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13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 PETER JOHNSON, DONALD PETERSON,
16 and MICHAEL CURFMAN, on behalf of
17 themselves and all others similarly situated,

18 Plaintiffs,

19 v.

20 LOS ANGELES COUNTY SHERIFF'S
21 DEPARTMENT, a public entity; LEROY
22 BACA, Sheriff of the County of Los
23 Angeles, and COUNTY OF LOS
24 ANGELES, a public entity, MICHAEL D.
25 ANTONOVICH, YVONNE B. BURKE,
26 DON KNABE, GLORIA MOLINA, ZEV
27 YAROSLAVSKY, as Supervisors of the
28 County of Los Angeles,

Defendants.

CASE NO.: CV-08-3515-DDP

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

DATE: June 30, 2008

TIME: 10:00 a.m.

DEPT.: 3

JUDGE: Hon. Dean D. Pregerson

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TABLE OF CONTENTS

	Page
1	
2	
3 I. INTRODUCTION	1
4 II. STATEMENT OF FACTS	6
5 A. Architectural Barriers Deny Detainees With Disabilities	
6 Equal Access To The Most Basic Facilities – Including	
7 Toilets, Showers and Drinking Fountains	6
8 B. The County Routinely Fails To Provide Detainees With	
9 Disabilities Necessary Accommodations And Services.....	7
10 C. Detainees With Disabilities Are Completely Excluded	
11 From Many Programs Available To The General Jail	
12 Population.....	9
13 D. Defendants Still Have Not Completed A Comprehensive	
14 Evaluation And Transition Plan As Required By The	
15 ADA.....	11
16 III. ARGUMENT	12
17 A. Standard Pursuant To Which The Court Should Issue A	
18 Preliminary Injunction.....	12
19 B. Plaintiffs Are Likely To Succeed On The Merits Of	
20 Their ADA And Rehabilitation Act Claims	12
21 1. Elements Of Plaintiffs’ Title II and Rehabilitation	
22 Act Claims.....	13
23 2. Plaintiffs Are Qualified Individuals With	
24 Disabilities.....	13
25 3. The Los Angeles County Jails Are A Public Entity	
26 Subject To The Title II Of The ADA And The	
27 Rehabilitation Act	14
28 4. Plaintiffs Are Being Excluded From Participation	
In, And Denied The Benefits Of, Jail Services And	
Programs, And Are Suffering Discrimination,	
Because Of Their Disabilities	15

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5. Section 504 Of The Rehabilitation Act Similarly Prohibits Discrimination Against Inmates With Disabilities..... 20

C. Plaintiffs Will Continue To Suffer Irreparable Injury Without A Preliminary Injunction..... 20

D. The Balance of Hardships Plainly Favors Plaintiffs 22

E. A Preliminary Injunction Would Advance The Public Interest 24

F. The Preliminary Injunction Complies With the Prison Reform Litigation Act 25

IV. CONCLUSION..... 25

TABLE OF AUTHORITIES

	<u>Page</u>
FEDERAL CASES	
<i>Armstrong v. Davis</i> , 275 F.3d 849 (9th Cir. 2001).....	15, 25
<i>Armstrong v. Wilson</i> , 124 F.3d 1019 (9th Cir. 1997).....	13
<i>Associated General Contractors of Cal. v. Coalition for Econ. Equity</i> , 950 F.2d 1401 (9th Cir. 1991).....	21
<i>Barden v. City of Sacramento</i> , 292 F.3d 1073 (9th Cir. 2002).....	16
<i>Bay Area Addiction Research and Treatment, Inc. v. City of Antioch</i> , 179 F.3d 725 (9th Cir.1999).....	13
<i>Block v. Rutherford</i> , 468 U.S. 576 (1984).....	24
<i>Chaffin v. Kansas State Fair Board</i> , 348 F.3d 850 (10th Cir. 2003).....	17, 18
<i>Clarkson v. Coughlin</i> , 898 F.Supp. 1019 (S.D.N.Y. 1995).....	19
<i>Clear Channel Outdoor Inc. v. City of Los Angeles</i> , 340 F.3d 810 (9th Cir. 2003).....	12, 21
<i>Collings v. Longview Fibre Co.</i> , 63 F.3d 828, 832 n.3 (9th Cir. 1995).....	14, 20
<i>Crawford v. Indiana Dept. of Corrections</i> , 115 F.3d 481, 486 (7th Cir. 1997).....	24
<i>Crowder v. Kitagawa</i> , 81 F.3d 1480 (9th Cir. 1996).....	15
<i>Cummings v. Roberts</i> , 628 F.2d 1065 (8th Cir. 1980).....	21
<i>Cupulo v. Bay Area Rapid Transit</i> , 5 F. Supp. 2d 1078 (N.D. Cal. 1997).....	21
<i>Goldie’s Bookstore, Inc. v. Superior Ct.</i> , 739 F.2d 466 (9th Cir. 1984).....	21
<i>Harris v. Bd. of Supervisors, Los Angeles</i> , 366 F.3d 754 (9th Cir. 2004).....	24
<i>Kimman v. New Hampshire Dep’t of Corr.</i> , 451 F.3d 274 (1st Cir. 2006).....	18
<i>Lawson v. CSX Transp., Inc.</i> , 245 F.3d 916, 924 (7th Cir. 2001).....	14
<i>Leach v. Shelby County Sheriff</i> , 891 F.2d 1241 (6th Cir. 1989).....	21

1	<i>Lopez v. Heckler</i> ,	
2	713 F.2d 1432 (9th Cir. 1983).....	24
3	<i>Love v. Westville Corr. Ctr.</i> ,	
4	103 F.3d 558 (7th Cir. 1996).....	19
5	<i>McDonald v. Penn. Dept. of Public Welfare</i> ,	
6	62 F.3d 92 (3d Cir. 1995).....	20
7	<i>Natale v. Camden County Correctional Facility</i> ,	
8	318 F.3d 575 (3d Cir. 2003).....	22
9	<i>Orantes-Hernandez v. Smith</i> ,	
10	541 F.Supp. 351, 386 n. 42 (C.D. Cal. 1982).....	25
11	<i>Palmer v. Johnson</i> ,	
12	193 F.3d 346 (5th Cir. 1999).....	22
13	<i>Parker v. Universidad de Puerto Rico</i> ,	
14	225 F.3d 1, 5 (1st Cir. 2000).....	16
15	<i>Pennsylvania Dep't of Corr. v. Yeskey</i> ,	
16	524 U.S. 206, 210 (1998).....	14, 18
17	<i>People ex rel Van de Kamp v. Tahoe Regional Planning Agency</i> ,	
18	766 F.2d 1319, 1325-26 (9th Cir.1985).....	25
19	<i>Pierce v. County of Orange</i> ,	
20	--- F.3d ---, 2008 WL 2052408, *19 (9th Cir. May 15, 2008).....	14, 16, 18, 19
21	<i>Revere v. Mass. Gen. Hosp.</i> ,	
22	463 U.S. 239 (1983).....	21
23	<i>Robertson v. Las Animas County Sheriff's Dept.</i> ,	
24	500 F.3d 1185 (10th Cir. 2007).....	14
25	<i>Rodde v. Bonta</i> ,	
26	357 F.3d 988 (9th Cir. 2004).....	12
27	<i>Ruiz v. Estelle</i> ,	
28	679 F.2d 1115 (5th Cir. 1982).....	22
	<i>Rutherford v. Pitchess</i> ,	
	457 F.Supp. 104 (C.D. Cal. 1978).....	24
	<i>Save Our Summers v. Wash. State Dept. of Ecology</i> ,	
	132 F. Supp. 2d 896 (E.D. Wash. 1999).....	21
	<i>Sullivan v. Vallejo City Unified School Dist.</i> ,	
	5 F. Supp. 947 (E.D. Cal. 1990).....	21
	<i>Tyler v. City of Manhattan</i> ,	
	857 F. Supp. 800 (D. Kansas 1994).....	14
	<i>U.S. v. Georgia</i> ,	
	546 U.S. 151 (2006).....	18
	<i>Walczak v. EPL Prolong, Inc.</i> ,	
	198 F.3d 725 (9th Cir. 1999).....	12
	<i>Warshak v. U.S.</i> ,	
	490 F.3d 455 (6th Cir. 2007).....	24
	<i>Weeks v. Chaboudy</i> ,	
	984 F.2d 185 (6th Cir. 1993).....	21

1	<i>Weinreich v. Los Angeles County Metropolitan Transp. Authority,</i>	
2	114 F.3d 976 (9th Cir. 1997).....	13
3	<i>Zukle v. Regents of University of California,</i>	
4	166 F.3d 1041 (9th Cir. 1999).....	13
5	STATUTES	
6	28 § 35.130(b)(4)(i)	15
7	28 § 35.130(b)(7)	15, 17
8	28 §§ 35.130(b)(1)(ii)-(iii).....	15
9	28 §§ 35.149-150	15
10	28 C.F.R. § 35.150(a)	16
11	28 C.F.R. § 35.130.....	15, 17, 18, 19
12	28 C.F.R. § 35.130(b)(1)(i).....	15
13	28 C.F.R. § 35.149	16
14	28 C.F.R. § 35.150.....	16, 19
15	29 U.S.C. § 794(a).....	13, 20
16	29 U.S.C. § 794(b).....	20
17	42 U.S.C. § 12101.....	13, 24
18	42 U.S.C. § 12101(b)(1)	13
19	42 U.S.C. § 12131(2).....	14
20	42 U.S.C. § 12132.....	13
21	42 U.S.C. § 12134(a)	15
22	42 U.S.C. §12102(2).....	14
23	18 U.S.C. § 3626(a)(2)	25
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1 **I. INTRODUCTION**

2 Plaintiffs bring this motion for preliminary injunction to provide interim relief
3 to the thousands of men and women with disabilities who are held for days, months
4 or even years, in the Los Angeles County Jail system (the “Jail”). In their daily
5 operation of the Jail, the County Defendants violate federal and state statutes
6 prohibiting discrimination against people with disabilities, including Title II of the
7 Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131 *et seq.*, Section 504 of
8 the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*, and California disability rights laws,
9 Cal. Civil Code § 51 *et seq.*; Cal. Civil Code § 54 *et seq.*; Cal. Gov. Code § 11135 *et*
10 *seq.* They do so by their: (1) failure to remedy architectural barriers such as
11 inaccessible toilets, sinks, drinking fountains, and telephones that prevent detainees
12 with disabilities from participating in the programs, services and activities to the
13 general jail population; (2) failure to make reasonable modifications to policies,
14 practices and procedures that are necessary to prevent discrimination against
15 detainees with disabilities, including, *e.g.*, by providing fully functioning
16 wheelchairs, physical therapy, necessary medication and supplies (such as catheters),
17 clean sheets and clothing as needed, and lower bunk assignments for detainees who
18 need them; and (3) exclusion of people with disabilities from programs available to
19 the general population, including exercise and recreation, vocational and educational
20 programs, and library services, and housing them in facilities Defendants know
21 cannot provide access to such programs.

22 Relief is needed for the named plaintiffs and for others similarly situated,¹
23 such as Christian Reyes, a 19 year old who is awaiting trial. Earlier this year a bullet
24 left him paralyzed from the waist down. In March, shortly after being released from
25 the hospital, Christian was arrested and incarcerated in the Jail. Although he has not
26 been convicted of any crime, Christian has been punished severely – but not for the

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28 ¹ Plaintiffs are filing concurrently a motion for class certification.

1 charges against him. From the moment he first arrived at the Inmate Reception
2 Center (IRC) for processing, Christian has been subjected to the unconscionable
3 treatment accorded individuals with disabilities in the Jail. In Christian’s own words:

4 When I was in the IRC, I wasn’t given a catheter so I couldn’t empty
5 my bladder. My bladder leaked urine because I couldn’t empty it.
6 Although there is a bathroom in the IRC, it is not wheelchair-
7 accessible. . . .I was forced to go to the bathroom in a diaper while
8 sitting in the wheelchair. . . . I sat in my own feces for two days in
9 the IRC before a nurse changed my diaper

10 Declaration (“Decl.”) of Christian Reyes, ¶ 6.²

11 While in jail, Christian has repeatedly been denied both medication and
12 supplies necessary to manage his disabilities and access to facilities and programs
13 that are available to the general detainee population. For example, although Christian
14 was taking a number of prescribed medications when he was arrested, he has been
15 denied those medications in jail. *Id.* ¶ 10; Declaration of Luz Reyes (Christian’s
16 aunt) ¶ 11-12. Similarly, while at the time of his arrest, Christian was in physical
17 therapy to restore mobility in his legs, but he has had no physical therapy while in
18 jail. *Id.* ¶ 10. Christian also has had no access to the roof, where detainees are
19 allowed outdoor recreational time, or to “any other form of exercise or recreational
20 activity.” *Id.* ¶ 12. After three months in Jail, Christina has suffered what may be
21 irreversible deterioration of his condition. L. Reyes Decl. ¶ 18-20.

22 Unfortunately, Christian’s story is not unique. A noted national expert and
23 architect with years of experience in correctional settings -- Logan Hopper -- has
24 toured the Jail and prepared a 30-page report with his preliminary findings. Decl. of
25 Logan Hopper, Exh. B. Mr. Hopper concluded that individuals with disabilities face
26 myriad discriminatory conditions in the Jail. Dozens of detainees who were
27 interviewed during the investigation that led to the filing of this lawsuit confirm his
28 findings of systemic discrimination against people with disabilities:

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- **Peter Johnson**, a 39 year-old detainee who was paralyzed by a gunshot when he was 15, was left “sitting in my own feces for around 6-8 hours” at IRC because there is no wheelchair accessible toilet. Decl. of Peter Johnson ¶ 3. He also could not get a drink of water because the drinking fountain is not accessible, and fell off a slippery bench, while trying to use a non-accessible phone, because there are no accessible ones. *Id.* ¶ 4.
 - Except for court appearances, Peter has only been outside twice during four months in jail: “I basically stay in my cell 24 hours a day, every day, except for Sunday, when I attend chapel.” *Id.* ¶ 9.
 - Peter has been denied access to showers or required to use shower facilities that have dams or barriers on the floor over which he has fallen while trying to bathe. *Id.* ¶¶ 11 & 13. He has also fallen while trying to use toilets that have broken grab bars. *Id.* ¶ 12.
 - Peter reports that detainees with disabilities are routinely denied access to outdoor exercise, vocational or educational programs, and the ability to become a “trustee” – a coveted position that allows detainees time and activities outside their cells. *Id.* ¶¶ 15 & 17.
 - **Francis Tribble**, who uses a wheelchair, had to “lower myself out of my wheelchair at the entrance to the toilet and crawl and drag myself along the ground to the toilet, the[n] pull myself up to the seat,” to use the bathroom in the IRC because the entrance to the toilets is too narrow to accommodate a wheelchair. Decl. of Francis Tribble ¶ 4.
 - Francis likewise reports that detainees with disabilities are denied access to outdoor recreation on the roof, to the commissary, and even to the library. Tribble Decl. ¶¶ 17-19.
 - **Michael Curfman**, a 25 year old detainee, who is partially paralyzed and has a traumatic brain injury, Decl. of Michael Curfman ¶ 3, has been denied a wheelchair, despite his inability to walk unaided, *id.* ¶¶ 9 & 15.
 - Michael has difficulty using the toilet at Men’s Central Jail because there is no grab bar. He must steady himself “by holding to the wall or on the sink.” *Id.* ¶ 12. Michael also has trouble using the showers because they have no grab bars. As a result, he has fallen and injured himself. *Id.* ¶ 21.
 - Because of his disability, Michael suffers bladder control problems. Even when he has an accident, however, Michael must often “wait for more than a day in my soiled clothes” before he is allowed to shower, *id.* ¶ 17, and “use my soiled sheets for almost a week before they are replaced,” *id.* ¶ 18.

- 1 • Like other detainees with disabilities, Michael stays in his cell most days,
2 *id.* ¶ 22, and has no access to exercise, physical therapy or programs and
3 activities that are available to other detainees, *id.* ¶¶ 16 & 23.
- 4 • **Giovanni Ceballos** has a fractured disk as a result of a work injury.
5 Although Giovanni Ceballos has periodic bouts of paralyzing pain, he
6 could walk normally when he arrived at IRC in January 2008. After his
7 arrival, however, he had to sleep on the floor for 4 nights, which aggravated
8 his injury, causing him to lose feeling in his right leg and to have difficulty
9 walking. Decl. of Giovanni Ceballos ¶ 2. Giovanni’s problems worsened
10 when he was repeatedly assigned to sleep in top bunks, even though getting
11 into them caused severe pain. *Id.* ¶ 4. Ultimately, he was confined to a
12 wheelchair for over a month. *Id.* ¶ 6.
- 13 • Although a doctor at County USC Hospital issued a report saying that
14 Giovanni “should be in a wheelchair at all times,” *id.*, he was declassified
15 from the wheelchair unit at Men’s Central Jail because others had seen him
16 stand to use the toilet or shower, *id.* ¶ 7. Upon his declassification, two
17 guards “picked [Giovanni] up out of the wheelchair . . . and dropped me
18 onto the floor so I landed on my buttocks and back[, which] caused me
19 extreme pain” The guards then “lifted me onto a blanket and dragged
20 me back to the cell and threw me in.” *Id.* ¶ 8.
- 21 • Giovanni was subsequently denied pain medication because he was in too
22 much pain to walk to pill call. When Giovanni told a guard that he was
23 unable to walk, the guard “told me to drag myself on the floor as some
24 others had done.” *Id.* ¶¶ 9-10.

25 None of this is news to the Los Angeles County Sheriff’s Department
26 (“LASD”). Over the past decade, LASD has prepared at least three reports (in 1998,
27 2000, and 2005) about the architectural, programmatic and policy modifications
28 required to bring its facilities and programs into ADA compliance. Notwithstanding
the appalling conditions outlined above, years later, LASD has yet to implement
many of its own recommendations. Moreover, Plaintiffs’ counsel brought the
problems identified in this motion to LASD’s attention over a year ago. Although
the Department promised to take corrective action, nothing has been done. *LASD has
not even seen fit to install a single wheelchair accessible toilet in IRC.* Defendants
simply do not prioritize, fund or ultimately even focus on their need to provide

1 physical access, accommodations and programs and services to people with
2 disabilities in the Los Angeles County Jails.

3 Plaintiffs filed this lawsuit because federal and state law, the Constitution, and
4 good conscience require different priorities. They require the County to assure that
5 people with disabilities are not subjected to discrimination in the jails. Plaintiffs seek
6 a preliminary injunction because the unspeakable conditions for people with
7 disabilities that result from Defendants' refusal to comply with their statutory and
8 constitutional obligations cannot be allowed to persist while this case is litigated.

9 The facts outlined above, and discussed more fully below, plainly justify a
10 preliminary injunction. There can be no dispute that Plaintiffs are likely to prevail on
11 the merits of their nondiscrimination claims and will continue to suffer irreparable
12 injuries, if conditions for detainees with disabilities in the Los Angeles County Jails
13 do not improve immediately. Defendants, for their part, would only be required to
14 comply with legal standards with which they should have complied years ago.

15 For all of these reasons, Plaintiffs respectfully request that the Court issue a
16 preliminary injunction enjoining Defendants from holding, booking or housing any
17 person with disabilities: (a) in any facility in which the detainee does not have access
18 on the same basis as the general population to a toilet, sink, drinking fountain, and
19 telephone that meet applicable standards; (b) without providing appropriate
20 accommodations for detainees with disabilities; (c) without permitting them to
21 participate on an equal basis with other detainees in programs and activities; or (d)
22 without commissioning a comprehensive evaluation of current ADA compliance and
23 developing a comprehensive plan for achieving full compliance.

24 These remedial measures can be achieved in timed stages, with the first being
25 the elimination of the most obvious architectural barriers within 30 to 60 days. The
26 next stage – implementing appropriate accommodations and integrating people with
27 disabilities into jail programs and activities – requires development of new protocols
28 and policies and a system to evaluate effectiveness and compliance. Plaintiffs have

1 already proposed that the County bring in three national experts³ on ADA
2 compliance in correctional settings to carry out this task within the next 90 days.

3 **II. STATEMENT OF FACTS**

4 **A. Architectural Barriers Deny Detainees With Disabilities Equal** 5 **Access To The Most Basic Facilities – Including Toilets, Showers** 6 **and Drinking Fountains**

7 Detainees with disabilities in the Los Angeles County Jails are denied the most
8 basic human necessities, including accessible toilets, showers and drinking fountains.
9 Toilets lack grab bars required by ADA regulations, which are necessary for inmates
10 with disabilities to be able to support themselves or transfer between their
11 wheelchairs and the toilet. Hopper Decl., Exh. B at 18, 20. Plaintiff Michael
12 Curfman has a difficult time using the bathrooms at Men’s Central Jail (“MCJ”)
13 because they are not accessible. Curfman Decl. ¶ 12. Francis Tribble risks falling
14 down every time he transfers from the toilet to his wheelchair. Tribble Decl. ¶ 7.
15 Francisco Gomez cannot use the toilet unless he finds someone to help him. Decl. of
16 Francisco Gomez ¶ 3. Bathroom sinks lack necessary knee clearance to
17 accommodate people in wheelchairs, Hopper Decl., Exh. B at 18, and there are no
18 accessible bathrooms in common areas such as the visiting area, classrooms, and law
19 libraries. *Id.* at 21.

20 Showers have built-in six inch high curbs, no grab bars, and no fixed wall
21 seats. Hopper Decl., Exh. B at 18. These deficiencies make the showers “unusable
22 by the vast majority of inmates with disabilities. *Id.*; *see, e.g.*, Decl. of Terry Stuart
23 ¶ 4 (cannot use the shower unless someone helps him). They pose an especially
24 difficult hardship to inmates confined in wheelchairs. Castro Tranquilino has fallen a
25 few times while trying to use the shower, and although there is an accessible shower
26 on his floor, jail staff have told him that inmates cannot use that shower. Decl. of

27 ³ These experts are Logan Hopper, who has already conducted a preliminary
28 review of the County Jails, Dr. Brie Williams and Dr. Robert Greifinger. *See* Decl.
of Dr. Brie Williams (discussing her experience and Dr. Greifinger’s).

1 Castro Tranquilino ¶ 4-5. Robert Johnson has been unable to take a shower for three
2 weeks because of the curb and lack of a shower seat. Decl. of R. Johnson ¶ 4.

3 The Inmate Reception Center (“IRC”), where all inmates are first processed,
4 has some of the worst conditions for inmates with disabilities. It lacks a single
5 accessible bathroom, shower, or drinking fountain in the entire facility. Hopper
6 Decl., Exh. B at 25; Decl. of Edward Turner ¶ 6; P. Johnson Decl. ¶ 3, 4; Tribble
7 Decl. ¶ 4. Detainees with disabilities are forced to crawl and drag themselves to the
8 toilet, Tribble Decl. ¶ 4, or sit in their own feces for hours on end while they wait to
9 be processed at the Inmate Reception Center. P. Johnson Decl. ¶ 3; C. Reyes Dec.
10 ¶¶ 5-7. Problems are also common in court line holding cells and in transporting
11 detainees to and from court. Reyes Decl., ¶¶ 15, 16; Hopper Decl., Exh. B at 22.

12 **B. The County Routinely Fails To Provide Detainees With Disabilities**
13 **Necessary Accommodations And Services**

14 Defendants also routinely deny detainees with disabilities accommodations,
15 modifications and services necessary to enable them to manage their disabilities –
16 including appropriate sleeping assignments, mobility aids, medication, medical
17 supplies, and physical therapy. Defendants’ practices, at best, reflect a complete
18 disregard for the needs of people with disabilities. For example, people with mobility
19 impairments and disabling medical conditions are not ensured access to a bottom
20 bunk, so that they are forced either to sleep on the concrete floor or risk injury by
21 attempting to climb to the top of a two or three-decker bunk. Hopper Decl., Exh. B
22 at 19; *see e.g.*, Ceballos Decl. ¶ 4, 13, 15 (no bottom bunk despite doctor’s note that
23 he required one due to a fractured disk); Decl. of Bernard Ward ¶ 3, 6, 9 (forced to
24 sleep on the cement floor on several occasions because he could not climb up to top
25 bunk); Decl. of Donald Driver ¶ 11, 16 (seizures, but has not had a bottom bunk);
26 Decl. of Tyrone White ¶ 2 (injured by a fall from a top bunk during a seizure).

27 LASD staff also denies wheelchairs, prostheses and other mobility aids to
28 people with disabilities, subjecting them to pain and risk of injury. Turner Decl. ¶ 3,

1 7 (amputee, forced to crawl when deputies took away his wheelchair); Peterson Decl.
2 ¶ 3, 5 & 9; Decl. of Smitty Williams ¶ 2, 3, 7 (inmate with pin in his back, bone
3 degeneration and pinched nerves forced to crawl to shower when deputies took his
4 walker); Ceballos Decl. ¶ 2, 7 & 8. Others are provided with jail-issued wheelchairs
5 that are grossly inadequate, with missing footplates and ill-fitting seats. Tribble Decl,
6 ¶ 6. By reducing their mobility and function, these defective wheelchairs further
7 contribute to their exclusion from jail programs and services. LASD’s policies
8 regarding this medical equipment seems to be entirely *ad hoc*. Without any rhyme or
9 reason, LASD staff allow some people to keep their own wheelchairs while
10 confiscating others’ personal chairs and providing defective, jail-issued chairs.
11 People are often “declassified” out of their wheelchairs and given walkers or crutches
12 with no physical therapy or acclimation, and then “declassified” again into the general
13 population. For example, Donald Peterson’s wheelchair was confiscated and,
14 although he had no feeling in one leg, he was instead given a walker, causing him to
15 fall. Peterson Decl. ¶ 3, 5. A few days later, even his walker was taken and he was
16 given nothing to help him walk for three days. He fell three times and had to drag
17 himself and hold onto walls to move. *Id.* at 9-10.

18 Detainees also suffer serious harm resulting from LASD’s failure to provide
19 consistent and reliable medication and medical supplies for disabling medical
20 conditions. Francis Tribble experienced seizures at three times the rate he did before
21 being in custody because the doctors at jail took him off his medication, prescribed
22 him something different, and only checked his blood every month instead of every
23 two weeks. Tribble Decl. ¶ 12. John Finn suffered complications from his diabetes
24 because Jail employees repeatedly denied him the proper combination of prescribed
25 diabetes medications. Decl. of John Finn ¶ 9. Despite notifying deputies and
26 supervisors at IRC of his medical conditions and needs, Finn was not given any
27 medication for more than 30 hours after his arrival at the jails, and was denied food
28 for 12 hours. *Id.* at ¶ 13, 15. Even though his blood sugar reading soared to 350,

1 compared to his normal range of 100 to 125, