,

27 vs.

28 GREGORY J. AHERN, Sheriff of Alameda
County, in His Official Capacity, and DOES
1-10,

Defendants / Respondents

Case No.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITIONERS' EX PARTE APPLICATION
FOR A TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE
RE PRELIMINARY INJUNCTION**

Filed concurrently with: Verified Petition;
Request for Judicial Notice; Petitioners' Ex
Parte Application for Temporary Restraining
Order and for Order to Show Cause re
Preliminary Injunction; McDermott
Declaration re Ex Parte Notice; Proposed
Order

Action Filed: May 29, 2020

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1 **I. INTRODUCTION**

2 Petitioners bring this action to prevent avoidable illness and death from COVID-19 at
3 Santa Rita Jail. This disease is both highly infectious and dangerous, particularly to the Medically
4 Vulnerable.¹ It spreads rapidly in congregate settings like Santa Rita Jail. Anyone can contract the
5 virus merely by breathing the same air or touching the same surface as an infected person.
6 Transmission can occur even from people who are pre-symptomatic or asymptomatic, meaning
7 that sick people can infect others without even realizing they have the disease.

8 The steps needed to slow COVID-19 are well known and widely practiced outside of
9 correctional institutions. They animate stay-at-home orders and other emergency measures that
10 have redefined social and economic life across the State of California. Among other things, people
11 should practice social distancing by maintaining six feet of space from others; anyone with
12 COVID-19 symptoms should be medically isolated until a doctor determines that they are no
13 longer infectious; and people with actual or potential exposure to the disease should remain in
14 quarantine for at least 14 days. The Centers for Disease Control (“CDC”) has urged prisons and
15 jails to incorporate these principles into their operational practices.

16 None of these measures have been meaningfully implemented at Santa Rita Jail. The Jail
17 continues to confine people, including Medically Vulnerable people, in dormitories and shared
18 cells where social distancing is impossible. The Jail has placed symptomatic people in units
19 alongside the uninfected, and it has been slow to identify and remove sick people to medical
20 isolation. Quarantine practices are inadequate: the forced mixture of people with suspected

21 _____
22 ¹ Medically Vulnerable people, as defined in the Petition and in accordance with CDC guidance,
23 include incarcerated people over the age of 55 and incarcerated people with the following
24 underlying medical conditions, regardless of their age: diabetes mellitus; lung disease, including
25 asthma or chronic obstructive pulmonary disease (chronic bronchitis or emphysema) or other
26 chronic conditions associated with impaired lung function or that require home oxygen; heart
27 disease; blood disorders, including sickle cell disease and disorders that require the use of blood
28 thinners; chronic kidney disease; chronic liver disease; compromised immune system (*i.e.*,
immunosuppression); current or recent pregnancy in the last two weeks; endocrine disorders;
metabolic disorders; and neurological, neurologic, and neurodevelopment conditions, including
disorders of the brain, spinal cord, peripheral nerve, and muscle, such as cerebral palsy, epilepsy
(seizure disorders), stroke, intellectual disability, moderate to severe developmental delay,
muscular dystrophy, or spinal cord injury.

1 COVID-19 exposure and others has introduced the disease to parts of the Jail that were previously
2 untouched. Adding to these concerns, the Jail's onsite medical center is wholly unequipped to
3 coordinate medical care for incarcerated people in the midst of a viral outbreak.

4 The Jail's recent (and belated) efforts to identify and protect people who have the highest
5 risk of serious COVID-19 complications are inadequate and self-defeating. Respondent's policy
6 inexplicably excludes a number of incarcerated people who are Medically Vulnerable and require
7 increased protections. And despite an apparent goal of isolating at-risk people from the general
8 population, the Jail continues to intermix people in the at-risk group with others in the Jail,
9 exposing the entire cohort to an unacceptable infection risk. Rather than creating a protected, self-
10 contained ecosystem, the Jail has merely clustered high-risk people into a single location, virtually
11 ensuring that any viral outbreak will spread rapidly through their ranks.

12 Under these circumstances, the *only* measure that can reasonably protect Medically
13 Vulnerable people incarcerated at Santa Rita Jail is to release them from custody or, where there is
14 no reasonable alternative, to home confinement. As the keeper of the Jail, Gov't Code § 26605,
15 Respondent Sheriff Gregory Ahern has clear authority to release incarcerated people to protect
16 them from public health emergencies. *See* Gov't Code § 8658. Respondent's refusal to exercise
17 that authority on behalf of Medically Vulnerable people constitutes deliberate indifference to a
18 substantial risk of medical harm in violation of the United States and California Constitutions.

