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10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE DISTRICT OF ARIZONA**

13 Maria Guadalupe Lucero-Gonzalez; Claudia
 Romero-Lorenzo; Tracy Ann Peuplie; James
 14 Tyler Ciecierski; and Marvin Lee Enos, each
 15 individually and on behalf of all others similarly
 16 situated,

17 Plaintiffs–Petitioners,

18 v.

19 Kris Kline, Warden of the Central Arizona
 Florence Correctional Complex; David Gonzales,
 20 U.S. Marshal for the District of Arizona; Donald
 W. Washington, Director of the U.S. Marshals
 21 Service; Michael Carvajal, Director of the Federal
 Bureau of Prisons, in their official capacities,

22 Defendants–Respondents.
 23

No. _____

**MOTION FOR TEMPORARY
 RESTRAINING ORDER AND
 PRELIMINARY INJUNCTION
 AND
 MEMORANDUM IN SUPPORT**

**(Oral Argument and
 Expedited Ruling Requested)**

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1 **MOTION FOR TEMPORARY RESTRAINING ORDER**
2 **AND PRELIMINARY INJUNCTION**

3 Plaintiffs–Petitioners (“Plaintiffs”), on behalf of themselves and the proposed class
4 members, respectfully move for a temporary restraining order (“TRO”) and a preliminary
5 injunction against Defendants–Respondents (“Defendants”). *See* Fed. R. Civ. P. 65. Plaintiffs
6 seek injunctive relief to remedy unconstitutional conditions of confinement at CoreCivic Inc.’s
7 Central Arizona Florence Correctional Complex (“CoreCivic”), due to a growing outbreak of
8 COVID-19 transmissions among detainees, guards, and medical staff. Plaintiffs specifically
9 request that this Court: (1) issue an order (a) appointing an independent expert, under Rule 706
10 of the Federal Rules of Civil Procedure, to inspect CoreCivic and its social-distancing and
11 hygienic practices, and (b) directing the expert to submit to the Court a report on whether these
12 measures comply with recommendations of public-health experts and are adequate to protect
13 Plaintiffs from COVID-19; and (2) if based on this report the Court concludes that these
14 conditions violate Plaintiffs’ constitutional right not to be subjected to unreasonable conditions
15 of confinement, issue an order directing Defendants to (a) immediately implement the expert’s
16 recommendations and (b) provide weekly updates on their progress.

17 Plaintiffs meet the requirements, under Federal Rules of Civil Procedure (“Rule”) 65,
18 for a TRO and a preliminary injunction. Defendants have failed to protect Plaintiffs from the
19 known and serious risks posed by the COVID-19 pandemic. These failures have violated
20 Plaintiffs’ rights under the Fifth and Eighth Amendments to the United States Constitution.
21 Absent such relief, Plaintiffs will suffer irreparable harm up to and including their deaths. And
22 both the balance of equities and the public interest favor granting Plaintiffs’ requested relief.

23 Plaintiffs also have satisfied the notice requirements of Rule 65. On May 8, 2020,
24 counsel for Plaintiffs notified Defendants that they have failed to protect against COVID-19
25 transmission and must remedy these unconstitutional conditions. Plaintiffs’ counsel also
26 disclosed that this litigation was imminent. After filing, Plaintiffs’ counsel promptly will send
27 Defendants a copy of Plaintiffs’ Class-Action Complaint for Declaratory and Injunctive Relief
28 and Petition for Writs of Habeas Corpus (the “Complaint”), along with a copy of this Motion.

1 Due to Plaintiffs' immediate and irreparable injury, no further notice should be required. *See*
2 Fed. R. Civ. P. 65(b)(1)(A), (B). Plaintiffs also request that this Court waive any security
3 requirement. *See* Fed. R. Civ. P. 65(c).

4 This Motion is based on the below Memorandum in Support; the Complaint and its
5 supporting documents and exhibits; and other evidence and arguments as may be presented.
6 For these reasons, Plaintiffs respectfully request that this Court issue a TRO and a preliminary
7 injunction, and grant such other relief as appropriate, to prevent the serious and deadly risks
8 that Plaintiffs face at CoreCivic during this global pandemic.

9 **MEMORANDUM IN SUPPORT**

10 For the past six weeks, much of the United States has been socially distancing as a result
11 of the COVID-19 pandemic. While knowing of this crisis and the dangers posed by unsanitary
12 conditions and inadequate social distancing and testing, though, Defendants have failed to
13 protect Plaintiffs from these risks. Now, COVID-19 diagnoses are increasing at CoreCivic.
14 Plaintiffs are crammed in 80-person pods, masks and gloves are unavailable or inadequate, and
15 without action it is only a matter of time before this initial outbreak engulfs the entire facility.
16 The window for averting widespread infection will soon close without this Court's intervention.

17 Detaining Plaintiffs in these conditions violates Plaintiffs' rights under the Fifth and
18 Eighth Amendments to the United States Constitution. Therefore, for the reasons below,
19 Plaintiffs respectfully request that the Court issue a TRO and a preliminary injunction.

20 **I. BACKGROUND**

21 The ongoing pandemic presented by COVID-19 already has altered many aspects of
22 our society and will continue to do so. As of May 8, 2020, over 1,239,000 people have tested
23 positive for COVID-19 and over 76,000 have died as a result of the disease, in the United
24 States alone. In Arizona, nearly 10,000 people have tested positive and 426 have died. These
25 numbers rise daily.

26 Individuals held in detention, and staff in detention facilities, are among the most
27 vulnerable to an outbreak. Without social distancing and hygienic measures, the virus spreads
28 uncontrollably in close quarters. At CoreCivic, Defendants have crammed up to 80 people into

1 one pod and up to 14 people in one cell, where beds are stacked on beds fewer than six feet
 2 apart. Defendants likewise have created unsanitary conditions: soap is scarce, cleaning supplies
 3 are limited, and social distancing is impossible. With at least 20 positive COVID-19 diagnoses
 4 at the facility so far,¹ the chances of stopping an outbreak grow increasingly slim each passing
 5 day. Everyone at CoreCivic—including Plaintiffs, correctional officers, and medical staff—will
 6 be affected. Many will become infected. Too many of those will die without immediate action.
 7 And many of these infected individuals—especially those who are asymptomatic—will further
 8 circulate the virus throughout CoreCivic, the broader community, and beyond.

