UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

J.H., by and through his mother and next friend, N.H.; I.B., by and through his parents and next friends, A.B. and I.B., on behalf of themselves and all others similarly situated,

Plaintiffs-Petitioners,

-against-

JOHN BEL EDWARDS, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF LOUISIANA; THE LOUISIANA OFFICE OF JUVENILE JUSTICE; EDWARD DUSTIN BICKHAM, IN HIS OFFICIAL CAPACITY AS INTERIM DEPUTY SECRETARY OF THE LOUISIANA OFFICE OF JUVENILE JUSTICE; JAMES WOODS, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE ACADIANA CENTER FOR YOUTH; SHANNON MATTHEWS, IN HER OFFICIAL CAPACITY AS THE DIRECTOR OF THE BRIDGE CITY CENTER FOR YOUTH; SHAWN HERBERT, IN HER OFFICIAL CAPACITY AS THE DIRECTOR OF THE SWANSON CENTER FOR YOUTH AT MONROE; and RODNEY WARD, IN HIS OFFICIAL CAPACITY AS THE DEPUTY DIRECTOR OF THE SWANSON CENTER FOR YOUTH AT COLUMBIA,

Defendants-Respondents.

CIVIL ACTION NO. 3:20-cv-00293-JWD-EWD

CLASS ACTION

PLAINTIFFS-PETITIONERS' MOTION FOR CLASS CERTIFICATION

NOW INTO COURT COME Plaintiffs-Petitioners in the above-captioned matter, through undersigned counsel, who move this Honorable Court to (1) certify the proposed Plaintiff Class: "All children who are, or will in the future be, confined at Acadiana Center for

Youth in Bunkie; Bridge City Center for Youth; Swanson Center for Youth at Columbia; and Swanson Center for Youth Monroe"; and (2) appoint the undersigned counsel as Class counsel.

For the reasons set forth in Plaintiffs-Petitioners' Memorandum in Support of this motion, the requirements of Federal Rule of Civil Procedure 23 have been satisfied. The proposed Class readily meets the requirements of Rules 23(a) and (b). The Class is sufficiently numerous: approximately 220 children are currently confined in OJJ's four secure care facilities. All Class Members are bound together by common questions of law and fact: the class claims all arise out of Defendants-Respondents' inadequate, dangerous and unconstitutional statewide COVID-19 response (or lack thereof). Named Plaintiffs-Petitioners are typical of the proposed Class: they are members of the Class, have suffered and will suffer the same injuries as the proposed Class Members, and seek relief that will benefit the Class as a whole. Named Plaintiffs-Petitioners and their counsel will adequately and vigorously represent the Class. Finally, certification is appropriate under Rule 23(b)(2) because Defendants-Respondents are creating and maintaining conditions that put the Class at imminent risk of contracting COVID-19, and they have "acted or refused to act on grounds that apply generally to the class." Alternatively, certification is appropriate under Rule 23(b)(1)(A) because individual adjudication of Class Members' claims would risk creating inconsistent decisions that would establish varying standards to which Defendants-Respondents would have to adhere in responding to COVID-19.

Respectfully submitted this 2nd day of June, 2020.

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CERTIFICATE OF SERVICE

I, Nishi Kumar, an attorney, hereby certify that on June 2, 2020, I caused a copy of the foregoing to be filed using the Court's CM/ECF system.

/s/ Nishi Kumar
Nishi Kumar, La. Bar No. 37415

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

J.H., by and through his mother and next friend, N.H.; I.B., by and through his parents and next friends, A.B. and I.B., on behalf of themselves and all others similarly situated,

Plaintiffs-Petitioners,

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JOHN BEL EDWARDS, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF LOUISIANA; THE LOUISIANA OFFICE OF JUVENILE JUSTICE; EDWARD DUSTIN BICKHAM, IN HIS OFFICIAL CAPACITY AS INTERIM DEPUTY SECRETARY OF THE LOUISIANA OFFICE OF JUVENILE JUSTICE; JAMES WOODS, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE ACADIANA CENTER FOR YOUTH; SHANNON MATTHEWS, IN HER OFFICIAL CAPACITY AS THE DIRECTOR OF THE BRIDGE CITY CENTER FOR YOUTH; SHAWN HERBERT, IN HER OFFICIAL CAPACITY AS THE DIRECTOR OF THE SWANSON CENTER FOR YOUTH AT MONROE; and RODNEY WARD, IN HIS OFFICIAL CAPACITY AS THE DEPUTY DIRECTOR OF THE SWANSON CENTER FOR YOUTH AT COLUMBIA,

Defendants-Respondents.

CIVIL ACTION NO. 3:20-cv-00293-JWD-EWD

CLASS ACTION

MEMORANDUM IN SUPPORT OF PLAINTIFFS-PETITIONERS' MOTION FOR CLASS CERTIFICATION

Pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2), Plaintiffs-Petitioners respectfully request that this Court certify the proposed Plaintiff Class, "All children who are, or will in the future be, confined at Acadiana Center for Youth in Bunkie; Bridge City Center for Youth; Swanson Center for Youth at Columbia; and Swanson Center for Youth Monroe," and appoint the undersigned counsel as Class counsel. For the reasons set forth herein, the requirements of Federal Rule of Civil Procedure 23 have been satisfied.

INTRODUCTION

Without this Court's intervention, hundreds of children currently confined by Defendants-Respondents are in grave danger from the worldwide COVID-19 pandemic. Correctional facilities, including juvenile correctional facilities such as OJJ's four secure facilities, are among the top "hotspots" for coronavirus transmission in the country. Despite COVID-19's well-known, deadly risks, Defendants-Respondents have failed to implement medically necessary and adequate system-wide COVID-19 preventative and protective measures. The lack of adequate preventative and protective measures increases the risk of transmission throughout the class, exposes vulnerable children to this deadly virus and prevents those who inevitably contract it from obtaining necessary medical care. Children detained for the purpose of rehabilitation could pay with their lives due to OJJ's improper actions and inactions in response to the COVID-19 crisis. Those actions and inactions are so seriously deficient in providing for the detained children's basic needs as to improperly constitute punishment—rather than rehabilitation or treatment. System-wide declaratory and injunctive relief is imperative to protect Plaintiffs-Petitioners and all other confined children who are or will be subjected to Defendants-Respondents' dangerously, and unconstitutionally, deficient response.