19 Respondent's flouting of constitutional requirements will irreparably harm Petitioners and
20 the putative class unless this Court provides interim relief. Petitioners face ongoing violations of
21 their constitutional rights, and the conditions of their confinement create a significant risk of
22 serious illness or death that increases with each day they remain at Santa Rita Jail. The public
23 likewise has a compelling interest in ensuring that Petitioners' constitutional rights are vindicated
24 before COVID-19's deadly progress renders these legal proceedings a purely academic exercise.

25 Accordingly, the Court should issue a temporary restraining order enjoining Respondent
26 from violating the constitutional rights of Medically Vulnerable people incarcerated at Santa Rita
27 Jail; requiring Respondent to release class members from custody (or, in some rare circumstances,
28 to home confinement), subject to certain exceptions as outlined in the accompanying Petition,

1 Application, and Proposed Order; and to provide testing for all class members for COVID-19.

2 **II. EVIDENCE OF DANGEROUS CONDITIONS AT SANTA RITA JAIL**²

3 **A. COVID-19 Endangers Medically Vulnerable Incarcerated People**

4 The COVID-19 outbreak is a global pandemic without modern precedent. There currently
5 is no vaccine for COVID-19 and no cure. The disease is easily transmitted, spreading through
6 respiratory droplets, close personal contact, and contact with contaminated surfaces. Appx. 002–
7 003 (Goldenson ¶ 7). Many people who have the disease are temporarily or permanently
8 asymptomatic: Signs of infection typically do not emerge until up to 14 days after exposure, and
9 as many as 25 percent of infected people never develop symptoms. *Id.* at 003 (¶¶ 8–9). The risk of
10 transmission from asymptomatic people creates a significant challenge for containment efforts. *Id.*

11 The effects of COVID-19 infection are serious and can include severe respiratory illness,
12 major organ damage, and death. The risk of death or serious illness is particularly high for the
13 Medically Vulnerable. *Id.* at 007–9 (¶ 22). People infected with COVID-19, particularly in
14 vulnerable populations, may require significant medical attention, including ventilator assistance
15 for respiration and intensive care. *Id.*

16 **B. COVID-19 is Already Established at Santa Rita Jail**

17 COVID-19 has already breached the walls of Santa Rita Jail. As of May 21, 2020, the Jail
18 reported 53 confirmed cases, with 23 tests pending. Appx. 337 (McDermott ¶ 5). The true
19 infection rate remains unknown given the Jail’s failure to implement widespread testing. But
20 experiences at other correctional institutions suggest that far more people carry the disease at
21 Santa Rita Jail than reported, *see* Petition ¶ 35, and that the numbers will increase exponentially
22 absent significant interventions, Appx. 002 (Goldenson ¶ 6).

23 **C. Conditions Are Intolerably Dangerous for the Medically Vulnerable**

24 **1. Social Distancing is Not Uniformly Practiced**

25 In the absence of a vaccine or cure, the only way to protect Medically Vulnerable people
26 from COVID-19 is to prevent them from falling ill in the first place. This, in turn, requires

27 _____
28 ² This brief incorporates by reference the corresponding verified Petition and evidence submitted
in support of the Petition.

1 rigorous enforcement of “social distancing”—maintaining at least six feet of space between people
2 at all times. Appx. 003 (Goldenson ¶ 10). As designed and operated, Santa Rita Jail makes it
3 impossible for Medically Vulnerable people to take even this basic precautionary measure.

4 Despite the pandemic, the Jail continues to pack people into barrack-style dorms with rows
5 of bunks placed just two or three feet apart. *See* Petition ¶ 58. Although the Jail has reduced its
6 population since the onset of the pandemic, incarcerated people continue to report crowding in the
7 dorms. Appx. 081–82 (Wolverton ¶ 5). Others—including some Medically Vulnerable people—
8 are housed in small, shared cells, with communal toilets and sinks. Petition ¶ 59. Meals, pill calls,
9 and common areas force all people incarcerated at Santa Rita Jail into close proximity. Petition ¶
10 60. Meals are served communally, by workers who are housed elsewhere in the Jail. Petition ¶¶
11 60–61. People wait in small holding cells with as many as ten others before they are permitted to
12 meet with their attorneys or psychiatric health professionals. Petition ¶ 65. Even the medical unit
13 is a maze of narrow hallways and tiny examination rooms. Appx. 019–022 (O’Neill ¶¶ 4, 11).

14 Movement through the Jail presents its own issues. Sally-ports trap people in enclosed
15 spaces when moving between secure areas. Appx. 019–22 (O’Neill ¶¶ 4, 11). Deputies transport
16 groups of people by handcuffing them to a chain, which grows as the procession moves from unit
17 to unit, picking up more people with each stop. Appx. 071 (Wayne ¶ 11). People on the chain are
18 handcuffed less than one foot apart, without protective gloves or masks. *Id.*; *see also* Appx. 032–
19 33 (English ¶ 6); Appx. 065 (Robinson ¶ 17); Appx. 079 (Williams ¶ 8).