9 **A. Defendants have detained federal pretrial and post-conviction detainees—**
 10 **including Plaintiffs—at CoreCivic.**

11 The named Plaintiffs are five individuals detained in federal custody at CoreCivic, who
 12 seek to represent a class of all detainees in federal custody at CoreCivic. Plaintiff Maria
 13 Guadalupe Lucero-Gonzalez is detained at CoreCivic for a supervised-release violation,
 14 following a conviction for illegal reentry. She seeks to represent the class of post-conviction
 15 detainees (“Post-Conviction Class”). The remaining Plaintiffs—Claudia Romero-Lorenzo,
 16 Tracy Ann Peuplie, James Tyler Ciecierski, and Marvin Lee Enos—are detained at CoreCivic
 17 while they await trial or sentencing on various federal criminal charges, for which they are
 18 presumed innocent.² They seek to represent the class of pretrial detainees (“Pretrial Class”).

19 Many of the Plaintiffs and proposed class members have one or more underlying
 20 medical conditions that make them particularly vulnerable to COVID-19. Ms. Lucero-

21
 22 ¹ *About 400 Inmates Quarantined at CoreCivic Prison in Florence, After 13 Test Positive for*
 23 *COVID-19, AZ Central* (May 8, 2020 7:00 a.m.),
<https://www.azcentral.com/story/news/local/arizona-health/2020/05/08/coronavirus-cases-multiple-inmates-test-positive-corecivic-prison-covid-19/3093348001/>.

24 ² Several circuits have held that the Fifth Amendment’s Due Process Clause applies to
 25 both pretrial detainees and people who have been convicted but not yet sentenced. *See, e.g.,*
 26 *Lewis v. Downey*, 581 F.3d 467, 474 (7th Cir. 2009). The Supreme Court also has observed that
 27 “Eighth Amendment[] protections d[o] not attach until after conviction and sentence.” *Graham*
 28 *v. Connor*, 490 U.S. 386, 392 n.6 (1986). And the Ninth Circuit has addressed this issue only in
 the context of the standard for determining a due-process liberty interest in being free from
 segregated housing. *See Resnick v. Hayes*, 213 F.3d 443, 448 (9th Cir. 2000). Here, because a
 court has not yet issued a judgment and commitment for Plaintiffs Romero, Peuplie, Ciecierski,
 and Enos, they have not received a “formal adjudication of guilt” subjecting them to the Eighth
 (rather than the Fifth) Amendment. *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983).

1 Gonzalez suffers from asthma, hypertension, diabetes, and kidney cancer. Ms. Romero-
2 Lorenzo suffers from several medical conditions, including a type of leukemia. Ms. Peuplie
3 suffers from multiple conditions, including asthma, hypertension, anxiety, substance-abuse
4 disorder, and spinal stenosis. Mr. Ciecierski suffers from severe asthma. And Mr. Enos suffers
5 from multiple severe medical conditions, including asthma and hypertension.

6 Defendants are the federal and private officials who have immediate custody over
7 Plaintiffs and all class members whom Plaintiffs seek to represent. Defendant Kris Kline is the
8 warden of CoreCivic. Defendant David Gonzales is the U.S. Marshal for the District of
9 Arizona, and Defendant Donald W. Washington is the Director of the U.S. Marshals Service.
10 And Defendant Michael Carvajal is the Director of the Federal Bureau of Prisons.

11 **B. COVID-19 poses an unprecedented risk of illness, injury, and death.**

12 The 2019 novel coronavirus known to cause coronavirus disease 2019 (“COVID-19”)
13 spreads from person to person through respiratory droplets, close personal contact, and
14 contact with contaminated surfaces and objects. [Compl. ¶ 28 & Ex. 2 (Declaration of Joseph
15 Goldenson, M.D. (“Goldenson Decl.”)) ¶ 21] There is no vaccine, nor any known medication
16 to prevent or treat the virus. [Compl. ¶ 28 & Ex. 2, ¶¶ 17, 24] The only known measures for
17 effectively protecting against transmission of COVID-19 are “social distancing”—that is,
18 keeping at least six feet between persons to avoid transmission—and a vigilant hygienic
19 regimen, including frequent and thorough hand washing. [Compl. ¶ 28 & Ex. 2, ¶¶ 17, 24]
20 Because the coronavirus spreads among people who do not show symptoms, social distancing
21 is the best way to prevent transmission. [Compl. ¶ 28] Up to 25% of people infected with
22 COVID-19, it is estimated, lack symptoms of COVID-19. [Compl. ¶ 28 & Ex. 2, ¶ 31]

23 Once contracted, COVID-19 can cause severe damage or even death. [Compl. ¶ 29]
24 People of any age who suffer from certain underlying medical conditions—including lung
25 disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients),
26 diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or
27 autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic
28 disorders, stroke, developmental delay, and asthma—also have elevated risks due to COVID-

1 19. [Compl. ¶ 31 & Ex. 2, ¶ 10] Most people in higher risk categories who develop serious
2 illness will need advanced medical support, requiring highly specialized equipment like
3 ventilators that are in limited supply, and an entire team of care providers. [Compl. ¶ 32]
4 Patients can show the first symptoms of infection in as little as two days after exposure, and
5 their condition can seriously deteriorate in as little as five days or sooner. [Compl. ¶ 34]