Named Plaintiffs-Petitioners seek this declaratory and injunctive relief on behalf of a Class defined as: "All children who are, or will in the future be, confined at Acadiana Center for Youth in Bunkie; Bridge City Center for Youth; Swanson Center for Youth at Columbia; and Swanson Center for Youth Monroe" (the "Plaintiff Class"). Plaintiffs-Petitioners seek declaratory and injunctive relief to terminate the ongoing course of conduct on the part of Defendants-Respondents that is creating a substantial risk of serious harm (including death) to class members and is depriving or will deprive class members of their constitutional rights, and to enjoin the policies and practices adopted and implemented by Defendants-Respondents that result or will result in the deprivation of those rights.

As detailed below, Defendants-Respondents' deficient COVID-19 response impacts hundreds of class members in exactly the same way—all face a constitutionally intolerable risk of harm due to Defendants-Respondents' inadequate system-wide policies, practices, and omissions. As such, this Court need not engage in any determinations regarding any particular class member's individual circumstances; rather, the Court must only determine whether Defendants-Respondents' deficient response warrants declaratory and injunctive relief. Further, because these systemic deficiencies apply to all putative class members, all class members will benefit from prospective relief that remediates these defects and abates the substantial risk of harm class members face. Courts routinely certify classes seeking to remediate systemic defects in a prison system's provision of medical care. Certification here is not only proper but also crucial to protect the health and safety of all class members subjected to Defendants-Respondents' unconstitutional acts and omissions. *See, e.g.*, *Fraihat v. ICE*, No. 5:19-cv-01546-JGB-SHK, Dkt. No. 133 (C.D. Cal. Apr. 20, 2020) (certifying nationwide class of medically vulnerable people in ICE custody in light of COVID-19 risks).

FACTUAL BACKGROUND

I. The COVID-19 Health Crisis Requires Swift and Dramatic Coordinated Action to Prevent Further Widespread Illness and Death

The devastating COVID-19 virus has infected over 6.2 million people and killed more than 370,000 people worldwide in just five months.[1] Much remains unknown about COVID-19, and new, alarming information includes specific risks to children and young adults. Recent medical reports show that children are vulnerable to life-threatening complications both during and *after* the infection.[2] A May 14, 2020, CDC Health Advisory relayed that COVID-19 positive children may be vulnerable to pediatric multisystem inflammatory syndrome ("MIS-C"), which can lead to toxic shock.[3] As of May 27, 2020, there are 13 cases of MIS-C in Louisiana, and at least one child has died.[4] And, even asymptomatic children unquestionably play a role in the transmission and spread of COVID-19 to the wider community.[5]

Crowded correctional facilities are breeding grounds for COVID-19, with prisons accounting for seven of the top ten coronavirus clusters in the United States.[6] The close and

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[1] Coronavirus Resource Center, JOHNS HOPKINS UNIV., https://coronavirus.jhu.edu/map.html (last visited June 1, 2020).
[2] *See, e.g.*, Joseph Goldstein, *15 Children Are Hospitalized With Mysterious Illness Possibly Tied to COVID-19*, N.Y. TIMES (May 5, 2020), https://www.nytimes.com/2020/05/05/nyregion/children-Kawasaki-syndrome-coronavirus.html; Ex. 1, Graves Decl. ¶ 7.
[3] Pam Belluck, *A New Coronavirus Threat to Children*, N.Y. TIMES (May 11, 2020), https://www.nytimes.com/2020/05/06/health/kawasaki-disease-covid-coronavirus-children.html; CDC. *Multisystem Inflammatory Syndrome in Children (MIS-C) Associated with Coronavirus Disease 2019 (COVID-19)* (May 14, 2020), https://emergency.cdc.gov/han/2020/han00432.asp?deliveryName=USCDC_511-DM28431.
[4] *13 Louisiana children have developed illness tied to virus*, 4WWL (May 27, 2020), https://www.wwltv.com/article/news/health/coronavirus/louisiana-reports-childs-death-from-inflammatory-condition-linked-to-coronavirus/289-7549efa7-1cbb-4323-a968-ee53fe5f74a6.
[5] CDC, *Morbidity and Mortality Weekly Report* (Apr. 10, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6914e4.htm.
[6] *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES (May 14, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html; *see also* Timothy Williams, Benjamin Weiser, and William K. Rashbaum, *'Jails Are Petri Dishes': Inmates Freed*

crowded quarters of incarceration make it impossible to adhere to adequate physical distancing and heightened hygiene measures. Like all correctional facilities, OJJ's four facilities are petri dish-like settings that accelerate the spread of COVID-19. The four OJJ facilities have dormitory-style living, with up to twelve children sleeping and living in one room. Despite the reportedly high prevalence of the disease at the four OJJ facilities among the children and the staff, OJJ has failed to administer COVID-19 tests to children. Indeed, OJJ has tested only 30 children, with the last child first testing positive on April 12, 2020.[7] In the meantime, COVID-19 positives among staff continue to rise. As of May 29, 2020, 48 staff have tested positive.[8] With staff entering the facilities on a daily basis and interacting regularly with both COVID-19 positive individuals and those who are healthy, the children and the surrounding communities face a serious risk of substantial harm. In short, children detained within OJJ facilities face a significantly greater risk of infection as compared to children outside those facilities.

II. Defendants-Respondents' Policies, Practices, and Omissions in Response to COVID-19 Expose Class Members to an Unreasonable Risk of Serious Harm

A. Defendants-Respondents are Placing Children at Serious Risk of Medical Harm, up to and Including Death

Children in OJJ custody are at heightened risk because of high rates of pre-existing conditions that make them especially vulnerable to COVID-19 and the physical spacing realities in the four facilities. OJJ is heightening these risks still further by failing to provide adequate medical treatment to children with COVID-19, failing to adequately monitor and mitigate the spread of the disease, and failing to provide basic information to the public and to parents.

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as the Virus Spreads Behind Bars, N.Y. Times (Mar. 30, 2020), https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html.

[7] Joint Statement of Stipulated Facts, Dkt. No. 51, ¶¶ 22, 26.

[8] *Id.* ¶ 30; *cf.* Coronavirus (COVID-19) Information, LA. OFFICE OF JUVENILE JUSTICE, https://ojj.la.gov/coronaviruscovid-19-information/ (last visited June 1, 2020) ("OJJ Coronavirus Information").

