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16 Attorneys for Plaintiff-Petitioners

18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

20 LANCE AARON WILSON;  
 MAURICE SMITH; EDGAR  
 21 VASQUEZ, individually and on  
 behalf of all others similarly situated,

22 Plaintiff-Petitioners,

23 vs.

24 FELICIA L. PONCE, in her capacity  
 as Warden of Terminal Island; and  
 25 MICHAEL CARVAJAL, in his  
 capacity as Director of the Bureau of  
 26 Prisons,

27 Defendant-Respondents.  
28

CASE NO. 2:20-cv-04451-MWF-MRWx

**PLAINTIFF-PETITIONERS’  
 NOTICE OF EX PARTE  
 APPLICATION AND EX PARTE  
 APPLICATION FOR PROVISIONAL  
 CLASS CERTIFICATION**

*[Filed concurrently with Declarations of  
 Naeun Rim, Peter Eliasberg, and Donald  
 Specter; [Proposed] Order]*

Assigned to Hon. Michael W. Fitzgerald  
 Courtroom 5A

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that Plaintiff-Petitioners (“Petitioners”) Lance  
3 Aaron Wilson, Maurice Smith, Edgar Vasquez, individually and on behalf of all  
4 others similarly situated, apply, *ex parte*, for an order provisionally certifying  
5 Petitioner’s claims as a class action, appointing Petitioners as Class Representatives,  
6 and appointing Class Counsel, pursuant to Federal Rule of Civil Procedure 23(a),  
7 23(b)(2) and any other applicable rule of civil procedure or law.

8 Petitioners propose the following class definition: All current and future  
9 people in post-conviction custody at Terminal Island. If the Court disagrees with  
10 the above-stated definition for the Proposed Class, Petitioners move for the Court to  
11 redefine or modify that definition, as such determinations are within the Court’s  
12 discretion. Fed. R. Civ. P. 23(d)(1). Petitioners also move for the appointment of  
13 Petitioners Lance Aaron Wilson, Maurice Smith, Edgar Vasquez as representatives  
14 of the Proposed Class. Petitioners further move for the ACLU of Southern  
15 California, the Prison Law Office, and Bird Marella to be appointed as Class  
16 Counsel under Fed. R. Civ. P. 23(g).

17 This *ex parte* application is based upon this Notice, the Memorandum of  
18 Points and Authorities, the Declarations of Naeun Rim, Peter Eliasberg and Donald  
19 Specter, the filings in this action, the Proposed Order, which is being lodged in  
20 accordance with Local Rule 7-20, and any and all evidence, argument, or other  
21 matters that may be presented at the hearing. On May 21, 2020, Naeun Rim,  
22 counsel for Petitioners, met and conferred with Assistant United States Attorneys  
23 Joanne Osinoff, David M. Harris, and Keith Staub by telephone and gave notice of  
24 this application for provisional class certification. *See* Decl. of Naeun Rim ¶ 8.  
25 Petitioners anticipate that Respondents will object.

26  
27  
28

1            *Local Rule 5-4.3.4(a)(2)(i) Compliance: Filer attests that all other*  
2 *signatories listed concur in the filing's content and have authorized this filing.*

3  
4 DATED: May 27, 2020

Respectfully submitted,

5 Terry W. Bird  
6 Dorothy Wolpert  
7 Naeun Rim  
8 Shoshana E. Bannett  
9 Christopher J. Lee  
10 Jimmy Threatt  
11 Bird, Marella, Boxer, Wolpert, Nessim,  
12 Dooks, Lincenberg & Rhow, P.C.

13 By:           /s/ Naeun Rim            
14 Naeun Rim  
15 Attorneys for Plaintiff-Petitioners

16 DATED: May 27, 2020

Peter J. Eliasberg  
Peter Bibring  
ACLU Foundation of Southern California

17 By:           /s/ Peter Bibring            
18 Peter Bibring  
19 Attorneys for Plaintiff-Petitioners

20 DATED: May 27, 2020

Donald Specter  
Sara Norman  
Prison Law Office

21 By:           /s/ Donald Specter            
22 Donald Specter  
23 Attorneys for Plaintiff-Petitioners  
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25  
26  
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28

1           **APPLICATION FOR PROVISIONAL CLASS CERTIFICATION**

2   **I. INTRODUCTION**

3           Petitioners-Plaintiffs Lance Aaron Wilson, Maurice Smith and Edgar Vasquez  
4 (“Petitioners”) have moved for preliminary relief to prevent catastrophic harm to  
5 Terminal Island prisoners, many of whom are medically vulnerable, as a result of  
6 Respondent Felicia L. Ponce and Michael Carvajal’s failure to take adequate  
7 measures to address the COVID-19 pandemic. This motion seeks provisional  
8 certification of a class of all current and future prisoners incarcerated at Terminal  
9 Island because they are in desperate need of that preliminary relief before they  
10 suffer substantial—and potentially fatal—harm.

11           As described in Petitioner’s *Ex Parte* Application for Temporary Restraining  
12 Order and Order to Show Cause re: Preliminary Injunction, Terminal Island is the  
13 site of one of the worst COVID-19 outbreaks at any federal prison in the country.  
14 Nearly 70% of all prisoners have tested positive for COVID-19 and eight prisoners  
15 have died. Despite these sobering statistics, Respondents have refused to follow  
16 Center for Disease Control (CDC) Guidance for Correctional Facilities regarding  
17 social distancing, testing, tracing, quarantine and isolation of suspected and  
18 confirmed cases, hygiene and medical care. Respondents have repudiated the  
19 direction of Attorney General Barr to “immediately maximize appropriate transfers  
20 to home confinement of all appropriate inmates,” releasing just 6 out of 1,042  
21 inmates. It is clear that Respondents will not act to protect prisoners from the  
22 substantial danger posed by COVID-19, which makes preliminary relief imperative.