6 Correctional settings—like CoreCivic—further increase the risk of contracting
7 COVID-19 due to the high numbers of people with chronic, often untreated, illnesses housed
8 in a setting with minimal levels of sanitation, limited access to personal hygiene products,
9 limited access to medical care, numerous high-contact surfaces, and no possibility of staying at
10 a distance from others. [Compl. ¶ 36 & Ex. 2, ¶¶ 19–30] Numerous public health experts have
11 all strongly cautioned that people booked into and held in jails and prisons are likely to face
12 serious, even deadly, harm due to the outbreak of COVID-19. [Compl. ¶ 38]

13 **C. Governments, businesses, and communities have implemented stringent**
14 **preventative measures to slow the spread of COVID-19.**

15 Due to the risks posed by the COVID-19 pandemic, people have implemented
16 responsive measures globally, nationally, and in Arizona. On March 13, 2020, the President
17 declared a state of emergency. [Compl. ¶ 40] Numerous states also have issued “stay at home”
18 orders, asking people to stay home in order to stop the spread of COVID-19. [Compl. ¶ 41]

19 The State of Arizona similarly is taking unprecedented steps to manage the public health
20 crisis caused by COVID-19 and to minimize the spread of the virus. On March 11, 2020,
21 Arizona Governor Doug Ducey declared a State of Emergency due to the COVID-19
22 outbreak. [Compl. ¶ 42] Days later, on March 15, Governor Ducey closed all public schools, a
23 closure later extended through the end of the 2019–2020 school year. [*Id.*] Then, on March 30
24 Governor Ducey ordered a statewide “stay-at-home” order. [*Id.*] And on April 29, Governor
25 Ducey extended the stay-at-home order to at least May 15, 2020. [*Id.*]

26 **D. Despite the grave risks posed by COVID-19, Defendants have not provided safe**
27 **conditions of confinement to protect Plaintiffs from infection.**

28 Defendants must address these risks above by following public-health guidelines,

1 including those by the Centers for Disease Control and Prevention (“CDC”).³ But Defendants
2 have failed to do so, exposing Plaintiffs to unreasonable risks of contracting COVID-19.

3 Detainees at CoreCivic are detained in community “pods,” or housing units, typically
4 containing either 40 or 80 people. [Compl. Ex. 6 (Declaration of James Tyler Ciecierski
5 (“Ciecierski Decl.”)) ¶ 4; Compl. Ex. 5 (Declaration of Tracy Ann Peuplie (“Peuplie Decl.”))
6 ¶ 5; Compl. Ex. 3 (Declaration of Maria Guadalupe Lucero-Gonzalez (“Lucero Decl.”)) ¶ 8;
7 Compl. Ex. 4 (Declaration of Claudia Romero-Lorenzo (“Romero Decl.”)) ¶ 7] All 40 or 80
8 people in the pod share between four to six showers and three to four telephones. [Ciecierski
9 Decl. ¶ 4; Peuplie Decl. ¶ 5; Lucero Decl. ¶ 8; Romero Decl. ¶ 7; Compl. Ex. 1 (Declaration of
10 Christina M. Woehr (“Woehr Decl.”)) ¶ 33] Within their pods, Plaintiffs share a cell with either
11 one person or as many as 13 other people. [Ciecierski Decl. ¶¶ 4–5; Woehr Decl. ¶ 42; Peuplie
12 Decl. ¶ 6; Lucero Decl. ¶ 10; Romero Decl. ¶ 8] In cells with one other person, beds are placed
13 only a couple feet, or arms’ length, apart. [Woehr Decl. ¶ 43; Ciecierski Decl. ¶ 4; Lucero Decl.
14 ¶ 10; Romero Decl. ¶ 8] In cells with bunk beds, as many as six bunks are often placed against
15 the same wall, within one or two feet apart. [Ciecierski Decl. ¶ 5; Peuplie Decl. ¶ 6] Everyone
16 in a cell—regardless of whether it houses two or 14 people—shares a single toilet and sink.
17 [Peuplie Decl. ¶ 6; Lucero Decl. ¶ 10; Romero Decl. ¶ 8] In isolation, Plaintiff Enos is held in
18 a small cell with two other people as close to two feet apart without access to daily showers.
19 [Compl. Ex. 7 (Declaration of Marvin Lee Enos) ¶¶ 13–15]

20 When people are first transferred to CoreCivic, they are placed in a “quarantine room”
21 or “cohort” with other people who recently came to the facility. [Peuplie Decl. ¶ 12] These
22 cohorts are held in a small room for 14 days. [*Id.*] After 14 days, they are moved to the pod and
23 are placed in a cell housing between two to 14 people. [*Id.*] Sometimes before the end of the
24 14 days, though, people in quarantine are removed from quarantine and placed in the general
25 population, “by mistake,” before eventually being returned to quarantine. [Woehr Decl. ¶ 30]

26
27 ³ See, e.g., Centers for Disease Control and Prevention, *Interim Guidance on Management of*
28 *Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*,
[https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-
correctional-detention.html](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html) (last visited May 7, 2020).

1 Defendants have not attempted to implement social distancing by any means. [Peuplie
2 Decl. ¶ 7; Lucero Decl. ¶ 8; Romero Decl. ¶¶ 7, 16] People frequently stand close together in
3 lines when waiting for meals, for medical appointments, and for the communal telephones.
4 [Ciecierski Decl. ¶ 9; Peuplie Decl. ¶ 7; Lucero Decl. ¶ 9; Woehr Decl. ¶ 40] These telephones
5 are placed “considerably less than six feet apart, requiring [detainees] to stand within 2 to 3 feet
6 to other detainees while using the phone to call their attorneys or families.” [Woehr Decl. ¶ 36]
7 There is nearly always a line of people waiting to use these phones. [Woehr Decl. ¶ 37; Peuplie
8 Decl. ¶ 7] People cram together at tables during mealtime. [Woehr Decl. ¶ 38; Ciecierski Decl.
9 ¶ 9; Peuplie Decl. ¶ 7; Lucero Decl. ¶ 9] And jobs for detainees, including kitchen staff and
10 barbers, have continued as usual, with as many as 17 people working in close quarters.
11 [Ciecierski Decl. ¶ 9; Romero Decl. ¶ 9; Woehr Decl. ¶¶ 72–73]

12 Despite CDC and other public health recommendations, Plaintiffs did not receive any
13 sort of mask until mid-April 2020. [Ciecierski Decl. ¶ 7; Lucero Decl. ¶ 17; Romero Decl. ¶ 12]
14 Some still have not received masks. [Woehr Decl. ¶¶ 61–63] The masks Plaintiffs did receive,
15 if at all, were thin disposable paper masks, not the N95 masks recommended by the CDC.
16 [Woehr Decl. ¶ 62; Ciecierski Decl. ¶ 7; Peuplie Decl. ¶ 9; Lucero Decl. ¶ 17; Romero Decl.
17 ¶ 11] CoreCivic’s guards also tease detainees that these disposable masks “‘don’t work’ against
18 the virus.” [Woehr Decl. ¶ 68]

19 When Plaintiffs eventually received masks, Defendants did not require everyone to wear
20 a mask. [Ciecierski Decl. ¶ 7; Peuplie Decl. ¶ 9; Lucero Decl. ¶ 17] And because masks were
21 not required, most people—including guards and other CoreCivic staff—did not wear a mask.
22 [Ciecierski Decl. ¶ 7; Peuplie Decl. ¶¶ 9, 11; Lucero Decl. ¶ 17] Although beginning around
23 April 30, 2020, Plaintiffs have been required to wear masks when outside the pods, Plaintiffs
24 are not required to wear masks when in their pods or cells. [Peuplie Decl. ¶ 9; Lucero Decl.
25 ¶ 17; Romero Decl. ¶ 11] Few people (if any) wear masks inside the pods and cells. [Lucero
26 Decl. ¶ 17; Woehr Decl. ¶ 62] Guards and other staff began wearing masks beginning around
27 April 30, 2020, after the first confirmed case within the facility, but many still are not
28 consistently wearing masks or gloves. [Lucero Decl. ¶¶ 18–19; Romero Decl. ¶ 12; Woehr Decl.

1 ¶¶ 31, 66–67] Plaintiffs have received only one or two masks, and when these masks are broken
2 or lost, Defendants have required Plaintiffs to share and swap each other’s masks in order to
3 leave the pod for things like laundry and legal calls. [Peuplie Decl. ¶ 10; Woehr Decl. ¶ 29]

4 Plaintiffs receive, only once per week, a small amount of soap and shampoo. [Ciecierski
5 Decl. ¶ 6; Lucero Decl. ¶ 15; Romero Decl. ¶ 10; Woehr Decl. ¶ 53] Plaintiffs have not received
6 additional or different hygiene products since COVID-19 spread to Arizona. [Peuplie Decl.
7 ¶ 8; Lucero Decl. ¶¶ 15–16; Romero Decl. ¶ 10; Woehr Decl. ¶ 28] These bathroom supplies
8 frequently are not enough to last the week, especially because Plaintiffs—lacking other cleaning
9 supplies—are forced to use their personal allotment of soap to clean their plates, cups, or even
10 cells. [Lucero Decl. ¶ 15; Romero Decl. ¶ 10; Woehr Decl. ¶¶ 27–28, 52, 54] When people run
11 out of their weekly allotment of soap, they must purchase more—if they can afford to do so—
12 from the commissary at CoreCivic. [Lucero Decl. ¶ 15; Romero Decl. ¶ 10] If they cannot
13 afford to do so, they have no soap at all. [Woehr Decl. ¶ 55]

14 Defendants also fail to adequately and consistently clean the pods and cells, in order to
15 disinfect and stop the spread of COVID-19. Plaintiffs are responsible for cleaning their own
16 pods and cells. [Peuplie Decl. ¶¶ 5–6; Lucero Decl. ¶¶ 12, 14; Romero Decl. ¶ 13; Woehr Decl.
17 ¶¶ 48–49] When cleaning the pods and cells, Plaintiffs do not receive or wear personal
18 protective equipment (“PPE”), like gloves or masks. [Peuplie Decl. ¶ 5; Lucero Decl. ¶ 12;
19 Romero Decl. ¶ 13] To clean both the pods and cells, Plaintiffs receive only a small amount of
20 cleaning solution—none of which is antibacterial. [Peuplie Decl. ¶ 5; Lucero Decl. ¶ 14] For
21 some, this cleaning solution runs out, every day, before the pod and cells are cleaned. [Woehr
22 Decl. ¶ 50; Peuplie Decl. ¶ 5] Some resort to cleaning with water only. [Woehr Decl. ¶ 50] And
23 frequently used items—like communal telephones—are not cleaned between uses, or even
24 every day. [Woehr Decl. ¶¶ 33, 46; Lucero Decl. ¶ 13] Lacking any disinfecting products or
25 wipes to clean the telephones between uses and fearing the possibility of contracting COVID-
26 19, women in the pods have resorted to cleaning the phones with shirts or with menstrual pads
27 wet down with water. [Lucero Decl. ¶ 13; Romero Decl. ¶ 13]

28 Plaintiffs also have been exposed to numerous people who have showed symptoms of

1 COVID-19. [Lucero Decl. ¶ 19; Romero Decl. ¶ 15] Some of the people showing such
2 symptoms were placed in quarantine and then returned to the pod without being tested for
3 COVID-19, even though their symptoms continued. [Romero Decl. ¶ 15] Despite the risks of
4 COVID-19 spreading through CoreCivic and signs of symptoms from people at CoreCivic,
5 Defendants also have failed to even investigate the spread at the facility. Only a handful of
6 people at CoreCivic have been tested for COVID-19 or checked for symptoms of COVID-19
7 by, for example, taking a person’s temperature. [Ciecierski Decl. ¶ 7; Peuplie Decl. ¶ 13; Lucero
8 Decl. ¶ 20; Romero Decl. ¶ 14; Woehr Decl. ¶¶ 19, 69–70] And even some showing symptoms
9 of COVID-19 and requesting medical care have not been tested. [Woehr Decl. ¶ 70]