OJJ is failing to provide adequate medical treatment to children with confirmed cases of COVID-19, failing to ensure that all positive cases are identified, and failing to prevent the spread of the disease. After Plaintiff-Petitioner I.B. tested positive for COVID-19, he was placed in a dirty room with no air conditioning in an old isolation cell that had not been used in years.[9] He had no access to running water for days, was unable to bathe or brush his teeth, and received no medical attention.[10] When he moved back to his dormitory he had not been retested,[11] in direct contravention of CDC guidance.[12] Many children report that they have not been tested, despite being in contact with other who have tested positive.[13] Putative Class Member T.S. requested a test because he was feeling very sick but was told that he was not eligible.[14]

OJJ has failed to take needed preventative measures. Staff move back and forth between children with confirmed cases and healthy children,[15] and there is no social distancing or

[9] A.B. Decl., Dkt. 1-10 at ¶ 8 ("After my son tested positive for COVID-19, they put him in a dirty room at Cypress with no air conditioning. He was in there without water for 2-3 days. There were other children with him who had tested positive for COVID."); *see also* Holt Decl., Dkt. 1-9 at ¶ 13 ("The Cypress disciplinary wing at the Swanson Center for Youth at Monroe was shut down in 2005 and turned into a short-term crisis intervention unit. They are currently using it for suicide watch as well as reconstituted it as disciplinary lockdown unit.").
[10] A.B. Decl., Dkt. 1-10 at ¶¶ 8, 9, 11.
[11] *Id.* at ¶ 11.
[12] CDC guidance states that before a person is moved out of medical isolation, "[t]he individual [must test] negative in at least two consecutive respiratory specimens collected at least 24 hours apart." CDC Guidance, *supra* note 50, at 17.
[13] *See* N.H. Decl., Dkt. 1-4, Dkt. 1-4 at ¶ 4; *see also* D.B. Decl., Dkt. 1-12 at ¶ 5; B.B. Decl., Dkt. 1-8 at ¶ 6; W.H. Decl., Dkt. 1-14 at ¶ 5. Testing is "crucial . . . to help treat, isolate or hospitalize people who are infected," and it is important "in the bigger public health picture on mitigation efforts, helping investigators characterize the prevalence, spread and contagiousness of the disease." Dr. Eduardo Sanchez, *COVID-19 science: Why testing is so important*, AM. HEART ASS'N (Apr. 2, 2020), https://www.heart.org/en/news/2020/04/02/covid-19-science-why-testing-is-so-important.
[14] L.P. Decl., Dkt. 1-7 at ¶ 8.
[15] *See* A.B. Decl., Dkt. 1-10 at ¶ 4; *see also* N.H. Decl., Dkt. 1-4 at ¶ 4.

personal protective equipment ("PPE") use being enforced in the dormitories.[16] OJJ either fails to provide children with masks (or other PPE) or fails to require that they wear them, and they are not giving children adequate cleaning materials.[17] Children have also been transferred between facilities for non-medical reasons, in further contravention of CDC guidance.[18]

OJJ further exacerbates the harm to the children in its custody by refusing to communicate basic information about the children's health to their parents, preventing the parents' ability to advocate for needed medical treatment. A.B., mother of Plaintiff-Petitioner I.B., was not contacted when her son I.B. tested positive for COVID-19.[19] When A.B. called repeatedly after learning that her son had a fever, her son's case worker refused to communicate entirely, and only after repeated calls to the case worker's supervisor did A.B. learn that her son tested positive.[20] Similarly, S.W., mother of putative Class Member J.S., was rebuffed when she sought Swanson's COVID-19 policies after her son tested positive there.[21]

Moreover, as previously noted, no initial COVID-19 tests have been administered to children since April 12, 2020.[22] This virtually guarantees that some number of COVID-19-positive children will remain unidentified and continue to spread the disease freely throughout the facilities, further jeopardizing the lives and health of the children in OJJ's custody.

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[16] *See* A.B. Decl., Dkt. 1-10 at ¶ 12; *see also* N.H. Decl., Dkt. 1-4 at ¶ 4; D.B. Decl., Dkt. 1-12 at ¶ 10; B.B. Decl., Dkt. 1-8 at ¶ 6; L.P. Decl., Dkt. 1-7 at ¶ 9; W.H. Decl., Dkt. 1-14 at ¶ 9.
[17] *See* A.B. Decl., Dkt. 1-10 at ¶ 12; *see also* N.H. Decl., Dkt. 1-4 at ¶ 4; D.B. Decl., Dkt. 1-12 at ¶ 10; B.B. Decl., Dkt. 1-8 at ¶ 6; L.P. Decl., Dkt. 1-7 at ¶ 9; S.W. Decl., Dkt. 1-13 at ¶ 4; W.H. Decl., Dkt. 1-14 at ¶ 9.
[18] *See* N.H. Decl., Dkt. 1-4 at ¶ 3; *see also* B.B. Decl., Dkt. 1-8 at ¶ 3; L.P. Decl., Dkt. 1-7 at ¶ 3; S.W. Decl., Dkt. 1-13 at ¶ 3. CDC Guidance, *supra* note 50, at 14.
[19] A.B. Decl., Dkt. 1-10 at ¶ 6.
[20] *Id.*
[21] S.W. Decl., Dkt. 1-13 at ¶¶ 3, 4, 6.
[22] Dkt. No. 25-3; Def. Opp. to Pl. Mot. for TRO at 5 (admitting that "Youth who are not exhibiting symptoms of COVID-19 are not tested for the disease").

B. OJJ's Intensified Disciplinary Measures, Lack of Structured Programming, and Limitations on Family Contact Throughout the Pandemic Subject Children Class Members to Enhanced and Unnecessary Physical and Psychological Harm

OJJ also is putting children at enhanced and unnecessary risk of both medical and psychological harm by exposing them to pepper spray, placing them in isolation, and depriving them of programming and visitation to which they are constitutionally entitled.