20 **2. Sick People are Not Promptly Identified and Isolated**

21 The CDC advises that as soon as an incarcerated person develops COVID-19 symptoms,
22 he or she “should be immediately placed under medical isolation in a separate environment from
23 other individuals.” Appx. 110. Sick people should isolated until their fever breaks *and* their other
24 symptoms have improved, among other criteria. *Id.* 112.

25 Despite this guidance, Jail officials have placed symptomatic people in residential units
26 that are shared with dozens of others. They have also been slow to identify and isolate sick people.
27 Dylan Hyche, whose asthma carries heightened risk, recalls deputies placing in his unit a person
28 who was coughing and sneezing but nonetheless used common areas and joined in unit activities.

1 Appx. 041 (Hyche ¶¶ 2, 5). Deputies did not remove the man for days, and Mr. Hyche tested
2 positive for COVID-19 shortly thereafter. *Id.* at 042 (¶ 9); *see also* Petition ¶ 73.

3 The Jail has also returned sick people to the general population too quickly, even removing
4 people with COVID-19 from isolation while they are still symptomatic. Cedric Henry, for
5 instance, tested positive for COVID-19, developing difficulty breathing during the course of his
6 illness. Appx. 036 (Henry ¶¶ 4–6). As soon as his fever broke, however, the doctor transferred him
7 to a new unit, telling him, “You’ll breathe better in another building.” *Id.*

8 **3. The Jail Does Not Adequately Quarantine People with Actual or**
9 **Potential COVID-19 Exposure**

10 The CDC advises that people who have had “close contact” with anyone who tests positive
11 for COVID-19 should be held separately in quarantine for a period of at least 14 days. Appx. 099.
12 This guidance, too, is frequently ignored.

13 In early May, multiple people in Unit 7 tested positive for COVID-19. On May 5, the Jail
14 transferred a man from the stricken unit to the un-quarantined Unit 32. Appx. 048 (J. Mendez ¶ 4.)
15 Days later, deputies removed the man and informed Unit 32 residents that they had been exposed
16 to COVID-19. *Id.* 048–49 (¶ 5). Administrative carelessness spread the virus to a new population,
17 needlessly exposing dozens of individuals—some number of whom are Medically Vulnerable—to
18 infection. Officials compounded their error by failing to conduct universal COVID-19 tests in Unit
19 32, ignoring the risk of asymptomatic transmission among the residents. *Id.* 049 (¶ 7). Moreover,
20 the Jail appears to be holding people in Unit 32 in a cohort, rather than in separate quarantine—a
21 practice that the CDC specifically discourages. Appx. 114 (explaining that “[c]ohorting multiple
22 quarantined close contacts of a COVID-19 case could transmit COVID-19 from those who are
23 infected to those who are uninfected.”).

24 **4. Santa Rita’s Medical Unit is Unequipped to Handle a Viral Outbreak**

25 While social distancing, isolation, and quarantine are cornerstones of COVID-19
26 prevention, it is equally essential “that incarcerated/detained individuals receive medical
27 evaluation and treatment at the first signs of COVID-19 symptoms.” Appx. 0118. Conditions at
28 Santa Rita Jail again fall short. The Jail’s onsite medical unit, the Outpatient Housing Unit

1 (“OPHU”), is unequipped to handle a widespread outbreak of COVID-19,³ further increasing the
2 risk for any Medically Vulnerable person who contracts the disease.

3 Already people who have contracted COVID-19 are being denied medical treatment—
4 while housed in miserable conditions. When Mr. Hyche tested positive for COVID-19, OPHU
5 nurses denied him a hospital bed and placed him on a mattress covering the floor of a dirty cell,
6 which was stained with another person’s blood. Appx. 041–42 (Hyche ¶ 2, 8–10). Mr. Hyche
7 received no treatment beyond occasional vital checks and was never allowed to shower, despite
8 multiple requests. *Id.* 042 (¶ 11). Mr. Hyche saw another COVID-19 “patient” lose consciousness
9 and remain motionless for hours before staff checked on his condition. *Id.* 043 ¶ 14. Once they
10 eventually noticed his condition, staff members foisted the unresponsive man into a wheelchair
11 and removed him from the unit “while his head dangled to the side.” *Id.* (¶ 13).

12 The Jail moved Leonard Wakefield to a garbage-strewn cell following his positive
13 COVID-19 test. Appx. 067 (Wakefield ¶¶ 5–6). Deputies denied him soap, hand wipes, and
14 supplies to clean the filth. *Id.* 068 (¶ 8). Despite serious symptoms, Mr. Wakefield received no
15 meaningful treatment; when he complained of difficulty breathing, medical staff offered him
16 Tylenol. *Id.* ¶ 7. And Mr. Henry’s COVID-19 diagnosis landed him a transfer to a cell with feces
17 on the floor. Appx. 035–36 (Henry ¶¶ 5, 6 (p. 1), 6 (p. 2)). Like the others, Mr. Henry received no
18 meaningful medical treatment even as he gasped desperately for breath. *Id.* (¶ 4 (p. 2)).