23           Federal courts in the Ninth Circuit “routinely grant provisional class  
24 certification for purposes of entering [preliminary] injunctive relief” under  
25 Rule 23(b)(2), when the plaintiffs establish that the four prerequisites in Rule 23(a)  
26 are also met. *Carrillo v. Schneider Logistics, Inc.*, No. 11-cv-8557, 2012 WL  
27 556309, at \*9 (C.D. Cal. Jan. 31, 2012) (citing *Baharona-Gomez v. Reno*, 167 F.3d  
28 1228, 1233 (9th Cir. 1999)); *see also Meyer v. Portfolio Recovery Assocs., LLC*, 707

1 F.3d 1036, 1041 (9th Cir. 2012) (holding district court did not abuse its discretion  
 2 by provisionally certifying class for purpose of entering preliminary injunction);  
 3 *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1202 (N.D. Cal. 2017) (provisionally  
 4 certifying class of detained immigrant children), *aff'd* 905 F.3d 1137 (9th Cir.  
 5 2018). Because Rule 23's requirements are easily satisfied here, the Court should  
 6 provisionally certify the following Proposed Class for purposes of the Temporary  
 7 Restraining Order Petitioners seek: ***All current and future people in post-***  
 8 ***conviction custody at Terminal Island.***

9 **II. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF**  
 10 **RULE 23(A).**

11 **A. Numerosity**

12 Rule 23(a)(1) requires that the class be “so numerous that joinder of all  
 13 members is impracticable.” Fed. R. Civ. P. 23(a)(1). No specific number is needed,  
 14 but “forty or more members will generally *satisfy the numerosity requirement.*”  
 15 *Arroyo v. United States Dep’t of Homeland Sec.*, No. SA CV 19-815 JGB (SHKX),  
 16 2019 WL 2912848, at \*9 (C.D. Cal. June 20, 2019); *see also In re Cooper Cos. Inc.*  
 17 *Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009). Numerosity is satisfied when  
 18 “general knowledge and common sense indicate that [the class] is large.” *Inland*  
 19 *Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx),  
 20 2018 WL 1061408, at \*7 (C.D. Cal. Feb. 26, 2018) (quoting *Cervantez v. Celestica*  
 21 *Corp.*, 253 F.R.D. 562, 569 (C.D. Cal. 2008)). To be impracticable, joinder must be  
 22 difficult or inconvenient but need not be impossible. *Keegan v. Am. Honda Motor*  
 23 *Co.*, 284 F.R.D. 504, 522 (C.D. Cal. 2012).

24 The Proposed Class is sufficiently numerous. Petitioners seek relief on behalf  
 25 of all persons incarcerated at Terminal Island. Currently, there are approximately  
 26 1,023 prisoners at Terminal Island.<sup>1</sup> That number standing alone satisfies the  
 27

28 <sup>1</sup> <https://www.bop.gov/locations/institutions/trm/> (accessed May 25, 2020).

1 numerosity requirement. See *Arroyo*, 2019 WL 2912848, at \*9.

2 **B. Commonality**

3 Rule 23(a) next requires that there be “questions of law or fact common to the  
4 class.” Fed. R. Civ. P. 23(a)(2). However, all questions of law and fact need not be  
5 common to satisfy Rule 23(a). *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981  
6 (9th Cir. 2011). Instead, commonality requires plaintiffs to demonstrate that their  
7 claims “depend upon a common contention . . . [whose] truth or falsity will resolve  
8 an issue that is central to the validity of each one of the claims in one stroke.” *Wal-*  
9 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Commonality can be satisfied  
10 by a single common issue. See, e.g., *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d  
11 952, 957 (9th Cir. 2013) (Commonality “does not . . . mean that every question of  
12 law or fact must be common to the class; all that Rule 23(a)(2) requires is a single  
13 significant question of law or fact.”) (citations and internal quotation marks  
14 omitted).

15 Commonality is satisfied where a lawsuit challenges “systemic policies and  
16 practices that allegedly expose inmates to a substantial risk of harm,” even where  
17 there are “individual factual differences among class members.” *Parsons v. Ryan*,  
18 754 F.3d 657, 681-682 (9th Cir. 2014) (collecting cases); *Hernandez v. Lynch*, Case  
19 No. EDCV 16-00620-JGB (KKx), 2016 WL 7116611, at \*17 (C.D. Cal. Nov. 10,  
20 2016), *aff’d sub nom. Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017); see also  
21 *Inland Empire-Immigrant Youth Collective*, 2018 WL 1061408, at \*8. “The  
22 existence of shared legal issues with divergent factual predicates is sufficient, as is a  
23 common core of salient facts coupled with disparate legal remedies within the  
24 class.” *Arroyo*, 2019 WL 2912848, at \*9 (quoting *Staton v. Boeing Co.*, 327 F.3d  
25 938, 953 (9th Cir. 2003)).

26 Here, the Proposed Class meets the commonality requirement because all  
27 class members are subject to the same practices: Respondents’ unwillingness or  
28 inability to institute social distancing, appropriate sanitation and hygiene measures,

1 and to provide adequate care and monitoring of prisoners regarding COVID-19.  
2 While it is true that COVID-19 poses a higher risk of serious illness or death for  
3 certain class members, it is also true that all prisoners are at risk.<sup>2</sup> *See Brown v.*  
4 *Plata*, 563 U.S. 493, 431-32 (2011) (“Even prisoners with no present physical or  
5 mental illness may become afflicted, and all prisoners in California are at risk so  
6 long as the State continues to provide inadequate care. Prisoners in the general  
7 population will become sick, and will become members of the plaintiff classes, with  
8 routine frequency; and overcrowding may prevent the timely diagnosis and care  
9 necessary to provide effective treatment and to prevent further spread of disease.”)  
10 For example, adults age 20-44 account for 20% of all hospitalizations and 12% of  
11 ICU admissions.<sup>3</sup> Even healthier people who contract COVID-19 are susceptible to  
12 severe strokes.<sup>4</sup> For some, the stroke is even the first symptom of COVID-19.<sup>5</sup> In  
13 fact, preliminary evidence suggests COVID-19 may render lasting organ damage in  
14 even minimally symptomatic or completely asymptomatic patients.<sup>6</sup>

15 The claims brought by the named Petitioners on behalf of the proposed Class  
16 raise a number of common questions of fact and law, including but not limited to:

- 17 • Whether the Proposed Class Members are able to adequately social

18  
19 <sup>2</sup> Complaint, Ex. 5 , ¶¶ 6, 9 (Declaration of Dr. Shamsheer Samra)