Although the use of pepper spray has been prohibited in juvenile facilities for many years, the inhumane practice was revived during the pandemic, and probation officers began pepper spraying children again—during a pandemic involving a respiratory illness, no less. To make up for a lack of staff, OJJ has brought in probation officers trained only in adult correctional tactics to work in its secure care facilities.[23] On March 17, OJJ issued a memorandum authorizing probation officers to carry pepper spray into the facilities.[24] While this memorandum was rescinded on April 27, the rescinding memorandum explicitly allows the use of "chemical spray" as long as the Regional Director has given permission.[25] Putative Class Members T.G., J.B., and T.S. have been pepper sprayed by probation officers and Plaintiff-Petitioner J.H. has been pepper sprayed multiple times.[26] Pepper spray, even for adults in pre-pandemic times, is dangerous.[27] It can cause burning in the throat, wheezing, dry cough,

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[23] Eli Hager, *Solitary, Brawls, No Teachers: Coronavirus Makes Juvenile Jails Look Like Adult Prisons*, THE MARSHALL PROJECT (May 12, 2020, 6:00 AM), https://www.themarshallproject.org/2020/05/12/solitary-brawls-no-teachers-coronavirus-makes-juvenile-jails-look-like-adult-prisons; *see also* Emily Lane, *'There was no control,' says Bridge City youth prison guard about riot*, WDSU NEWS (Apr. 24, 2020), https://www.wdsu.com/article/there-was-no-control-says-bridge-city-youth-prison-guard-on-riot/32259043.

[24] *See* Ex. 3, Memorandum from E. Dustin Bickham to OJJ Staff (Apr. 27, 2020).

[25] *Id.*

[26] D.B. Decl., Dkt. 1-12 at ¶ 6; B.B. Decl., Dkt. 1-8 at ¶ 4; L.P. Decl., Dkt. 1-7 at ¶ 7.

[27] David Railton, *What is pepper spray, and is it dangerous?*, MEDICAL NEWS TODAY (Sep. 25, 2018), https://www.medicalnewstoday.com/articles/238262.

shortness of breath, gagging, gasping, and the inability to breathe or speak.[28] Using pepper spray on a child who may have COVID-19—a likely scenario given low testing rates but high positive results—could be lethal.[29] Pepper spray irritates the wet, mucus-lined parts of the body, including the lungs.[30] Pepper spraying a child who has COVID-19 could inhibit the child's ability to breathe, potentially killing him.[31] Moreover, consequences of pepper spraying, including cough and shortness of breath, mirror the symptoms of COVID-19[32] and could potentially mask positive cases. The use of pepper spray may also exacerbate trauma for children and undermine positive youth and staff relationships.

Children are also currently deprived of the rehabilitative programming that is the core justification for their placement in OJJ custody, and they are enduring up to 23-hour-a-day dormitory lockdowns.[33] The educational and rehabilitative services to which children in state custody are constitutionally entitled have either been substantially reduced or completely eliminated.[34] During lockdown, children are confined to their dormitories, sometimes even for meals, with only one hour outside of their cell for recreation each day.[35] Cutting off education and treatment is particularly devastating to teenagers; during adolescence, the brain reaches what is referred to as the "second period of heightened malleability."[36] Such deprivation "may

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[28] *Id.*
[29] Holt Decl., Dkt. 1-9 at ¶ 12.
[30] *Id.*
[31] *Id.*
[32] Coronavirus Disease 2019 (COVID-19): Symptoms of Coronavirus, CDC, https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html (last visited May 15, 2020).
[33] *See* L.P. Decl., Dkt. 1-7 at ¶ 9; *see also* W.H. Decl., Dkt. 1-14 at ¶ 7.
[34] *See* A.B. Decl., Dkt. 1-10 at ¶ 18; *see also* N.H. Decl., Dkt. 1-4 at ¶ 12; W.H. Decl., Dkt. 1-14 at ¶ 15; S.W. Decl., Dkt. 1-13 at ¶ 9; L.P. Decl., Dkt. 1-7 at ¶ 14; B.B. Decl., Dkt. 1-8 at ¶ 10.
[35] *Id.*
[36] Delia Fuhrmann et al., *Adolescence as a Sensitive Period of Brain Development*, 19 TRENDS COGNITIVE SCI. 558, 559 (2015).

dramatically increase the risk that youth will self-harm and is associated with risks lasting into adulthood, including poorer overall general health and increased incidence of suicide."[37]

OJJ is further harming children by improperly depriving them of regular contact with their families. For example, N.H, mother of Plaintiff-Petitioner J.H., has not seen her son in three months; during this time, N.H. has had just one video conference with her son.[38] D.B., mother of putative Class Member T.G., has not been able to visit her son for months and has only spoken with him three times since the pandemic began.[39] B.B., mother of putative Class Member J.B., has also not seen her son in three months, has had only two video calls with her son since then, and he did not receive the letter she sent him.[40] L.P., mother of putative Class Member T.S., has not seen her son since around Christmas and it took two months to schedule a video call.[41] W.H., mother of putative Class Member H.C., has not seen her son since March 16, the day she took him back to Bridge City after his furlough was cut short.[42] More than a month passed before W.H. was able to have a video call with her son on April 23.[43]

The terror of being trapped in a hotbed of life-threatening infection during a global pandemic with no autonomy and little family contact has led some children to take desperate measures, including rioting and attempting to escape.[44] OJJ admitted that isolation (Behavioral

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[37] Schiraldi, et al. Decl., Dkt. 1-3 at ¶ 21.
[38] N.H. Decl., Dkt. 1-4 at ¶ 9.
[39] D.B. Decl., Dkt. 1-12¶ 11.
[40] B.B. Decl., Dkt. 1-8 at ¶ 5, 7.
[41] L.P. Decl., Dkt. 1-7 at ¶ 11.
[42] W.H. Decl., Dkt. 1-14 at ¶¶ 3, 8, 14.
[43] *Id.* at ¶ 8.
[44] Marge Mason and Robin McDowell, *Riots, escapes and pepper spray: Virus hits juvenile centers*, 4WWL (May 3, 2020, 5:03 PM), https://www.wwltv.com/article/news/health/coronavirus/riots-escapes-and-pepper-spray-virus-hits-juvenile-centers/289-e52aa1ea-5680-47eb-a8c5-4c62af60cd4e.; *see also Northeast Louisiana juvenile lockup sees another mass escape*, WASH. TIMES (May 10, 2020),

Intervention) is being used a disciplinary measure to punish and discourage riots and escape attempts.[45] Under OJJ's own policies, isolation, or "Behavioral Intervention," is not meant to be used for punishment—only for temporary incapacitation[46]—and may not be used as a consequence for escape attempts or property destruction.[47] At the very least, Behavioral Intervention Rooms should not be used to isolate children who are COVID-19-positive or who display any symptoms. Inhumane disciplinary tactics such as isolation and pepper spray only exacerbate the anxiety and desperation that drive the children to take such risks in the first place.

LEGAL STANDARD

To proceed as an injunctive class, Plaintiffs-Petitioners must satisfy the requirements of Federal Rule of Civil Procedure 23(a) and (b). *M.D. ex rel. Stukenberg v. Perry*, 675 F.3d 832, 837 (5th Cir. 2012). Rule 23(a) provides that an action may be maintained as a class action if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Rule 23(b)(2) class actions may be maintained "if the party opposing the class has acted or refused to act on grounds that

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https://www.washingtontimes.com/news/2020/may/10/northeast-louisiana-juvenile-lockup-sees-another-m/.

[45] Hager, *supra* note 98 ("Beth Touchet-Morgan, spokeswoman for the Louisiana Office of Juvenile Justice, said in an email that . . . the use of isolation was in part to stop bad behavior from escalating").

[46] Youth Services Policy No. B.2.21, *supra* note 5 ("Staff shall *never* use a BI room for *discipline*, *punishment*, *administrative convenience*, retaliation, *staffing shortages*, or reasons other than a temporary response to behavior that threatens *immediate harm* to the youth or others.") (emphases added).

[47] Youth Services Policy B.5.1 at 4, 5, 13, *available at* https://ojj.la.gov/wp-content/uploads/2019/03/B.5.1.pdf.

apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

Rule 23 does not require that common questions "will be answered, on the merits, in favor of the class." *Cole v. Livingston*, No. 4:14-CV-1698, 2016 WL 3258345, at *3 (S.D. Tex. June 14, 2016) (quoting *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 459 (2013)). "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the class certification stage. Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen, Inc.*, 568 U.S. at 466. The decision to certify is within the broad discretion of the court. *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 740 (5th Cir. 1996).

ARGUMENT

The proposed Class readily meets the requirements of Rules 23(a) and (b). The Class is sufficiently numerous: approximately 220 children are currently confined in OJJ's four secure care facilities. All Class Members are bound together by common questions of law and fact: the class claims all arise out of Defendants-Respondents' inadequate, dangerous and unconstitutional statewide COVID-19 response (or lack thereof). Named Plaintiffs-Petitioners are typical of the proposed Class: they are members of the Class, have suffered and will suffer the same injuries as the proposed Class Members, and seek relief that will benefit the Class as a whole. Named Plaintiffs-Petitioners and their counsel will adequately and vigorously represent the Class. Finally, certification is appropriate under Rule 23(b)(2) because Defendants-Respondents are creating and maintaining conditions that put the Class at imminent risk of contracting COVID-19, and they have "acted or refused to act on grounds that apply generally to the class." Alternatively, certification is appropriate under Rule 23(b)(1)(A) because individual adjudication

of Class Members' claims would risk creating inconsistent decisions that would establish varying standards to which Defendants-Respondents would have to adhere in responding to COVID-19.

I. The Proposed Class Satisfies the Numerosity, Commonality, Typicality, and Adequacy Requirements of Rule 23(a)

A. Numerosity

The proposed Class is so numerous that joinder of all Class Members is impracticable for a number of reasons. Courts have found the "impracticability" requirement met by a class composed of forty or more members. *See Lewis v. Cain*, 324 F.R.D. 159, 168 (M.D. La. 2018); *see also In re Nissan Radiator/Transmission Cooler Litigation*, 2013 WL 4080946, *18 (S.D. N.Y. 2013) (noting that courts have found the "impracticability" requirement met by a class composed of forty or more members); *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) ("[T]he size of the class in this case—100 to 150 members—is within the range that generally satisfies the numerosity requirement."). As of April 19, 2020, approximately 220 children were incarcerated in the four OJJ secure care facilities. The proposed Class includes these approximately 220 members. Defendants-Respondents' policies and practices put each child class member in OJJ's custody at risk of contracting and dying of COVID-19 and of receiving inadequate care and being deprived of rehabilitative programming while in custody. Second, the proposed Class is fluid due to the ever-changing populations of the OJJ facilities, which "counsels in favor of including certification of all present and future members," *Lewis*, 324 F.R.D. at 168, and the indeterminate number of future Class Members makes joinder impracticable. *See, e.g., Phillips v. Joint Legislative Comm. on Performance & Expenditure Review of State of Miss.*, 637 F.2d 1014, 1022 (5th Cir. 1981) (internal citations omitted) (because the class includes future applicants who are "necessarily unidentifiable," the numerosity requirement is "clearly met for 'joinder of unknown individuals is certainly impracticable'");

Third, the Class Members are "geographically dispersed" across the state in four OJJ facilities, "further indicating that joinder is impracticable." *Morrow v. Washington*, 277 F.R.D. 172, 191 (E.D. Tex. 2011); *see also Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 625 (5th Cir. 1999). Finally, Class Members are incarcerated, rendering their ability to institute individual lawsuits extremely limited, particularly in light of the OJJ's reduced or eliminated visitation, ongoing issues with OJJ's secure attorney phone lines, and COVID-19 court closures in Louisiana. Accordingly, the numerosity requirement is easily satisfied.

B. Commonality

The proposed Class and its named representatives share factual and legal issues more than adequate to satisfy commonality because Plaintiffs-Petitioners' claims "depend upon a common contention" that "is capable of classwide resolution" such that "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The central question driving this case is whether Defendants-Respondents' statewide response to COVID-19, or lack thereof, violates Plaintiffs' rights. That is, "all members of the proposed class share [the] common claim" that Defendants-Respondents' COVID-19 response plan is inadequate and exposes all Class Members to a substantial risk of serious harm. *Lewis*, 324 F.R.D. at 169 (citations omitted) (holding that Plaintiffs allegations of inadequate access to medical care and referrals posed "common complaints that Defendants' policies pose a substantial risk of serious harm to the health of all inmates and argue Defendants have been deliberately indifferent to this risk").