19 **5. The Jail Has Made only Paltry Efforts to Identify and Protect**
20 **Medically Vulnerable People**

21 While conditions at Santa Rita Jail endanger everyone, they are particularly hazardous to
22 Medically Vulnerable people. The Jail has not implemented policies capable of protecting its most
23 vulnerable populations. To the contrary, its belated attempts at protection are both under-inclusive
24 and ineffective, denying any real protection to those who need it most.

25 _____
26 ³ Even before COVID-19, the OPHU often operated at or near capacity. Appx. 020–21 (O’Neill
27 ¶7). The OPHU is the primary medical provider for thousands of people, but it is smaller than an
28 average general practitioners’ office, with only a few small examination rooms. *Id.* 020, 22 (¶¶ 4,
11). Medical staff are spread thin, and requests for medical treatment often go unanswered. *Id.*
021–22 (¶ 10).

1 Santa Rita Jail and its medical provider, Wellpath, have identified certain incarcerated
2 people as “high risk” and removed them to a single unit within the Jail. But the Jail applies its
3 measures too narrowly, excluding people who meet the CDC’s criteria for medical vulnerability.
4 *See* Appx. 007–9 (Goldenson ¶ 22). Petitioner Wilkerson, for example, has seizures, asthma, and
5 high blood pressure. Appx. 074 (Wilkerson ¶ 3). Petitioner Robinson has severe asthma. Appx.
6 064 (Robinson ¶ 5). Neither they, nor others like them, have received special housing or other
7 protective measures based on their increased COVID-19 risk. Petition ¶¶ 53–55.

8 Even for people identified as high risk, the Jail’s efforts are woefully deficient. Social
9 distancing is impossible. In one high-risk unit, incarcerated people are held two to a cell, where
10 they share bunk beds, a toilet, and a sink. Appx. 081–82 (Wolverton ¶¶ 3–4, 7). They also share
11 common areas and—contrary to the goal of isolation—interact with people from *other* residential
12 units, without any assurance that those people are COVID-19 free. *Id.* 082 (¶ 7). Petitioner
13 Wolverton has seen deputies take people from his medically vulnerable unit to court appearances
14 with people from other pods. *Id.* 082–83 (¶ 9). And people from other pods prepare and serve
15 meals to those on the Medically Vulnerable Unit—all without proper protective equipment. *Id.*
16 082 (¶¶ 7–8).

17 **III. LEGAL ARGUMENT**

18 **A. Standard for Temporary Restraining Order**

19 “Plaintiffs are not required to wait until they suffer actual harm, but may seek injunctive
20 relief against threatened infringement of their rights.” *S. Christian Leadership Conference v. Al*
21 *Malaikah Auditorium Co.*, 230 Cal. App. 3d 207, 223 (1991). A temporary restraining order is
22 properly granted *ex parte* to prevent plaintiffs from suffering irreparable harm until the court can
23 evaluate the matter at a preliminary injunction hearing. *See* Code Civ. Proc. § 527(c).

24 California courts balance two factors in evaluating whether to enter a temporary restraining
25 order: (1) “the likelihood that the plaintiff will prevail on the merits at trial,” and (2) “the interim
26 harm that the plaintiff is likely to sustain if the restraining order were denied as compared to the
27 harm that the defendant is likely to suffer if the order were issued.” *Church of Christ in Hollywood*
28 *v. Superior Court*, 99 Cal. App. 4th 1244, 1251 (2002)(alteration and citation omitted); *see IT*

1 *Corp. v. Cty. of Imperial*, 35 Cal. 3d 63, 69–70 (1983) (establishing an identical standard for
2 preliminary injunctions). Courts weigh these factors on a sliding scale. For example, “if the party
3 seeking the [restraining order] can make a sufficiently strong showing of likelihood of success on
4 the merits, the trial court has discretion to issue the [restraining order] notwithstanding that party’s
5 inability to show that the balance of harms tips in his favor.” *Common Cause v. Bd. of*
6 *Supervisors*, 49 Cal. 3d 432, 447 (1989).

7 Petitioners satisfy both standards. They are likely to succeed on their constitutional claims,
8 and Respondent’s deliberate indifference to the dangers of COVID-19 threatens Medically
9 Vulnerable incarcerated people with the risk of serious illness or death. The balance of the equities
10 and the public interest also favor a temporary restraining order.