20 <sup>3</sup> *Id.*

21 <sup>4</sup> *Id.*

22 <sup>5</sup> Coronavirus May Pose a New Risk to Younger Patients: Strokes, New York  
23 Times (May 14, 2020), [https://www.nytimes.com/2020/05/14/health/coronavirus-](https://www.nytimes.com/2020/05/14/health/coronavirus-strokes.html)  
24 [strokes.html](https://www.nytimes.com/2020/05/14/health/coronavirus-strokes.html)

25 <sup>6</sup> *Id.* (describing the way that COVID-19 can severely damage lung tissues, which  
26 in some case can cause a permanent loss of respiratory capacity, and target the heart  
27 muscle causing a condition known as myocarditis, or inflammation of the heart  
28 muscle, which can lead to rapid or abnormal heart rhythms in the short term and  
long-term heart failure that limits exercise tolerance and the ability to work.)

1 distance at Terminal Island at all times

- 2 • Whether Terminal Island failed to adopt and implement adequate  
3 testing, tracing, quarantine and isolation protocols to reduce the spread  
4 of COVID-19;
- 5 • Whether the Proposed Class Members are living in sufficiently  
6 hygienic living spaces to reduce the spread of COVID-19
- 7 • Whether Terminal Island provided prisoners and staff with appropriate  
8 Personal Protective Equipment (“PPE”) and adequately enforced the  
9 usage of PPE to reduce the spread of COVID-19;
- 10 • Whether Terminal Island failed to provide adequate medical  
11 monitoring and treatment related to COVID-19;
- 12 • Whether the failure to institute social distancing subjects the Proposed  
13 Class to a heightened risk of serious illness and death and violates the  
14 Proposed Class Members’ Eighth Amendment rights.

15 Other courts have provisionally certified similar classes. *See e.g. Martinez-*  
16 *Brooks v. Easter*, No. 3:20-cv-00569-MPS, 2020 WL 2405350, at \*20-21 (D. Conn.  
17 May 12, 2020) (provisionally certifying class of medically vulnerable prisoners at  
18 FCI Danbury); *Wilson v. Williams*, No. 4:20-cv-00794, 2020 WL 1940882 9 (N.D.  
19 Ohio Apr. 22, 2020) (provisionally certifying a class of medically vulnerable  
20 prisoners at FCI Elkton); *Cameron v. Bouchard*, No. 20-cv-10494 (E.D. Mich.  
21 May 21, 2020) (certifying a class of all current and future persons detained at  
22 Oakland County Jail, as well as two subclasses prior to issuing preliminary  
23 injunction). As in each of these cases, there is a single facility and one overarching  
24 issue—whether Respondents have violated the proposed Class Members Eighth  
25 Amendment rights by exposing them “to a serious communicable disease. . .that is  
26 more than very likely to cause a serious illness.” *See Castillo v. Barr*, 2020 WL  
27 1502864, at \*5 (C.D. Cal. Mar. 27, 2020) (citing *Helling v. McKinney*, 509 U.S. 25,  
28 32 (1993)). That obviously presents a common issue amenable to class treatment.



1           **C.     Typicality**

2           Federal Rule of Civil Procedure 23(a)(3) requires that “the claims . . . of the  
3 representative parties [be] typical of the claims . . . of the class.” “[T]he typicality  
4 requirement is permissive and requires only that the representative’s claims are  
5 reasonably coextensive with those of absent class members; they need not be  
6 substantially identical.” *Rodriguez*, 591 F.3d at 1124 (quotation marks omitted).

7           “The test of typicality is ‘whether other members [of the class] have the same  
8 or similar injury, whether the action is based on conduct which is not unique to the  
9 named plaintiffs, and whether other class members have been injured by the same  
10 course of conduct.’” *Parsons*, 754 F.3d at 685 (citation omitted). Typicality is  
11 satisfied “when each class member’s claim arises from the same course of events,  
12 and each class member makes similar legal arguments to prove the defendant’s  
13 liability.” *Rodriguez*, 591 F.3d at 1124 (quotation omitted).

14           The Proposed Class meets the typicality requirement because the named  
15 Petitioners and Proposed class members are all individuals who are incarcerated at  
16 Terminal Island and their claims all arise from the same failure to implement  
17 appropriate preventative measures, monitoring and treatment in response to COVID-  
18 19. Compl. ¶ 52. Finally, they all will suffer the same harm: the significant and  
19 avoidable risk of serious illness or death. *See* Compl. ¶ 52.

20           **D.     Adequacy of Representation**

21           Rule 23(a)(4) requires that the “representative parties will fairly and  
22 adequately protect the interests of the class.” The adequacy inquiry asks: “(1) do the  
23 named plaintiffs and their counsel have any conflicts of interest with other class  
24 members and (2) will the named plaintiffs and their counsel prosecute the action  
25 vigorously on behalf of the class?” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020  
26 (9th Cir. 1998). This requirement “tend[s] to merge with the commonality and  
27 typicality criteria of Rule 23(a).” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591,  
28 626 n.20 (1997) (internal quotation marks omitted).

1 Both requirements are plainly satisfied here. *First*, there is no conflict  
 2 between the named Plaintiffs and other members of the Proposed Class. The named  
 3 Petitioners and other class members have the same injury and seek the same relief—  
 4 namely, put in place a structured, court-supervised process for immediate,  
 5 individualized consideration of each prisoner’s suitability for release on an  
 6 accelerated schedule that is more focused on the critical factors of prisoner and  
 7 public safety than the current home confinement review process at Terminal Island;  
 8 *Second*, the named Petitioners have confirmed their willingness to vigorously  
 9 prosecute this action, and their commitment to ensuring that all people facing the  
 10 current dangerous conditions in Terminal Island benefit from this case just as they  
 11 do. *See, e.g.*, Compl., Ex. 1, ¶ 4, Ex. 2, ¶ 4, Ex. 3, ¶ 3.