Named Plaintiffs-Petitioners satisfy the commonality requirement because Class Members have numerous questions of fact and law in common. "[E]ven a single common question" can satisfy the commonality requirement. *Dukes*, 564 U.S. at 359. The Supreme Court, the Fifth Circuit, and countless other courts have recognized that common questions exist

in cases alleging systemic deficiencies in the provision of medical care at prisons that expose class members to a substantial risk of harm—even if that harm does not ultimately manifest as to each class member and even where class members face differing levels of risk. *See, e.g.*, *Plata*, 563 U.S. at 506–08; *M.D.*, 675 F.3d at 838–39; *Gates v. Cook*, 376 F.3d 323, 328 (5th Cir. 2004); *see also Lewis*, 324 F.R.D. at 170-71 (Defendants-Respondents cannot "negate the injury at the center of the Class's claims: the exposure to an unreasonable risk of serious harm").

More specifically, when youth are confined in the juvenile justice system and "subject to the same policies, practices, and conditions of confinement" that raise identical legal issues and the "resolution of the problems complained of will affect all or a significant number of the class members," then commonality is satisfied." *J.D. v. Nagin*, 255 F.R.D. 406, 415 (E.D. La. 2009).

Here, the common questions of fact shared by all Class Members include, but are not limited to:

- Whether Defendants-Respondents are aware of or should have known of the substantial risk of serious harm Class Members face under OJJ's lack of an adequate COVID-19 response plan;
- Whether Defendants-Respondents have taken reasonable measures to abate the substantial risk of serious harm caused by the COVID-19 pandemic for the individuals who are within their custody;
- Whether Defendants-Respondents have promulgated adequate policies to protect against the harms of COVID-19;
- Whether Defendants-Respondents have ensured that the four OJJ facilities have sufficient oversight, staffing, and resources to protect children from COVID-19;

- Whether OJJ's COVID-19 response plan (or lack thereof) is consistent with the appropriate standards of care for COVID-19; and
- Whether Defendants-Respondents have ensured that the conditions in the four OJJ secure care facilities are adequate to accomplish the rehabilitative and treatment purposes of Class Members' confinement.

The common questions of law shared by all Class Members include, but are not limited to:

- Whether Class Members are experiencing or will experience conditions of confinement that are so seriously deficient in providing for their basic needs as to constitute punishment rather than rehabilitation and treatment;
- Whether Class Members face a constitutionally intolerable risk of serious harm under the OJJ's COVID-19 response plan (or lack thereof); and
- Whether the OJJ's COVID-19 response plan (or lack thereof) amounts to deliberate indifference to Class Members' right to be free from cruel and unusual punishment, in violation of Class Members' rights under the Constitution.

The answers to these common questions (and others) are central to all Class Members' claims and, crucially, each of these common questions is "amenable to a common answer." *Jones v. Gusman*, 296 F.R.D. 416, 466 (E.D. La. 2013); *see also Braggs*, 317 F.R.D. at 655–61 (M.D. Ala. 2016) (commonality requirement and certification proper in statewide class action challenging state prison system's medical care). And Defendants-Respondents are expected to raise—and already have raised—common defenses to these claims, including denying that the conditions of confinement constitute punishment, denying that they are deliberately indifferent, and denying that their actions violate the law.[48]

[48] *See generally* Def. Opp. to Pl. Mot. for TRO at 3–13.

Defendants-Respondents' deficient response to COVID-19 generally applies to all Class Members, and this Court need not engage in any individualized determinations to assess whether Defendants-Respondents' conduct is unconstitutional. *See Brown v. Plata*, 563 U.S. 493, 505 n.3 (2011) ("Plaintiffs rely on systemwide deficiencies in the provision of medical and mental health care that, taken as a whole, subject sick and mentally ill prisoners . . . to 'substantial risk of harm' and cause the delivery of care in the prisons to fall below the evolving standards of decency that mark the progress of a maturing society."). And because all Class Members seek the same declaratory and injunctive relief, this Court's determination of the legality of Defendants-Respondents' actions and inactions on one or more of the grounds the Class alleges will resolve all Class Members' claims in "one stroke." *Dukes*, 564 U.S. at 350. Accordingly, commonality is satisfied.

C. Typicality

Named Plaintiffs-Petitioners satisfy the typicality requirement because they are members of the proposed Class with the same claims shared by all members of the class. *Lewis*, 324 F.R.D. at 169 ("Typicality requires showing that, in fact, the proposed representatives have that claim [that is shared by all members of the proposed class].") (citations omitted). Named Plaintiffs-Petitioners' claims are typical of class members' claims because their claims "arise from a similar course of conduct and share the same legal theor[ies]." *Id.* (quoting *James v. City of Dallas*, 254 F.3d 551, 571 (5th Cir. 2001)).

Here, Plaintiffs-Petitioners' claims are typical of those of the proposed Class, as their claims arise from the same policies, practices, omissions, or courses of conduct of Defendants-Respondents, and their claims are based on the same theories of law as all Class Members' claims. Named Plaintiffs-Petitioners are members of the Class; their injuries arise from the same course of conduct at issue—Defendants-Respondents' inadequate and misguided response to the

COVID-19 pandemic which puts them at unreasonable risk of serious harm—and they seek the same relief as the Class. Named Plaintiffs-Petitioners are subjected to the inadequate policies and practices of Defendants-Respondents, and have suffered or will suffer injuries or face a substantial risk of serious harm (including death) and are experiencing or will experience conditions that deprive them of their right to rehabilitation, and will remain in their precarious position due to Defendants-Respondents' unlawful and unconstitutional policies and practices.

The common course of conduct Plaintiffs-Petitioners allege include OJJ's inadequate oversight of its facilities' medical care and failure to implement adequate precautionary measures and protocols and their deprivation of rehabilitative programming. The failures to act are thus the same across the Class as a whole. The same is true of the legal injury: Named Plaintiffs-Petitioners' claims and the claims of all other Class Members concern whether Defendants-Respondents' COVID-19 response violates the Fourteenth and Eighth Amendment rights by depriving them of rehabilitative treatment and placing them at risk of serious medical harm. *See J.D. v. Nagin*, 255 F.R.D. 406, 415 (E.D. La. 2009) (plaintiffs met typicality where "the legal theories advanced"—violations of First, Sixth, Eighth, and Fourteenth Amendment rights by conditions of confinement, lack of medical care, and excessive use of isolation—"and relief sought by the named Plaintiffs and putative class members are the same"); *Dockery*, 253 F. Supp. 3d at 855 (plaintiffs met typicality where claims "(1) arise from the same policy or practice, i.e. the prison officials' alleged failure to take corrective action, and the same defect, i.e. the existence of inhumane confinement, and (2) are based on the same legal theory, i.e. the alleged violation of the Eighth Amendment right to be free from cruel and unusual punishment").