10 Defendants also have exposed Plaintiffs to unnecessary risk of exposure by failing to
11 provide them with information about COVID-19, measures for preventing its spread, or the
12 very real risks of contracting and spreading COVID-19 at CoreCivic. [Peuplie Decl. ¶ 11;
13 Lucero Decl. ¶ 11; Ciecierski Decl. ¶ 8; Woehr ¶ 76] And despite acknowledging elsewhere that
14 COVID-19 has spread to CoreCivic [Woehr Decl. ¶¶ 19, 76], Defendants have refused to
15 inform the people most needing this information: Plaintiffs. Defendants have failed to disclose
16 to Plaintiffs that people at CoreCivic have tested positive for COVID-19. [Peuplie Decl. ¶ 11;
17 Ciecierski Decl. ¶ 8; Romero Decl. ¶ 17] Defendants, in fact, have affirmatively denied these
18 positive tests, claiming they are merely “rumors” from other facilities. [Romero Decl. ¶ 17] But
19 even the correctional officers at CoreCivic acknowledge (privately) these positive tests.
20 [Ciecierski Decl. ¶ 8]

21 Furthermore, Defendants’ generic policies for “managing” COVID-19 are inadequate
22 to stop it from spreading.⁴ Defendants’ policy of quarantining groups of persons who are
23 transferred to CoreCivic on the same day, for example, will not stop COVID-19 from
24 continuing to spread within the facility. The World Health Organization has reported that “the

25
26 ⁴ See CoreCivic Inc., *How CoreCivic is Managing COVID-19*,
<https://www.corecivic.com/hubfs/files/CoreCivic%20Response%20to%20COVID-1.pdf>;
27 see also Media Statement, CoreCivic Inc., *CoreCivic Statement on COVID-19 Prevention*,
<https://www.corecivic.com/en/corecivic-statement-on-covid-19-prevention>; CoreCivic Inc.,
28 *Frequently Asked Questions Regarding COVID-19*,
<https://www.corecivic.com/hubfs/files/FAQ%20Regarding%20COVID.pdf>.

1 incubation period for COVID-19, which is the time between exposure to the virus (becoming
2 infected) and symptoms onset, is an average of 5–6 days, however can be up to 14 days.” World
3 Health Organization, *Coronavirus Disease 2019 (COVID-19) Situation Report – 73* (Apr. 2, 2020),
4 [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2)
5 [73-covid-19.pdf?sfvrsn=5ae25bc7_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2). During this “pre-symptomatic” time, “infected persons
6 can be contagious.” *Id.* Because Defendants have quarantined people together without social
7 distancing, proper PPE, or sanitation, detainees can spread the virus to each other and then
8 throughout the facility. One medical physician, in fact, concludes that this practice “does not
9 conform to CDC guidelines and it would likely contribute to the overall transmission rate.”
10 [Goldenson Decl. ¶ 33]

11 Now, 20 people at CoreCivic—detainees, guards, and medical staff—have tested
12 positive for COVID-19. Defendants have failed to implement policies and conditions to stop
13 this outbreak now spreading through the facility. And Defendants thus have exposed Plaintiffs
14 (and the public) to unreasonable risk of harm arising from this global pandemic.

15 **II. LAW AND DISCUSSION**

16 A court may grant injunctive relief when the movant “establish[es] [1] that he is likely
17 to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of
18 preliminary relief, [3] that the balance of equities tip in his favor, and [4] that an injunction is
19 in the public interest.” *Aleman Gonzalez v. Barr*, 955 F.3d 762, 768 (9th Cir. 2020) (quoting *Winter*
20 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Courts have applied this approach to
21 motions both for a preliminary injunction and for a TRO. *See, e.g., Stublberg Int’l Sales Co. v. John*
22 *D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). “Under this approach, the elements of
23 the preliminary injunction test are balanced, so that a stronger showing of one element may
24 offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th
25 Cir. 2011). Thus, “[a] preliminary injunction is appropriate when the [movant]
26 demonstrates . . . that serious questions going to the merits were raised and the balance of the
27 hardships tips sharply in the [movant]’s favor, . . . so long as the [movant] also shows that there
28 is a likelihood of irreparable injury and that the injunction is in the public interest.” *Id.* at 1134—

1 35 (citation omitted). Each of these elements is satisfied here.

2 **A. Plaintiffs are likely to succeed on the merits of their claims.**

3 Plaintiffs divide into a Pretrial Class governed by the Fifth Amendment and a Post-
4 Conviction Class governed by the Eighth Amendment. The Eighth Amendment’s deliberate
5 indifference test “provide[s] a *minimum standard of care*” for both classes. *Gordon v. County of*
6 *Orange*, 888 F.3d 1118, 1122 (9th Cir. 2018) (citation omitted); *see also Estelle v. Gamble*, 429 U.S.
7 97, 104-05 (1976) (applying test to post-conviction detainees). Plaintiffs are likely to succeed in
8 establishing that Defendants have acted with deliberate indifference to Plaintiffs’ safety and
9 serious medical needs, thereby violating the constitutional rights of both classes. The Pretrial
10 Class also is likely to establish that Defendants have subjected the class to unconstitutional
11 punishment under the Fifth Amendment.

12 **1. Defendants are subjecting all Plaintiffs to unconstitutional**
13 **conditions of confinement under the Eighth Amendment.**

14 Under the Eighth Amendment, corrections officials have a constitutional obligation to
15 “provide humane conditions of confinement,” including adequate medical care, and to “take
16 reasonable measures to guarantee the safety of the inmates.” *Farmer v. Brennan*, 511 U.S. 825,
17 832–33 (1994). “[H]aving stripped [prisoners] of virtually every means of self-protection and
18 foreclosed their access to outside aid, the government and its officials are not free to let the
19 state of nature take its course.” *Id.* at 833. Corrections officials violate this obligation by
20 showing “deliberate indifference” to a substantial risk of serious harm. *Estelle*, 429 U.S. at 104
21 (“deliberate indifference to serious medical needs of prisoners” is “proscribed by the Eighth
22 Amendment”).