11 **B. Petitioners Will Succeed on the Merits**

12 Respondent has disregarded the dangers posed by COVID-19 by failing to implement
13 reasonable and readily available measures to protect Medically Vulnerable people incarcerated at
14 Santa Rita Jail from COVID-19: release and home confinement. Respondent’s inaction subjects
15 Petitioners and the putative class to unsafe conditions of confinement that violate the United States
16 and California Constitutions. Petitioners are thus entitled to writs of habeas corpus and mandamus
17 requiring Respondent to take corrective action.

18 **1. Writs of Habeas Corpus and Mandate Will Lie to Correct**
19 **Unconstitutional Conditions of Confinement**

20 Unconstitutional conditions of confinement may be remedied through either a writ of
21 habeas corpus or mandate. In *In re Head*, 42 Cal. 3d 223 (1986), the California Supreme Court
22 explained that a writ of habeas corpus was an appropriate vehicle for an action that “presented
23 issues related to the conditions of confinement in a state prison and involved the rights of prison
24 inmates generally.” *Id.* at 226; *see also Inmates of the Riverside Cty. Jail v. Clark*, 144 Cal. App.
25 3d 850, 862 (1983) (holding in a habeas corpus action brought by jail inmates that trial court
26 properly ordered operational reforms to address unconstitutional conditions of confinement).

27 A writ of mandate affords the same relief. To obtain this writ, a petitioner must establish:
28 “(1) A clear, present and usually ministerial duty on the part of the respondent; and (2) a clear,

1 present and beneficial right in the petitioner to the performance of that duty.” *City of Dinuba v.*
2 *Cty. of Tulare*, 41 Cal. 4th 859, 868 (2007). Although a writ of mandate often is used to compel
3 performance of a “ministerial” duty, it also “will lie to correct an abuse of discretion by an official
4 acting in an administrative capacity.” *Common Cause v. Bd. of Supervisors*, 49 Cal. 3d 432, 442
5 (1989). Because no official has discretion to violate the Constitution, mandate is an appropriate
6 vehicle to remedy unconstitutional acts or omissions by public officials. *See Jolicoeur v. Mihaly*, 5
7 Cal. 3d 565, 570 n.2 (1971) (“Mandamus is . . . appropriate for challenging the constitutionality or
8 validity of statutes or official acts.”); *Edward W. v. Lamkins*, 99 Cal. App. 4th 516, 529 (2002)
9 (“[M]andamus may lie to correct constitutional violations.”). For this reason, the California
10 Supreme Court has expressly held that a writ of mandate may compel officials to change
11 conditions in prisons and jails when they do not meet constitutional requirements. *See Head*, 42
12 Cal. 3d at 231 n.7 (“Because actions to enforce statutory and constitutional rights of prisoners are
13 brought to ‘compel the performance of an act which the law specifically enjoins, as a duty
14 resulting from an office,’ . . . there is no question but that mandamus lies.” (citation omitted)).

15 Claims arising from unconstitutional conditions at the Santa Rita Jail satisfy both
16 requirements for a writ of mandate against Respondent. As Alameda County Sheriff, Respondent
17 has a clear duty “to keep the county jail and the prisoners in it,” Gov’t Code § 26605, which he
18 must perform in a manner consistent with the Constitution. As people incarcerated at Santa Rita
19 Jail, Petitioners have a “special interest” in safe Jail conditions “over and above the interest held in
20 common with the public at large.” *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 52 Cal.
21 4th 155, 165 (2011). Thus, as in *In re Head*, a writ of mandate will lie to correct conditions of
22 confinement that violate the constitutional rights of Petitioners or the putative class.

23 **2. Respondent is Deliberately Indifferent to the Risks that COVID-19**
24 **Presents to Medically Vulnerable People**

25 “[W]hen the State takes a person into its custody and holds him there against his will, the
26 Constitution imposes upon it a corresponding duty to assume some responsibility for his safety
27 and general well-being.” *DeShaney v. Winnebago Cty. Dept. of Soc. Servs.*, 489 U.S. 189, 199–
28 200 (1989). This principle requires correctional officials to provide adequate medical care to

1 incarcerated people and to protect them from communicable disease. *See Farmer v. Brennan*, 511
2 U.S. 825, 828 (1994); *see also Helling v. McKinney*, 509 U.S. 25, 33 (1993) (holding officials may
3 not be “deliberately indifferent to the exposure of inmates to a serious, communicable disease”);
4 *Hutto v. Finney*, 437 U.S. 678, 682 (1978) (finding constitutional violation where incarcerated
5 people were placed in conditions where infectious disease could easily spread).

6 An official’s “deliberate indifference” to a substantial risk of harm from infectious disease
7 violates the Eighth Amendment, *Helling*, 509 U.S. at 33, and article I, section 17 of the California
8 Constitution. *See Inmates of the Riverside Cty. Jail*, 144 Cal. App. 3d at 859 (“The same basic test
9 employed in the federal courts is appropriate to assessing conditions of confinement challenged
10 under the California Constitution.”). For people detained pretrial—and presumed innocent—
11 deliberate indifference violates the Fourteenth Amendment and article I, section 7 of the California
12 Constitution. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979); *Sundance v. Mun. Ct.*, 42 Cal. 3d
13 1101, 1123 n.12 (1986); *Inmates of the Riverside Cty. Jail*, 144 Cal. App. 3d at 859 (1983). Unlike
14 individuals who have been convicted, people who are detained pre-trial have not been adjudicated
15 guilty of any crime and cannot be subjected to “punishment” without due process. *Bell*, 441 U.S.
16 at 535 (“[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication
17 of guilt in accordance with due process of law.”)

18 For those who are incarcerated following a conviction, deliberate indifference must be
19 found where (1) the challenged deprivation was “sufficiently serious,” and (2) officials “know[]
20 that inmates face a substantial risk of serious harm and disregard[] that risk by failing to take
21 reasonable measures to abate it.” *Farmer*, 511 U.S. at 834, 847. Those held pretrial need show
22 only *objective* deliberate indifference, *i.e.*, that “a reasonable official in the circumstances would
23 have appreciated the high degree of risk involved.” *Gordon v. Cty. of Orange*, 888 F.3d 1118,
24 1124–25 (9th Cir. 2018). As Petitioners’ evidence demonstrates, Respondent has knowingly failed
25 to protect the Jail’s Medically Vulnerable population from COVID-19, in violation of the U.S. and
26 California Constitutions.

1 (a) COVID-19 Presents a Serious Health Risk to Medically Vulnerable
2 People Incarcerated at Santa Rita Jail

3 As described above and in the Petition, COVID-19 presents a serious threat to Petitioners
4 and all Medically Vulnerable people in Santa Rita Jail. Under similar circumstances, courts across
5 the country have concluded that COVID-19 is a serious matter that requires an appropriate
6 response from correctional officials. *See, e.g., Cameron v. Bouchard*, 2020 WL 1929876, at *2
7 (E.D. Mich. Apr. 17, 2020), *as modified on reconsideration*, No. CV 20-10949, 2020 WL
8 1952836 (E.D. Mich. Apr. 23, 2020) (“It cannot be disputed that COVID-19 poses a serious health
9 risk to Plaintiffs and the putative class [consisting of current and future jail detainees.]”); Appx.
10 305–306 (*Martinez-Brooks v. Easter*, No. 3:20-cv-00569 (D. Conn. May 12, 2020) (“It is also
11 undisputed—and, indeed, by now common knowledge—that COVID-19 is a highly dangerous
12 disease that poses a significant risk of severe illness and death, particularly for members of the
13 Medically Vulnerable Subclass.”)); Appx. 236 (Order, *Wilson v. Williams*, No. 20-cv-794 (N.D.
14 Ohio Apr. 22, 2020) (finding deliberate indifference based, in part, on prison’s failure to keep
15 “inmates at least six feet apart, despite clear CDC guidance for some time that such measures
16 are necessary to stop the spread and save lives”)).

17 (b) Respondent has Acted with Deliberate Indifference by Failing to
18 Conduct Targeted Releases of Medically Vulnerable People

19 Respondent is indisputably aware of the substantial risk of serious harm COVID-19 poses
20 to Medically Vulnerable people. *See Farmer*, 511 U.S. at 842 (“[A] fact finder may conclude that
21 a prison official knew of a substantial risk from the very fact that the risk was obvious.”). And
22 Respondent cannot credibly claim ignorance of the measures necessary to contain the virus. *See*
23 *CDC Guidance*, Appx. 096–121.

24 Despite Respondent’s *actual knowledge* of both risk and remedy, he continues to confine
25 people in ways that ignore the serious risk that COVID-19 poses to Medically Vulnerable people’s
26 health. COVID-19 is only in its early stages, and the Jail has already demonstrated its inability to
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1 protect or treat those who are *not* Medically Vulnerable when they fall ill. In light of these failures,
2 the risk to the Medically Vulnerable is too great to justify their continued confinement.⁴

3 Respondent cannot continue to hold Medically Vulnerable people in these conditions.
4 Release—or, where there is no less restrictive alternative, transfer to home confinement—is the
5 only viable measure that can reasonably assure the safety of Medically Vulnerable people. Appx.
6 015 (Goldenson ¶ 37) (“[T]hose who are medically vulnerable. . . should be moved out of the jails
7 to the absolute maximum extent possible.”). California law provides Respondent clear authority to
8 implement this lifesaving measure. Government Code section 8658 expressly authorizes him to
9 protect incarcerated people “endanger[ed]” by the COVID-19 pandemic by “remov[ing] them to a
10 safe and convenient place” for the duration of the emergency. Govt. Code § 8658. Advocates in
11 another lawsuit recently urged Respondent to invoke his Section 8658 authority in response to the
12 COVID-19 threat.⁵ Respondent expressly rejected their plea, stating: “While the Sheriff’s Office
13 will continue to work with justice stakeholders to safely reduce the jail’s population as to those
14 inmates who are not in custody for serious and violent felonies, out of concern for public safety,
15 *the Sheriff respectfully declines to invoke California Government Code Section 8658.*” Appx. 219.

16 Respondent’s blanket refusal to conduct targeted releases of the Jail’s most vulnerable
17 population is untenable—and unconstitutional. Although Respondent may exercise discretion in
18 choosing among equally effective measures to mitigate serious risks, “choosing inevitably
19 inadequate measures to the exclusion of a plainly superior one constitutes deliberate indifference.”
20 Appx. 310 (*Martinez-Brooks*, No. 3:20-cv-00569 (D. Conn. May 12, 2020)); *see also Hamilton v.*
21 *Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992) (“By choosing to rely upon a medical opinion which a

22
23 ⁴ Courts routinely find Eighth Amendment violations in similar situations. *See, e.g., Brown v.*
24 *Plata*, 563 U.S. 493, 545 (2011) (affirming order to reduce prison overcrowding in order to, *inter*
25 *alia*, remedy unsanitary living conditions and failure to protect incarcerated people from infectious
26 disease); *Hutto*, 437 U.S. at 682–83 (finding constitutional violation where incarcerated people
27 were placed in conditions where infectious diseases could spread easily); *Jolly v. Coughlin*, 76
28 F.3d 468, 477 (2d Cir. 1996) (“[C]orrectional officials have an affirmative obligation to protect
inmates from infectious disease.”); *DeGidio v. Pung*, 920 F.2d 525, 533 (8th Cir. 1990) (prison’s
negligent and reckless response to tuberculosis outbreak violated Eighth Amendment).

⁵ That lawsuit, *Babu, et al. v. County of Alameda, et al.*, No. 5:18-cv-07677 (N.D. Cal.), centers primarily on allegations of inadequate mental health treatment at Santa Rita Jail.

1 reasonable person would likely determine to be inferior, the prison officials took actions which
2 may have amounted to the denial of medical treatment and the unnecessary and wanton infliction
3 of pain.”), *overruled in part on other grounds; McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir.
4 1999) (holding that deliberate indifference may be established “by a decision to take an easier but
5 less efficacious course of treatment”). Rather than removing those at the greatest risk from the
6 Jail’s dangerous confines, Respondent has confined a small subset of them in a designated unit.
7 These measures cannot protect Medically Vulnerable people, both because the Jail excludes many
8 Medically Vulnerable people from the at-risk unit and because it continues to expose that unit to
9 the general population, with no guarantee that the people they contact are COVID-19 free.⁶ Nor
10 have Medically Vulnerable people been provided any testing to allow Medically Vulnerable
11 people to take appropriate precautions. Under these circumstances, Respondent’s flat rejection of
12 release or (rarely) home confinement and testing constitutes deliberate indifference to an imminent
13 danger to Medically Vulnerable people. *See DeGidio*, 920 F.2d at 531 (finding Eighth
14 Amendment violation based on prison officials’ inadequate response to a tuberculosis outbreak).

15 **C. Petitioners Will Suffer Irreparable Harm Absent Immediate Relief**

16 Petitioners are likely to suffer irreparable harm unless this Court grants a temporary
17 restraining order mandating release or (rarely) home confinement for Medically Vulnerable people
18 incarcerated at Santa Rita Jail. This is true for at least two reasons.

19 First, ongoing confinement at Santa Rita Jail violates the rights of Petitioners and the
20 putative class to constitutional conditions of confinement. “It is well established that the
21 deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v.*
22 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
23 Respondent’s failure to implement adequate measures to protect Medically Vulnerable people

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25 ⁶ Exposing non-infected incarcerated people to contagious individuals in itself constitutes
26 deliberate indifference. *See, e.g., Duvall v. Dallas County, Tex.*, 631 F.3d 203, 208 (5th Cir. 2011)
27 (upholding a finding of unconstitutional conditions of confinement where officials continued to
28 house inmates in a facility despite the existence of an extensive MRSA outbreak); *Laureau v.*
Manson, 651 F.2d 96, 98–99 (2d Cir. 1981) (upholding finding of unconstitutional conditions of
confinement where healthy prisoners were housed with physically ill cellmates).

1 from COVID-19 creates a “condition of confinement that is sure or very likely to cause serious
2 illness and needless suffering the next week or month or year.” *Helling*, 509 U.S. at 33. This fact
3 alone is sufficient to support temporary injunctive relief.

4 Second, as a direct consequence of the unconstitutional Jail conditions, Petitioners and the
5 class face a substantial and imminent risk of death or serious illness. People have already fallen ill
6 at Santa Rita Jail, and COVID-19 infections are likely to continue. If Petitioners and class
7 members succumb to the disease while this case remains pending, no relief from this Court would
8 remedy the resulting injury. The risk to Petitioners’ health clearly rises to the level of irreparable
9 harm. *See Rodde v. Bonta*, 357 F.3d 988, 999 (9th Cir. 2004) (upholding grant of preliminary
10 injunction where plaintiffs demonstrated they would suffer “delayed and/or complete lack of
11 necessary treatment and increased pain and medical complications”); *Villanueva-Bustillos v.*
12 *Marin*, 370 F. Supp. 3d 1083, 1090 (C.D. Cal. 2018) (holding that the risk of death is “clearly” an
13 irreparable harm).

14 Consistent with these principles, courts across the country have concluded that the risk of
15 contracting COVID-19 as a result of unsafe conditions of confinement constitutes irreparable
16 harm.⁷ As in those cases, Petitioners have presented ample evidence that immediate relief is
17 necessary to protect Medically Vulnerable people from an imminent health risk.

18 **D. Equities and the Public Interest Strongly Favor Petitioners**

19 The balance of equities tips decidedly in Petitioners’ favor. Petitioners and the class face
20 deprivations of their constitutional right to adequate treatment that outweigh any injury to
21 Respondents. *See Church of Christ in Hollywood*, 99 Cal. App. 4th at 1251. Any harm that
22 Respondent would experience from removing the Jail’s most vulnerable population to a safe
23 location would be ameliorated by the opportunity to designate certain individuals for home

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25 ⁷ *See, e.g.*, Appx. 236–37 (Order, *Wilson v. Williams*, No. 20-cv-794 (N.D. Ohio Apr. 22, 2020)
26 (finding risk of exposure at federal prison constituted irreparable harm); *Mays v. Dart*, 2020 WL
27 1812381, at *13 (N.D. Ill. Apr. 9, 2020) (granting TRO on behalf of detainees at county jail on
28 conditions of confinement claim after finding exposure to COVID-19 constituted a “grave threat
to their health and possibly their lives”); *Fraihat v. U.S. I.C.E.*, 2020 WL 1932570, at *29 (C.D.
Cal. Apr. 20, 2020) (granting injunctive relief to immigration detainees who faced increased
likelihood of severe illness and death in absence of preliminary injunction).

1 confinement and object to other releases on public safety grounds, as outlined in the
2 accompanying Petition, Application, and Proposed Order. With those safeguards in place, any
3 harm to Respondent pales in comparison to the imminent threat to Petitioners' health. *See Klein v.*
4 *City of San Clemente*, 584 F.3d 1196, 1207-08 (9th Cir. 2009) (holding that harm from
5 constitutional deprivations is particularly irreparable when "time is of the essence" in vindicating
6 the affected right); *Mays*, 2020 WL 1812381, at *14 (holding in a suit challenging a jail's COVID-
7 19 containment efforts that detainees' interest in avoiding infection outweighs sheriff's interest in
8 maintaining current practices). In fact, targeted releases of Medically Vulnerable people from
9 Santa Rita Jail could *benefit* Respondent by facilitating his ongoing efforts to safeguard the
10 facility. Releases would ease space constraints and free resources necessary to provide targeted
11 protective measures and a higher level of medical care for those who remain.

12 The public interest also favors Petitioners for at least two reasons. First, Petitioners' suit
13 highlights systemic constitutional deficiencies at Santa Rita Jail, and "it is always in the public
14 interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002
15 (citations and quotation marks omitted). Second, public safety requires containing COVID-19
16 everywhere it exists, including within Santa Rita Jail. The Jail is not hermetically sealed: People
17 enter and leave every day, creating vectors to spread the virus from the Jail to the outlying
18 community. In addition, because the Jail lacks resources to treat COVID-19 patients internally, an
19 outbreak would burden local healthcare facilities, straining a system that is already overtaxed by
20 the pandemic. Appx. 007, 010–013 (Goldenson ¶¶ 21, 26–30). For these reasons, immediate
21 targeted releases of Medically Vulnerable people would avoid an imminent safety risk while
22 supporting the State's efforts to flatten the curve of COVID-19 infections. Such relief is not only
23 warranted but desperately needed to prevent a public health catastrophe.


24 **IV. CONCLUSION**

25 Petitioners have shown an overwhelming likelihood of success on the merits of their
26 claims and an imminent threat of irreparable injury. Moreover, the balance of harms and public
27 interest weigh in favor of immediate injunctive relief. Petitioners therefore respectfully request
28 that the Court grant the *ex parte* request for a temporary restraining order.

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