Although Named Plaintiffs-Petitioners' situations differ based on whether they are currently COVID-19-positive, where they are in custody, or whether they fall into a high-risk

group, the basis of liability is not dependent upon their individual circumstances, but instead "the denial of a system that would have the effect of ensuring that they and their fellow prisoners [or detainees] are appropriately" protected from the risk posed by the COVID-19 pandemic, *Lewis* 324 F.R.D. at 170—a system which Defendants-Respondents are legally obligated to provide—and the severe deprivations of programming and rehabilitation they face. Because Named Plaintiffs-Petitioners' claims arise from the same course of conduct and share the same legal theories as Class members', Named Plaintiffs-Petitioners' "factual differences [do] not defeat typicality." *James v. City of Dallas*, 254 F.3d 551, 571 (5th Cir. 2011), *abrogated on other grounds by M.D.*, 675 F.3d at 839–41.

D. Adequacy

Named Plaintiffs-Petitioners are adequate representatives of the Class because their interests in the vindication of their legal claims are entirely aligned with the interests of other Class Members, who each have the same basic constitutional claims. They are members of the Class, and their interests coincide with and are not antagonistic to those of other Class Members.

Named Plaintiffs-Petitioners and Class Members currently, and shall in the future, suffer the same harms. Named Plaintiffs-Petitioners are committed to class-wide resolution, and they will adequately and fairly protect the interests of the Class. There are no known conflicts of interest among Class Members, or among Plaintiffs-Petitioners, all of whom have a similar interest in vindicating their constitutional rights.

Plaintiffs-Petitioners are represented by attorneys from the Promise of Justice Initiative ("PJI"), the Juvenile Law Center, the Law Office of John Adcock ("Adcock"), and O'Melveny & Myers LLP ("O'Melveny"), who collectively have ample experience litigating complex civil rights matters related to incarcerated children and prisoners' rights in federal court and extensive knowledge of both the details of Louisiana's juvenile justice process and the relevant

constitutional and statutory law. Class counsel have a detailed understanding of local law and practices as they relate to federal constitutional requirements.

II. Plaintiffs-Petitioners Meet the Requirements of Rule 23(b)(2)

Plaintiffs-Petitioners' claims present "a paradigmatic case for Rule 23(b)(2) relief." *Jones*, 296 F.R.D. at 465. Certification under Rule 23(b)(2) is appropriate here because Defendants-Respondents have "acted [and] refused to act on grounds that apply generally to the class, so that final injunctive [and] corresponding declaratory relief [are] appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Moreover, all Class Members are "harmed in essentially the same way" and seek only "specific" injunctive relief. *M.D.*, 675 F.3d at 845; *see also Dockery*, 253 F. Supp. 3d at 855.

In establishing commonality, Named Plaintiffs-Petitioners have identified a common practice or policy that is the source of Class Members' harm. If Plaintiffs-Petitioners prevail on the merits, a single injunction modifying Defendants-Respondents' course of behavior will, in the ordinary course, provide relief to the members of the class. *Dockery*, 253 F. Supp. 3d at 839. Defendants-Respondents' challenged practices are not tailored to individual children, but apply to the population of children in OJJ custody who are, or will in the future be, subject to the medical care and confinement policies and practices of OJJ as a whole. These practices apply to all Class Members by virtue of Class Members' status as children held in the four OJJ facilities because they are now, or in the future could become, subject to OJJ's policies and practices, without regard to the various circumstances of their cases or any other differences among them. Because Defendants-Respondents' overall failures in responding adequately to the pandemic put all Class Members at a substantial risk of serious harm from COVID-19, a carefully crafted injunction will provide relief to all Class Members.

As confined children seeking injunctive relief from the conditions of their confinement, Named Plaintiffs-Petitioners need not prove that Defendants-Respondents' COVID-19 response plan or lack thereof has already resulted in actual injury to each Class Member, but rather must demonstrate that it has imposed punishment rather than rehabilitation in violation of the Fourteenth Amendment. *See, e.g.*, *Alexander S. v. Boyd*, 876 F. Supp. 773, 796 n.43 (D.S.C. 1995). Moreover, even under the Eighth Amendment standard typically applied to adults, Plaintiffs must demonstrate only that they face an unreasonable *risk* of harm. *See, e.g.*, *Farmer v. Brennan*, 511 U.S. 825, 847 (1994); *see also Jones*, 296 F.R.D. at 465–66 (satisfying commonality does not require challenged defects to "injure each class member"). Claims challenging the constitutionality of correctional health care systems are amenable to class treatment where "systemwide deficiencies in the provision of medical and mental health care that, taken as a whole, subject sick and mentally ill prisoners . . . to substantial risk of serious harm cause the delivery of care in the prisons to fall below the evolving standards of decency that mark the progress of a maturing society." *Brown*, 563 U.S. at 505 n.3 (internal quotation marks and citation omitted); *see also J.D. v. Nagin*, 255 F.R.D. 406 (E.D. La. 2009) (claims requiring Defendants to address policies relating to the provision of medical and mental health care to youth in detention satisfy the requirements of rule 23(b)(2)).

"The precise terms of the injunction need not be decided at class certification, only that the class members' claim is such that a sufficiently specific injunction can be conceived . . . ." *Dockery*, 253 F. Supp. 3d at 851. The injunctive relief Class Members seek is "specific" because their claims are "susceptible to common, specific relief." *Perry*, 294 F.R.D. at 47. As noted in *Lewis*, "[t]he Fifth Circuit has held that 'class claims could conceivably be based on an allegation that the State engages in a pattern or practice of agency action or inaction—including a failure to

correct a structural deficiency within the agency, such as insufficient staffing—'with respect to the class,' so long as declaratory or injunctive relief 'settling the legality of the State's behavior with respect to the class as a whole is appropriate.'" *Lewis*, Dkt. No. 394 at 21 (quoting *Perry*, 675 F.3d at 847–48). So too here; the entire Class seeks a declaratory judgment that Defendants-Respondents violate Class Members' constitutional rights by depriving youth of rehabilitative treatment and failing to adequately safeguard their health and safety in the midst of a pandemic of a deadly infectious disease and an injunction requiring Defendants-Respondents to take the steps necessary to protect Class Members from suffering serious harm from disease.

Among other relief, Plaintiffs-Petitioners ask that this Court order Defendants-Respondents to:

- Promulgate and implement adequate policies and procedures related to COVID-19 that comply with the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, and that ensure adequate staffing; resources; quality assurance; surveillance; auditing; data tracking; coordination with local, state, and federal health officials; education; clinical guidance; and training;
- Ensure that each COVID-19 patient in OJJ custody is evaluated by a medical professional and conduct testing for all children in the four OJJ facilities, not only the few individuals who display obvious symptoms, on a regular basis and in accordance with CDC guidelines;
- Eliminate or reduce to the greatest extent possible the transportation of children between the four OJJ facilities;
- Assess and issue guidance to the relevant individuals at the four OJJ facilities regarding the conditions of confinement consistent with the CDC's social distancing guidelines;

- Suspend the use of solitary confinement and dorm confinement as a means of medical isolation; and
- Provide children with online (or through other adaptive strategies) educational and therapeutic services and opportunities and physical activity and recreation.

This relief would apply equally to the entire Class as a whole. *See Dockery*, 253 F. Supp. 3d at 856 (injunctive relief satisfies Rule 23(b)(2) where "the types of injunctive relief requested by Plaintiffs would not require that the Court adjudicate the individual class members' needs or circumstances"). Therefore, certification under Rule 23(b)(2) is appropriate.

III. Plaintiffs-Petitioners Also Meet the Requirements of Rule 23(b)(1)(A)

Named Plaintiffs-Petitioners' claims also satisfy Rule 23(b)(1)(A) for certification because there would be a real risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class if raised individually. Certification under Rule 23(b)(1)(A) "is appropriate [because] the class seeks injunctive [and] declaratory relief to change [Defendants-Respondents'] alleged ongoing course of conduct that is . . . illegal as to all members of the class." *Adair v. England*, 209 F.R.D. 5, 12 (D.D.C. 2002) (citing 5 Moore's Fed. Practice § 23.41[4] (3d ed. 2000)); *see also Evans v. Sterling Chems. Inc.*, No. CV H-07-625, 2008 WL 11389418, at *6 (S.D. Tex. Nov. 19, 2008) (23(b)(1)(A) certification appropriate where injunction is predominant relief sought and "there is a need to conclude or adjudicate all potential claims in one suit").

Even if it were feasible in this unprecedented pandemic environment for each of the approximately 220 individual Class Members to bring separate suits making the allegations here (and it is not), the adjudication of these actions would, problematically, risk creating inconsistent decisions that would establish varying standards to which Defendants-Respondents would have

to adhere. *See, e.g.*, *Ashker v. Gov. of the State of Cal.*, No. C 09-5796 CW, 2014 WL 2465191, at *7 (N.D. Cal. June 2, 2014) (certifying class of inmates claiming prison policy violated the Eighth Amendment pursuant to Rule 23(b)(1)(A) in light of the "significant risk" of inconsistent judgments if the hundreds of proposed class members filed separate actions). Plaintiffs-Petitioners seek declaratory and injunctive relief that is applicable to all Class Members. *See Evans*, 2008 WL 11389418, at *6. Finally, the urgent necessity of requiring Defendants-Respondents to adequately respond to the COVID-19 crisis creates a need to conclude these adjudications quickly in one suit. *Id.*

The Class therefore seeks declaratory and injunctive relief to enjoin Defendants-Respondents from exposing Plaintiffs-Petitioners and Class Members to the substantial risk of serious harm and from depriving them of their constitutional rights. Because the Class challenges Defendants-Respondents' policies and practices as unconstitutional through declaratory and injunctive relief that would apply the same relief to every Class Member, Rule 23(b)(1)(A) certification is appropriate.

IV. Undersigned Counsel Should Be Appointed Class Counsel Under Rule 23(g)

This Court must appoint Class counsel in consideration of "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed R. Civ. P. 23(g).

Plaintiffs-Petitioners' counsel satisfy all four criteria, and this Court should appoint PJI, Juvenile Law Center, Adcock, and O'Melveny as Class counsel. First, as reflected in Plaintiffs-Petitioners' Complaint, Motion for Temporary Restraining Order, and all papers filed in this matter, Plaintiffs-Petitioners' counsel have already devoted substantial time and resources

investigating the factual and legal issues in the case and will continue to do so throughout the pendency of the litigation. Second, Class counsel are experienced in handling class actions and other complex litigation. Third, PJI and Juvenile Law Center are dedicated to ensuring constitutional conditions for institutionalized individuals and children and are highly knowledgeable in the applicable law. Collectively, Class counsel have significant experience in the areas of criminal law, constitutional law, and class action litigation. PJI previously litigated *Ball v. LeBlanc*, succeeding at trial and then continuing to advocate for their clients through the appeal and remedy phases, and are currently successfully litigating *Lewis*—the facts of which are highly relevant here. Juvenile Law Center has successfully litigated numerous conditions of confinement suits on behalf of youth in the juvenile justice system, most recently *JJ v. Litscher*, 3:17-cv-00047 (W.D. Wis. 2017), and most notably *H.T. et al. v. Ciavarella*, 3:2009-cv-00357 (M.D. Pa 2009), and has successfully litigated cases across the country and in the U.S. Supreme Court in cases establishing Constitutional standards for youth in the justice system. As a firm that has extensive class action experience, O'Melveny's trial experience provides an important strategic benefit at every stage of the case—from effectively conducting discovery and factual development to fielding experienced teams that understand how to win in front of juries. Finally, the Court has seen firsthand the resources and acumen Plaintiffs-Petitioners' counsel bring to this case. Class counsel have already committed many hours to representing the Class in this case, and will continue to commit the time and resources necessary to advocate zealously for the rights of all Class Members.

CONCLUSION

For the foregoing reasons, Plaintiffs-Petitioners respectfully request that this Court certify the proposed Class and appoint the undersigned counsel as counsel for the Class.

Respectfully submitted this 2nd day of June, 2020.

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