23 The deliberate-indifference test contains both an objective-knowledge and a subjective-
24 intent prong. *See Wilson v. Seiter*, 501 U.S. 294, 298 (1991); *Allen v. Sakai*, 48 F.3d 1082, 1083
25 (9th Cir. 1994). Defendants have violated both prongs of the deliberate-indifference test.

26 For an impending infectious disease like COVID-19, both prongs are satisfied when
27 officials “ignore a condition of confinement that is sure or very likely to cause serious illness
28 and needless suffering the next week or month or year,” even when “the complaining inmate

1 shows no serious current symptoms.” *Helling v. McKinney*, 509 U.S. 25, 33–34 (1993). In *Helling*,
2 an asymptomatic plaintiff’s showing of pervasive secondhand smoke in the detention facility
3 was sufficient to order injunctive relief: “That the Eighth Amendment protects against future
4 harm to inmates is not a novel proposition. . . . It would be odd to deny an injunction to
5 inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground
6 that nothing yet had happened to them.” *Id.* at 33.

7 The conditions at CoreCivic, as described above, are objectively unreasonable.
8 Defendants have failed to implement adequate social-distancing measures. Up to 80 people are
9 crammed into pods, up to 14 people share a single cell with a single bathroom, and detainees
10 are forced to wait in lines—standing closer than six feet apart—to collect food trays, receive
11 medical attention, or use the telephone. These lines are a hotbed for transmission. And making
12 matters only worse, Plaintiffs share masks or lack proper masks because Defendants have
13 provided only some people with one or two disposable masks. Defendants similarly have failed
14 to disinfect CoreCivic from the spread of COVID-19. Plaintiffs lack cleaning supplies to clean
15 their cells and pods. So, instead, they use only water. Some detainees, in fact, are forced to use
16 their personal hygiene products (like soap) to clean their own cups and cells, leaving them
17 without soap until the next week’s allotment. And women at CoreCivic—lacking any
18 disinfecting products or wipes to clean the telephones and fearing COVID-19—have resorted
19 to cleaning telephones with shirts or with menstrual pads wet down with water. Based on these
20 facts, Plaintiffs are likely to establish that their conditions are objectively unreasonable.

21 As to the subjective prong, a court “may infer the existence [of subjective deliberate
22 indifference] from the fact that the risk of harm is obvious.” *Hope v. Pelzer*, 536 U.S. 730, 738
23 (2002). Here, Defendants have acted with deliberate indifference to the serious risk of harm
24 posed by COVID-19. Defendants undoubtedly have known of the obvious risks posed by
25 COVID-19. This historic pandemic has struck both across the globe and within Arizona.
26 Communities, governments, and organizations have implemented stringent preventative
27 measures to slow the spread of COVID-19, as detailed above. Defendants cannot seriously
28 dispute they have known of the risks posed by COVID-19. *Cf. Hare v. City of Corinth*, 74 F.3d

1 633, 644 (5th Cir. 1996) (“[E]ven where a State may not want to subject a detainee to inhumane
2 conditions of confinement or abusive jail practices, its intent to do so is nevertheless presumed
3 when it incarcerates the detainee in the face of such known conditions and practices.”).

4 Based on the obviousness of these risks, Plaintiffs are likely to establish the subjective
5 prong of deliberate indifference. And combined with the unreasonable risks of COVID-19,
6 Plaintiffs are likely to succeed on their claim under the Eighth Amendment.

7 **2. Defendants are subjecting the Pretrial Class to unconstitutional**
8 **punishment under the Fifth Amendment.**

9 Because Defendants have violated all Plaintiffs’ Eighth Amendment rights, they
10 necessarily have violated the Pretrial Class’s Fifth Amendment rights. The Fifth Amendment’s
11 Due Process Clause governs the Pretrial Class’s claims. Because these individuals are
12 presumptively innocent and lack a “formal adjudication of guilt” for their charges, *City of Revere*,
13 463 U.S. at 244, the Supreme Court has held that “due process rights . . . are at least as great as
14 the Eighth Amendment protections available to a convicted prisoner.” *Id.* The Ninth Circuit
15 recognizes that, where an individual’s rights arise under the Due Process Clause, “the
16 guarantees of the Eighth Amendment provide a *minimum standard of care* for determining their
17 rights, including the rights to medical and psychiatric care.” *Or. Advocacy Ctr. v. Mink*, 322 F.3d
18 1101, 1120 (9th Cir. 2003) (quoting *City of Revere*, 463 U.S. at 244). Here, as shown above,
19 Defendants have failed to meet even the more exacting Eighth Amendment standard and
20 Plaintiffs have therefore shown a likelihood of success on the merits of their Fifth Amendment
21 claims as well.

22 Furthermore, the Pretrial Class, unlike the Post-Conviction Class, need not establish
23 “subjective indifference”—i.e., that “[a] prison official . . . knows of and disregards an
24 excessive risk to inmate health or safety.” *Gordon*, 888 F.3d at 1120, 1125 n.4 (citation omitted);
25 accord *Darnell v. Pineiro*, 849 F.3d 17, 36 (2d Cir. 2017); see *Kingsley v. Hendrickson*, 135 S. Ct. 2466,
26 2472 (2015). This purely objective analysis requires a court to consider several factors:

- 27 (i) the defendant made an intentional decision with respect to the conditions
28 under which the plaintiff was confined;
(ii) those conditions put the plaintiff at substantial risk of suffering serious

- 1 harm;
- 2 (iii) the defendant did not take reasonable available measures to abate that
- 3 risk, even though a reasonable official in the circumstances would have
- 4 appreciated the high degree of risk involved—making the consequences
- 5 of the defendant’s conduct obvious; and
- 6 (iv) by not taking such measures, the defendant caused the plaintiff’s injuries.

7 *Gordon*, 888 F.3d at 1125. Every one of these factors is satisfied here.

8 *First*, Defendants cannot dispute they have “made an intentional decision with respect

9 to the conditions under which [Plaintiffs] [are] confined.” *Id.* at 1125. Defendants have

10 confined Plaintiffs to CoreCivic while they either await trial or serve their short terms of

11 incarceration. The conditions of confinement at CoreCivic—including inadequate social

12 distancing, disinfecting, and PPE—have resulted from Defendants’ deliberate decisions.

13 *Second*, Defendants also have “put [Plaintiffs] at substantial risk of suffering serious

14 harm,” *Gordon*, 888 F.3d at 1125, as the above establishes (at 12). Though the risks and spread

15 of COVID-19 are well known, the record here establishes that Plaintiffs face heightened and

16 unreasonable exposure to these serious—and often deadly—risks at CoreCivic. In this

17 pandemic, few places are more dangerous than a jail. The declaration of Dr. Joe Goldenson,

18 who has extensive experience in correctional health care, further establishes the unreasonable

19 risks at CoreCivic due to the COVID-19 pandemic. [Goldenson Decl. ¶¶ 19, 33–36].

20 *Third*, Defendants have not “take[n] reasonable available measures to abate that risk,

21 even though a reasonable official in the circumstances would have appreciated the high degree

22 of risk involved—making the consequences of [Defendants’] conduct obvious.” *Gordon*, 888

23 F.3d at 1125. Defendants, despite publicly acknowledging the importance of measures to

24 protect those in their custody, have not implemented public-health experts’ recommended

25 measures to abate the risks of COVID-19. Defendants have not implemented social distancing,

26 the primary tool recommended to prevent contracting COVID-19. Defendants also have not

27 provided Plaintiffs with adequate soap, hand sanitizer, masks, or other PPE, to prevent the

28 spread of COVID-19. And Defendants have tested only a few people for COVID-19.

Fourth, “by not taking such measures,” Defendants will cause Plaintiffs’ injuries and

1 perhaps even deaths. *Gordon*, 888 F.3d at 1125. Without the measures recommended by public-
2 health experts and with the close quarters and lack of mitigation measures to stop the spread
3 of COVID-19, it is inevitable that the virus—which already has entered the facility— will
4 continue to envelop CoreCivic. This not only will infect dozens of individuals, but also will
5 lead to numerous deaths. [Goldenson Decl. ¶¶ 33–37] In sum, the Pretrial Class is likely to
6 establish the objective factors enumerated above. *See Gordon*, 888 F.3d at 1125.

7 Separately, the Pretrial Class may establish likelihood of success by showing Defendants
8 have subjected them to unconstitutional pre-adjudication punishment. The Fifth Amendment’s
9 Due Process Clause prohibits the government from punishing detainees before “a formal
10 adjudication of guilt in accordance with due process of law.” *Bell v. Wolfish*, 441 U.S. 520, 535
11 n.16 (1979) (quoting *Ingraham v. Wright*, 430 U.S. 651, 671–72 n.40 (1977)). Thus, the
12 government violates a detained person’s rights if conditions of confinement amount to
13 punishment. *See Doe v. Kelly*, 878 F.3d 710, 720 (9th Cir. 2017) (quoting *Bell*, 441 U.S. at 539).
14 A punitive condition can be established “where the challenged restrictions serve an alternative,
15 non-punitive purpose but are nonetheless excessive in relation to the alternative purpose, or
16 are employed to achieve objectives that could be accomplished in so many alternative and less
17 harsh methods.” *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (internal quotation marks and
18 citations omitted).

19 Here, the relevant “restriction” is CoreCivic’s refusal to facilitate social distancing as
20 needed to prevent further spread of COVID-19. Given the current outbreak at CoreCivic,
21 without immediate action further spread of the virus is inevitable. Once the virus spreads
22 further, the consequences will be catastrophic. And even if Defendants’ current approach to
23 COVID-19 prevention could be described as serving a non-punitive purpose, their inadequate
24 approach to social distancing and hygienic measures are excessive in relation to that purpose.
25 By enacting these measures at CoreCivic, Defendants can avert these harms. The Pretrial Class
26 therefore is likely to establish that Defendants’ policies are unconstitutional punishment.

27 **B. Without injunctive relief, Plaintiffs face irreparable injury and even death.**

28 Plaintiffs face “a likelihood of irreparable injury.” *All. for the Wild Rockies*, 632 F.3d at

1 1135. “It is well established that the deprivation of constitutional rights ‘unquestionably
2 constitutes irreparable injury.’” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting
3 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). As shown above, Plaintiffs are likely to
4 prevail on their claims that Defendants have violated their constitutional rights.

5 Even more concerning are the actual risks COVID-19 poses to those at CoreCivic. The
6 risk of illness or death is not theoretical. At least 20 people so far already are infected at
7 CoreCivic, and expanded testing likely will reveal more. And without the requested relief,
8 Plaintiffs face intolerable risks of COVID-19 infection, injury, and even death. *See Harris v. Bd.*
9 *of Supervisors, L.A. Cty.*, 366 F.3d 754, 766 (9th Cir. 2004) (finding “irreparable harm” from
10 “pain, infection,” and possible “death due to delayed treatment”).

11 **C. The balance of the equities and the public interest favor Plaintiffs.**

12 Similarly, both “the balance of equities” and “the public interest” favor granting
13 Plaintiffs injunctive relief. *Aleman Gonzalez*, 955 F.3d at 768 (quoting *Winter*, 555 U.S. at 20).
14 “[I]t is always in the public interest,” the Ninth Circuit has held, “to prevent the violation of a
15 party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation
16 omitted). And as Plaintiffs establish above (at II.A), the conditions at CoreCivic combined with
17 the risks posed by the COVID-19 pandemic violate Plaintiffs’ constitutional rights. Thus, “by
18 establishing a likelihood that Defendants’ policy violates the U.S. Constitution, Plaintiffs have
19 also established that both the public interest and the balance of the equities favor [injunctive
20 relief].” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014). Defendants, by
21 comparison, “cannot suffer harm from an injunction that merely ends an unlawful practice.”
22 *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

23 Also, granting Plaintiffs their requested relief will help mitigate the spread of COVID-
24 19 not only inside CoreCivic, but also through neighboring communities, the state, and across
25 the country. With the numerous individuals (including staff) who come and go from CoreCivic
26 each week, COVID-19 will continue to spread both inside and outside the walls of this facility.

27 Allowing Defendants to maintain these conditions will cause Plaintiffs irreparable harm,
28 and the balance of the equities and the public interest favor granting Plaintiffs their requested

1 relief. Injunctive relief is designed precisely for situations like this global pandemic.

2 **D. Immediate injunctive relief in the form of a Rule 706 expert is a first step**
3 **toward remedying Defendants' constitutional failings.**

4 To date, several courts have agreed that the risks posed by COVID-19 require jails and
5 prisons around the country to implement changes far more significant than the minimal, and
6 even counterproductive, measures Defendants have adopted.

7 Plaintiffs seek immediate, expert assistance to implement constitutionally required social
8 distancing and hygiene practices at CoreCivic. Rule 706 experts can “assist the court in
9 evaluating contradictory evidence about an elusive disease of unknown cause.” *Walker v. Am.*
10 *Home Shield Long Term Disability Plan*, 180 F.3d 1065, 1071 (9th Cir. 1999). And “under Ninth
11 Circuit law, district courts enjoy wide latitude to make these appointments.” *Monolithic Power*
12 *Sys., Inc. v. O2 Micro Int'l Ltd.*, 558 F.3d 1341, 1348 (Fed. Cir. 2009). Other courts have appointed
13 experts in similar circumstances. *See, e.g., Stickney v. List*, 519 F. Supp. 617, 619 (D. Nev. 1981)
14 (ordering Rule 706 expert to determine “whether or not said institution has met its obligation
15 under the Eighth Amendment to the Constitution to furnish sentenced prisoners with adequate
16 food, clothing, shelter, sanitation, medical care and physical safety”); *Karsjens v. Jesson*, 6 F. Supp.
17 3d 958, 978 (D. Minn. 2014) (ordering Rule 706 expert to assess conditions at detention facility
18 and crafting remedies therefrom). And an expert similarly is needed here.⁵

19 **III. CONCLUSION**

20 For the reasons above, Plaintiffs respectfully request that the Court issue a temporary
21 restraining order and a preliminary injunction as described in the accompanying Motion.

22 ⁵ Order, *Wilson v. Williams*, No. 20-3447 (6th Cir. May 4, 2020), ECF No. 23-2 (denying
23 government's motion to stay district court's preliminary injunction directing government to
24 evaluate medically vulnerable prisoners' “eligibility for transfer out of [the prison] by any means
25 within two weeks”); Order, *Banks v. Booth*, No. 1:20-cv-00849-CCK (D.D.C. Apr. 20, 2020),
26 ECF No. 50 (granting in part TRO sought by putative class of jail detainees alleging their
27 conditions of confinement during COVID-19 pandemic violates their constitutional rights, and
28 adopting recommendations of *amici curiae* experts who inspected jail to assess the risk of
COVID-19 infection); Order, *Costa v. Bazron*, No. 1:19-cv-03185-RDM (D.D.C. May 1, 2020),
ECF No. 68 (appointing experts, as *amici curiae*, to inspect the conditions inside a hospital and
assess the risk of COVID-19 infection to people held through involuntary civil commitment).

1 Dated: May 8, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2020, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of same to:

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Maria Guadalupe Lucero-Gonzalez; Claudia Romero-Lorenzo; Tracy Ann Peuplie; James Tyler Ciecierski; and Marvin Lee Enos; each individually and on behalf of all others similarly situated,

Plaintiffs–Petitioners,

v.

Kris Kline, Warden of the Central Arizona Florence Correctional Complex; David Gonzales, U.S. Marshal for the District of Arizona; Donald W. Washington, Director of the U.S. Marshals Service; Michael Carvajal, Director of the Federal Bureau of Prisons, in their official capacities,

Defendants–Respondents.

No. _____

**[PROPOSED] ORDER
GRANTING PLAINTIFFS–
PETITIONERS’ MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

The Court having considered the briefs, supporting documents, and arguments of counsel, the evidence filed in support of and opposition to Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum in Support, and being fully advised, the Court finds that Plaintiffs have met their burden of demonstrating a need for a temporary restraining order and/or preliminary injunction in this case.

Accordingly, **IT IS HEREBY ORDERED** that Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction (Doc. ___) is **GRANTED** as follows:

- (1) The Court appoints a Rule 706 expert to lead a review of CoreCivic to determine whether Defendants have implemented consistent social (or physical) distancing, novel coronavirus testing procedures, and hygienic practices sufficient to reasonably

1 protect Plaintiffs and Class Members from contracting COVID-19 while in
2 Defendants' custody.

3 (2) The initial review by the appointed expert shall be completed and filed with this
4 Court within 48 hours of the issuance of this Order.

5 (3) If the appointed expert concludes that Defendants have not implemented the social
6 distancing, novel coronavirus testing procedures, and hygienic practices sufficient to
7 reasonably protect Plaintiffs and Class Members from contracting COVID-19, then
8 the expert shall submit to the Court, within 24 hours after filing the initial report,
9 recommendations as to how such practices should be achieved and within what
10 approximate timeline.

11 (4) Consistent with the recommendations of the appointed expert, Defendants shall,
12 consistent with this and any subsequent Order of the Court:

13 (a) begin implementing the expert's recommendations immediately;

14 (b) provide weekly updates to Plaintiffs' counsel and this Court on their progress;
15 and

16 (c) complete the implementation of the recommendations within the timeline
17 established by the expert, unless Defendants can show good cause as to why an
18 extension is necessary.

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