12 Moreover, the Proposed Class is represented by counsel from the American  
 13 Civil Liberties Union Foundation of Southern California, the Prison Law Office, and  
 14 Bird Marella. Counsel have extensive experience litigating class action lawsuits and  
 15 other complex cases in federal court, including litigating cases on behalf of  
 16 prisoners. *See* Declaration of Naeun Rim, Declaration of Peter Eliasberg,  
 17 Declaration of Donald Specter. Counsel will vigorously represent the Proposed  
 18 Class.

19 **III. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF**  
 20 **RULE 23(b)(2).**

21 In addition to satisfying the four prerequisites of Rule 23(a), the Proposed  
 22 Class qualifies for class treatment under Rule 23(b)(2). Rule 23(b)(2) requires  
 23 Petitioners establish that “the party opposing the class has acted or refused to act on  
 24 grounds that apply generally to the class, so that final injunctive relief or  
 25 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed.  
 26 R. Civ. P. 23(b)(2). “Rule [23](b)(2) was adopted in order to permit the prosecution  
 27 of civil rights actions.” *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998). As a  
 28 result, “[i]t is sufficient’ to meet the requirements of Rule 23(b)(2) [that] ‘class

1 members complain of a pattern or practice that is generally applicable to the class as  
2 a whole.” *Rodriguez*, 591 F.3d at 11226 (citation omitted) (holding that class of  
3 noncitizens detained during immigration proceedings met Rule 23(b)(2) criteria  
4 because “all class members [sought] the exact same relief as a matter of statutory or,  
5 in the alternative, constitutional right”); *id.* at 1125 (“The fact that some class  
6 members may have suffered no injury or different injuries from the challenged  
7 practice does not prevent the class from meeting the requirements of Rule  
8 23(b)(2).”).

9       The class Plaintiffs seek to certify is a paradigm Rule 23(b)(2) class. *First*,  
10 Respondents are acting on grounds that are generally applicable to the class because  
11 they subject all members of the Proposed Class to the same policies or practices—  
12 namely, Terminal Island’s policies do not allow for appropriate social distancing,  
13 adequate testing, tracing, quarantining or isolating, or adequately monitoring or  
14 treating prisoners to prevent the spread and severity of COVID-19. *See e.g.* Compl.  
15 ¶ 52. *Second*, the injunctive relief requested by Petitioners is appropriate for class  
16 as a whole. The class requests uniform relief—(1) the institution of a court-  
17 supervised process by which all prisoners are considered for home release or  
18 confinement on an accelerated basis and (2) an injunction mandating the adoption  
19 and implementation of appropriate social distancing, hygiene, quarantine/isolation,  
20 and treatment practices at Terminal Island. *See* Compl. pp. 50-54

21       Because this remedy would afford the same relief to all members of the  
22 Proposed Class, certification under Rule 23(b)(2) is appropriate. *See Parsons*, 754  
23 F.3d at 689 (holding declaratory and injunctive relief proper as to class where  
24 “every [member] . . . is allegedly suffering the same (or at least a similar) injury and  
25 that injury can be alleviated for every class member by uniform changes in . . .  
26 policy and practice”); *Rodriguez*, 591 F.3d at 1126 (certifying Rule 23(b)(2) class of  
27 imprisoned immigrants where class sought uniform procedure for release, because  
28 “relief from a single practice is requested by all class members”).

1 **IV. CONCLUSION**

2 For the foregoing reasons, Petitioners respectfully request that the Court  
 3 provisionally certify the Proposed Class.

4 *Local Rule 5-4.3.4(a)(2)(i) Compliance: Filer attests that all other*  
 5 *signatories listed concur in the filing’s content and have authorized this filing.*

7 DATED: May 27, 2020

Respectfully submitted,

8 Terry W. Bird  
 9 Dorothy Wolpert  
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15 By:                   /s/ Naeun Rim  
 16   Naeun Rim  
 17   Attorneys for Plaintiff-Petitioners

18 DATED: May 27, 2020

Peter J. Eliasberg  
 Peter Bibring  
 ACLU Foundation of Southern California

21 By:                   /s/ Peter Bibring  
 22   Peter Bibring  
  Attorneys for Plaintiff-Petitioners

24 DATED: May 27, 2020

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16 Attorneys for Plaintiff-Petitioners

18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

20 LANCE AARON WILSON;  
 MAURICE SMITH; EDGAR  
 21 VASQUEZ, individually and on  
 behalf of all others similarly situated,

22 Plaintiff-Petitioners,

23 vs.

24 FELICIA L. PONCE, in her capacity  
 as Warden of Terminal Island; and  
 25 MICHAEL CARVAJAL, in his  
 capacity as Director of the Bureau of  
 26 Prisons,

27 Defendant-Respondents.  
28

CASE NO. 2:20-cv-04451-MWF-MRWx

**DECLARATION OF NAEUN RIM IN  
 SUPPORT OF PLAINTIFF-  
 PETITIONERS' EX PARTE  
 APPLICATION FOR PROVISIONAL  
 CLASS CERTIFICATION**

*[Filed concurrently with Notice of Ex  
 Parte and Ex Parte Application;  
 Declarations of Peter Eliasberg and  
 Donald Specter; and [Proposed] Order]*

Assigned to Hon. Michael W. Fitzgerald  
 Courtroom 5A

**DECLARATION OF NAEUN RIM**

I, Naeun Rim, declare as follows:

1. I am an active member of the Bar of the State of California and attorney of record for Plaintiff-Petitioners Lance Aaron Wilson, Maurice Smith, Edgar Vasquez, individually and on behalf of all others similarly situated, in this action. I make this declaration in support of Plaintiff-Petitioners’ *Ex Parte* Application for Provisional Class Certification. Except for those matters stated on information and belief, I make this declaration based upon personal knowledge and, if called upon to do so, I could and would so testify.

2. I am a principal with Bird, Marella, Boxer, Wolpert, Nessim, Dooks, Lincenberg & Rhow, a professional corporation (“Bird Marella”), a litigation boutique in Los Angeles, California, that has extensive experience litigating class actions. I am counsel for Plaintiff-Petitioners in this matter, along with my partners Terry Bird and Dorothy Wolpert and my colleagues Shoshana Bannett, Christopher Jumin Lee, and Jimmy Threatt.

3. I have been practicing law for approximately twelve years. For the past four years, I have been an attorney at Bird Marella, where I litigate complex criminal and civil matters in federal and state courts. I am currently representing defendants in two class actions brought in this district. Prior to being at Bird Marella, I was a Trial Deputy for four years at the Federal Public Defenders Office in Los Angeles, where I represented federal criminal defendants in this district and litigated several habeas matters. For three years, I was the attorney in charge of overseeing Public Counsel’s Federal *Pro Se* Clinic, which was then located in the Spring Street United States Courthouse at 312 N. Spring Street, Los Angeles, California. At the Federal Pro Se Clinic, I advised and directly represent many litigants in civil rights cases, *Bivens* actions, and Federal Tort Claims Act cases brought against federal and state officials and agencies. I clerked for one year for the Honorable A. Howard Matz in the Central District of California.

1           4.     Terry Bird and Dorothy Wolpert, two of the founding partners of Bird  
2 Marella, each has more than 40 years of litigation experience, including experience  
3 litigating class actions and compassionate release cases. Prior to forming Bird  
4 Marella, Mr. Bird was an Assistant United States Attorney in the Central District of  
5 California. Shoshana Bannett, Christopher Jumin Lee, and Jimmy Threatt are each  
6 attorneys in my office who have experience litigating both criminal and civil cases.

7           5.     Our co-counsel in this matter include Peter Eliasberg and Peter Bibring,  
8 respectively the Chief Counsel and the Director of Police Practices/Senior Staff  
9 Attorney of the American Civil Liberties Union Foundation of Southern California  
10 (“ACLU”), and Donald Specter and Sara Norman, respectively the Executive  
11 Director and Managing Attorney of the Prison Law Office “PLO.”

12           6.     ACLU SoCal is a non-profit organization whose mission is to defend  
13 the fundamental rights outlined in the United States Constitution and the Bill of  
14 Rights and has extensive experience litigating large-scale class actions involving  
15 complex constitutional issues in the Southern California area. Further information  
16 about ACLU SoCal’s experience is found in the Declaration of Peter Eliasberg.

17           7.     PLO is a non-profit public interest law firm that provides free legal  
18 services to adult and juvenile offenders to improve their conditions of confinement.  
19 The office provides direct services to thousands of prisoners and juveniles each  
20 year, advocates for policy changes, and, if necessary, engages in impact litigation to  
21 ensure that correctional institutions meet standards required by the U.S.  
22 Constitution. PLO’s experience is elaborated on in the Declaration of Donald  
23 Specter.

24           8.     On May 21, 2020, I met and conferred with Assistant United States  
25 Attorneys Joanne Osinoff, David M. Harris, and Keith Staub by telephone and gave  
26 notice that Petitioners would be filing this *ex parte* application for provisional class  
27 certification. On May 23, 2020, I followed up in an email to Mr. Staub to determine  
28 Respondents’ position. Petitioners anticipate that Respondents will object.

1 I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct.

3 Executed May 27, 2020, at Los Angeles, California.

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/s/ Naeun Rim  
Naeun Rim

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Attorneys for Plaintiff-Petitioners

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

20 LANCE AARON WILSON;  
 MAURICE SMITH; EDGAR  
 21 VASQUEZ, individually and on  
 behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

24 FELICIA L. PONCE, in her capacity  
 as Warden of Terminal Island; and  
 25 MICHAEL CARVAJAL, in his  
 capacity as Director of the Bureau of  
 26 Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04451-MWF-MRWx

**DECLARATION OF PETER J.  
 ELIASBERG IN SUPPORT OF  
 PLAINTIFF-PETITIONERS' EX  
 PARTE APPLICATION FOR  
 PROVISIONAL CLASS  
 CERTIFICATION**

*[Filed concurrently with Notice of Ex  
 Parte and Ex Parte Application;  
 Declarations of Naeun Rim and Donald  
 Specter; and [Proposed] Order]*

Assigned to Hon. Michael W. Fitzgerald  
 Courtroom 5A

**DECLARATION OF PETER J. ELIASBERG**

I, Peter J. Eliasberg, declare as follows:

1. I am an attorney at law admitted to practice before the courts of the State of California and before this Court. I am the Chief Counsel of the American Civil Liberties Union Foundation of Southern California (“ACLU-SC”), and am co-counsel of record for Plaintiff-Petitioners (“Petitioners”) in this litigation. I make this declaration in support of Petitioners’ Motion for Provisional Class Certification. If called as a witness, I would and could competently testify to the facts stated herein, all of which are within my personal knowledge.

2. The ACLU-SC is committed to the vigorous, effective, and efficient prosecution of the interests of Petitioners and the proposed class (the “Class”), a commitment it has demonstrated in its representation of Petitioners in the proceedings to date in this matter.

3. Based on my co-representation with the attorneys of the law firm Bird Marella Boxer Wolpert Nessim Dooks Lincenberg & Rhow, P.C. (“Bird, Marella”) and the Prison Law Office (“PLO”) in this and other matters, it is my belief that the attorneys of the ACLU, Bird Marella, and PLO are likewise committed to the vigorous, effective, and efficient prosecution of this matter.

4. The ACLU-SC, Bird Marella, and PLO (collectively, “Petitioners’ counsel”) have been working for weeks on this matter. Prior to and since the filing of the complaint in this action, Petitioners’ counsel has dedicated significant hours to the investigation and research of Petitioners’ claims—including speaking with Petitioners, other members of the Class, and witnesses to develop the factual record and legal issues underlying this case, performing legal research about potential claims and relief available to the Class, and drafting a lengthy and detailed complaint, and *ex parte* application for a TRO and supporting documentation, as well as this provisional class certification motion. Through this work, Petitioners’ counsel have built a strong, effective working relationship with the named

1 Petitioners and several other members of the proposed class.

2         5.       The ACLU-SC has decades of experience in litigating a broad variety  
3 of civil rights cases, including prisoners' rights cases. In addition, I have served as  
4 lead counsel or co-lead counsel in numerous federal civil rights class actions in the  
5 Central District of California, have been lead counsel in civil rights matters before  
6 the United States Court of Appeals for the Ninth Circuit, the California Supreme  
7 Court, and the United States Supreme Court, and have argued a case before the U.S.  
8 Supreme Court. I have served as co-lead class counsel for all the inmates in Los  
9 Angeles County Jails in *Rutherford v. Baca*, No. 75-04111 (C.D. Cal.), in  
10 connection with issues concerning over-crowding, since 2009 and since 2012 have  
11 served as co-lead class counsel in *Rosas v. Baca*, No. 12-0428 (C.D. Cal.), in  
12 connection with use of force inside the Los Angeles County jails.

13         6.       My co-counsel Peter Bibring is a senior staff attorney and Director of  
14 Police Practices at the ACLU-SC, where he has worked since 2006. In addition to  
15 supervising the work around policing at ACLU-SC and coordinating advocacy  
16 around policing at the three California ACLU affiliates, Mr. Bibring has litigated  
17 numerous complex federal cases and class actions, primarily involving issues  
18 around policing, and has been lead counsel and argued cases at the Ninth Circuit,  
19 California Supreme Court and Central District, and various California courts,  
20 including the California Supreme Court. Representative cases include *Fazaga v.*  
21 *Fed. Bureau of Investigation*, 916 F.3d 1202 (9th Cir. 2019) (co-lead counsel) (class  
22 action challenge to FBI's use of undercover informants to collect information in  
23 mosques without suspicion of criminal activity); *Vasquez v. Rackauckus*, 734 F.3d  
24 1025 (9th Cir. 2013) (co-lead counsel) (class action due process challenge to  
25 enforcement of gang injunctions); *K.L. v. City of Glendale*, No. CV 11-8484 (C.D.  
26 Cal.) (co-lead counsel) (class action challenge to gang sweep in high school by  
27 police that exclusively targeted Latino students, resulting in settlement requiring  
28 changes to policies and training of four municipal agencies); *Fitzgerald v. City of*

1 *Los Angeles*, No. 03-01876 (C.D. Cal.) (class action challenge to Los Angeles  
2 Police Department detention and search practices in the Skid Row area of Los  
3 Angeles, resulting in settlement requiring changes in LAPD training on search and  
4 detention); *Trujillo v. City of Ontario*, No. ED CV 04-1015 (C.D. Cal.) and No. 06-  
5 55736 (9th Cir.) (class action on behalf of police officers subjected to covert video  
6 surveillance in their station locker room settled on the first day of trial for more than  
7 \$2 million). In addition to his litigation experience, Mr. Bibring helped to develop  
8 and for three years taught a Civil Rights Litigation Clinic at UCLA School of Law,  
9 in which he provided classroom instruction on procedural and immunities issues  
10 with federal civil rights actions, as well as instruction in legal skills including  
11 interviews, depositions, negotiations, and close supervision of students in their work  
12 on active civil rights cases. Before working at ACLU-SC, Mr. Bibring worked for  
13 two years in plaintiff-side employment law, where he litigated class action  
14 employment cases, and clerked for the Honorable Marilyn Hall Patel, then Chief  
15 Judge of the United States District Court for the Northern District of California, and  
16 the Honorable Pierre N. Leval on the United States Court of Appeals for the Second  
17 Circuit.

18       7. The ACLU-SC has dedicated and will continue to commit substantial  
19 resources to the representation of this class.

20       8. Petitioners' counsel have agreed to act jointly as class counsel, if the  
21 Court so designates them.

22       9. A true and correct copy of my resume is attached hereto as Exhibit A.

23 I declare under penalty of perjury of the laws of the State of California that  
24 the foregoing is true and correct.

25 I declare under penalty of perjury under the laws of the United States of  
26 America that the foregoing is true and correct.

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Executed May 27, 2020, at Los Angeles, California.

/s/ Peter J. Eliasberg  
Peter J. Eliasberg

# **EXHIBIT A**

**Peter J. Eliasberg**

ACLU of Southern California  
1313 West 8th Street  
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213-977-9500 ext 228  
peliasberg@aclu-sc.org

**LEGAL EXPERIENCE**

- 2016-** Chief Counsel and Manheim Family Attorney for First Amendment Rights for the ACLU Foundation of Southern California **B** Significant cases listed on separate sheet
- 2011- 2016** Legal Director and Manheim Family Attorney for First Amendment Rights for the ACLU of Foundation Southern California
- 2004-2011** Managing Attorney and Manheim Family Attorney for First Amendment Rights for the ACLU of Southern California Significant cases listed on separate sheet
- 2002-2004** Managing Attorney for the ACLU Foundation of Southern California
- 1996-2001** Staff Attorney for the ACLU Foundation of Southern California  
George Slaff First Amendment Fellow

- 1995-1996 Law Clerk for the Honorable Stephen Reinhardt  
United States Court of Appeals for the Ninth Circuit
- 1994-1995 Law Clerk for the Honorable Stanley Sporkin  
United States District Court for the District of Columbia

## EDUCATION

- 1991-1994 Harvard Law School, Cambridge, Massachusetts  
J.D., magna cum laude  
Ames Moot Court Semi-Finalist  
Research Assistant for Richard Fallon, Professor of  
Federal Courts and Constitutional Law
- 1978-1982 Yale College, New Haven, Connecticut  
B.A., *magna cum laude*  
Honors In History



## SELECTED APPEARANCES IN CIVIL RIGHTS CASES IN FEDERAL AND STATE COURT

### PRISONERS= RIGHTS

Rosas v. Baca B co-lead counsel in class action in federal district court challenging pattern of deputy on inmate abuse in the Los Angeles County jails. Case resulted in consent decree requiring Sheriff=s Department to implement wide-ranging systemic reforms to policies, practices, and training to end pattern of jail beatings

Rutherford v. Baca B co-lead counsel overseeing monitoring of jails as a result of successful judgment in case challenging conditions of confinement in Los Angeles County jails.

### FIRST AMENDMENT SPEECH AND ASSOCIATION

Porter v. Bowen B successfully represented plaintiffs in Ninth Circuit Court of Appeals making First Amendment challenge to California Secretary of State=s attempt to prohibit so-called vote swapping web sites.

Alliance For Survival v. City of Los Angeles -- Case on behalf of non-profit peace and environmental organization challenging validity of city's anti-solicitation ordinance. Argued for Plaintiffs in Ninth Circuit Court of Appeals and California Supreme Court on certification of state law question.

Valley Vote v. City of Los Angeles -- Represented and negotiated settlement for non-profit group barred from gathering petition signatures in public forum.

Burkow v. City of Los Angeles B Obtained preliminary injunctive relief forbidding defendant from enforcing ordinance banning AFor Sale@ signs on parked cars. Defendant subsequently agreed to cease enforcing the ordinance permanently in settlement agreement.

Lifestyles Inc. v. Stroh -- Successfully represented adult organization that had been barred from holding its annual sensual and erotic art exhibition. Obtained injunctive relief allowing exhibition to go forward. Argued for Plaintiff in Ninth Circuit Court of Appeals.

Neal v. Basset Unified School District B Represented student suspended for writing open letter to school community critical of principal. Obtained Temporary Restraining Order enabling student to return to school and Preliminary Injunction allowing student to attend graduation with his class and obtain his diploma.

## FIRST AMENDMENT RELIGION

Buono v. Norton B Successfully represented plaintiffs challenging display of Latin Cross on federal land in Mojave National Preserve in both district court and the Ninth Court of Appeals. Represented Plaintiff in United States Supreme Court on challenge to validity of congressional transfer of land upon which the Latin Cross is located.

Bacus v. Palo Verde Unified School District B Case on behalf of two teachers challenging constitutionality of school board practice of opening school board

meetings with sectarian prayers. Successfully argued appeal for Plaintiffs in Ninth Circuit Court of Appeals.

ACLU v. City of Redlands B Obtained injunctive relief under the Establishment Clause preventing City of Redlands from sponsoring March For Jesus Parade.

#### **FOURTH AMENDMENT AND PRIVACY**

Trujillo/Bernhard v. City of Ontario B Represented class of police officers challenging warrantless video surveillance of police locker room. Successfully argued appeal for Plaintiff class in Ninth Circuit Court of Appeal of denial of qualified immunity to Defendants.

Fitzgerald v. City of Los Angeles B Represented group of homeless individuals and obtained settlement in challenge to pattern of arrests and searches of Plaintiffs.

Riordan v. Verizon and Campbell v. AT&T B Representing telephone customers in challenge to telecommunications carriers= practice of turning over customer phone records to the National Security Agency.

#### **DISABILITY RIGHTS**

Beauchamp v. MTA -- class action suit on behalf of bus riders in wheelchairs against the Los Angeles County MTA for failing to obey Americans With Disabilities Act. Obtained preliminary injunctive relief and negotiation settlement agreement requiring significant improvements in bus service to riders with mobility impairments.

Miles v. Superior Court B Represented class of persons with disabilities challenging inaccessibility of Los Angeles County Superior Courts.

## **EDUCATIONAL EQUITY**

Daniel v. California B Challenge to unequal access to AP classes under the California State Constitution. Case resulted in settlement through legislation setting up AP Challenge Grant program for schools with few or no AP classes.

Williams v. California B Challenge to unequal and inadequate school facilities, unqualified teachers and lack of instructional materials in K-12 public schools. Settlement provided for, among other things, \$800 million emergency repair program and monitoring of facilities, access to instructional materials by County Superintendents of Education.

## **EQUAL PROTECTION**

Gregorio T. v. Wilson -- case successfully challenging the constitutionality of California's Proposition 187.

## **FREEDOM OF INFORMATION**

Wiener v. FBI -- successfully represented University of California history professor seeking documents concerning the FBI's surveillance of John Lennon during the early 1970's

## **HABEAS CORPUS**

McDougal v. Ramon -- Successfully challenged confinement of Whitewater suspect, Susan McDougal, in 23-hour lockdown in Los Angeles County Jail.

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Attorneys for Plaintiff-Petitioners

18 **UNITED STATES DISTRICT COURT**  
 19 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

20 LANCE AARON WILSON;  
 21 MAURICE SMITH; EDGAR  
 22 VASQUEZ, individually and on  
 behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

24 FELICIA L. PONCE, in her capacity  
 25 as Warden of Terminal Island; and  
 26 MICHAEL CARVAJAL, in his  
 capacity as Director of the Bureau of  
 Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04451-MWF-MRWx

**DECLARATION OF DONALD  
 SPECTER IN SUPPORT OF  
 PLAINTIFF-PETITIONERS’  
 MOTION FOR PROVISIONAL  
 CLASS CERTIFICATION**

*[Filed concurrently with Notice of Ex  
 Parte and Ex Parte Application;  
 Declarations of Naeun Rim and Peter  
 Eliasberg; and [Proposed] Order]*

Assigned to Hon. Michael W. Fitzgerald  
 Courtroom 5A



1 challenging inadequacy of California prisoner health care); *Valdivia v. Davis*, 206 F.  
2 Supp. 2d 1068 (E.D. Cal. 2002) (statewide class action challenging the lack of due  
3 process in California Board of Prison Terms parole revocation proceedings); *Perez*  
4 *v. Tilton*, Case No. 3:05-cv-05241-JSW (N.D. Cal. 2005) (statewide class action  
5 challenging inadequacy of California prisoner dental care); *Parsons v. Ryan*, 289  
6 F.R.D. 513 (D. Ariz. 2013), aff'd, 754 F.3d 657 (9th Cir. 2014) (statewide class  
7 action challenging inadequacy of Arizona Department of Correction's medical,  
8 dental, and mental health care, and conditions of confinement in isolation units);  
9 *Farrell v. Tilton*, Case No. 3079344 (Alameda County Sup. Ct. 2003) (taxpayer  
10 action to reform the conditions of confinement for wards under the jurisdiction of  
11 the Division of Juvenile Justice [formerly California Youth Authority]).

12 4. The Prison Law Office also has litigated successfully multiple cases  
13 challenging health care conditions in county jails in California, including *Hall v.*  
14 *Cty. of Fresno*, Case No. 1:11-cv-02047-LJO-BAM (E.D. Cal.) (Consent Decree,  
15 Dkt. 112); *Gray v. Cty. of Riverside*, Case No. EDCV 13-0444-VAP (Opx) (C.D.  
16 Cal) (Consent Decree, Dkt. 173); *Chavez v. Cty. of Santa Clara*, Case No. 1:15-cv-  
17 05277-NJV (N.D. Cal.); and *Turner v. Cty. of San Bernardino*, Case No. 5:16-cv-  
18 00355-VAP-DTB (C.D. Cal.) (pending). *Schwarzenegger*, Case No. 3:01-cv-01351-  
19 TEH (N.D. Cal. 2001).

20 5. PLO has dedicated and will continue to commit to dedicate substantial  
21 resources to the representation of the Proposed Class.

22 I declare under penalty of perjury under the laws of the United States of  
23 America that the foregoing is true and correct.

24 Executed May 27, 2020, at Sea Ranch, California.

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27  
28

/s/ Donald Specter  
Donald Specter



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Attorneys for Plaintiff-Petitioners

18 **UNITED STATES DISTRICT COURT**  
 19 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

20 LANCE AARON WILSON;  
 21 MAURICE SMITH; EDGAR  
 22 VASQUEZ, individually and on  
 behalf of all others similarly situated,

Plaintiff-Petitioners,

vs.

24 FELICIA L. PONCE, in her capacity  
 25 as Warden of Terminal Island; and  
 26 MICHAEL CARVAJAL, in his  
 capacity as Director of the Bureau of  
 Prisons,

Defendant-Respondents.

CASE NO. 2:20-cv-04451-MWF-MRWx

**[PROPOSED] ORDER GRANTING  
 PLAINTIFF-PETITIONERS' EX  
 PARTE APPLICATION FOR  
 PROVISIONAL CLASS  
 CERTIFICATION**

*[Filed concurrently with Notice of Ex  
 Parte and Ex Parte Application; and  
 Declarations of Naeun Rim, Peter  
 Eliasberg, and Donald Specter]*

Assigned to Hon. Michael W. Fitzgerald  
 Courtroom 5A

1 Plaintiff-Petitioners Lance Aaron Wilson, Maurice Smith, and Edgar  
2 Vasquez’s (“Petitioners”) *Ex Parte* Application for an order provisionally certifying  
3 a class, as defined below, appointing Petitioners as class representative and  
4 appointing class counsel, came on for a hearing before the Court.

5 Upon reading and considering the supporting papers filed in connection with  
6 the Application and the evidence presented in support thereof, the Court finds that:

- 7 (a) under Rule 23(a)(1), the Proposed Class is sufficiently numerous in that  
8 it consists of over 1,000 individuals;
- 9 (b) under Rule 23(a)(2), there exist common questions of law and fact as to  
10 all class members, which include, *inter alia*,
- 11 (i) whether the Proposed Class Members are able to adequately  
12 social distance at Terminal Island at all times;
- 13 (ii) whether Terminal Island failed to adopt and implement adequate  
14 testing, tracing, quarantine and isolation protocols to reduce the  
15 spread of COVID-19;
- 16 (iii) whether the Proposed Class Members are living in sufficiently  
17 hygienic living spaces to reduce the spread of COVID-19;
- 18 (iv) whether Terminal Island provided prisoners and staff with  
19 appropriate Personal Protective Equipment (“PPE”) and  
20 adequately enforced the usage of PPE to reduce the spread of  
21 COVID-19;
- 22 (v) whether Terminal Island failed to provide adequate medical  
23 monitoring and treatment related to COVID-19; and
- 24 (vi) whether the failure to institute social distancing subjects the  
25 Proposed Class to a heightened risk of serious illness and death  
26 and violates the Proposed Class Members’ Eighth Amendment  
27 rights.
- 28 (c) under Rule 23(a)(3), the claims of the proposed class representatives

1 are typical of the claims of all class members in that the Petitioners and  
2 Proposed Class Members are all individuals who are incarcerated at  
3 Terminal Island and their claims all arise from the same failure to  
4 implement appropriate preventative measures, monitoring and  
5 treatment in response to COVID-19, and they all will suffer the same  
6 harm: the significant and avoidable risk of serious illness or death;  
7 (d) under Rule 23(a)(4), the proposed class representatives have  
8 demonstrated that each of them will fairly and adequately protect the  
9 interests of the class;  
10 (e) the proposed counsel for the class, the ACLU of Southern California,  
11 the Prison Law Office and the law firm of Bird Marella have  
12 demonstrated that they are experienced in prosecuting class actions of  
13 this nature and will adequately represent the interests of the Class;  
14 (f) under Rule 23(b)(2), the party opposing the class has acted or refused  
15 to act on grounds that apply generally to the class so that final  
16 injunctive relief is appropriate respecting the class as a whole, because  
17 Respondents subject all members of the proposed class to the same  
18 policies or practices—namely, Terminal Island’s policies do not allow  
19 for appropriate social distancing, adequate testing, tracing, quarantining  
20 or isolating, or adequately monitoring or treating prisoners to prevent  
21 the spread and severity of COVID-19, and the injunctive relief  
22 requested by Petitioners is appropriate for class as a whole—(1) the  
23 institution of a court-supervised process by which all prisoners are  
24 considered for home release or confinement on an accelerated basis and  
25 (2) an injunction mandating the adoption and implementation of  
26 appropriate social distancing, hygiene, quarantine/isolation, and  
27 treatment practices at Terminal Island; and  
28

1 It appearing to the Court that good cause has been shown, IT IS HEREBY  
2 ORDERED THAT:

3 1. The above-styled action is hereby provisionally certified as a class  
4 action as to all claims in the Complaint in this action pursuant to Rule 23(b)(2) of  
5 the Federal Rules of Civil Procedure, for purposes of entering the Temporary  
6 Restraining Order;

7 2. The “Class” of plaintiff-petitioners is defined as follows: All current  
8 and future people in post-conviction custody at Terminal Island;

9 3. Lance Aaron Wilson, Maurice Smith and Edgar Vasquez are appointed  
10 as representatives of the Class;

11 4. The ACLU of Southern California, the Prison Law Office and Bird  
12 Marella are appointed as Class Counsel for all purposes related to the Temporary  
13 Restraining Order.

14  
15 SO ORDERED:

16  
17 DATED:

18  
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20 \_\_\_\_\_  
Hon. Michael W. Fitzgerald  
United States District Judge  
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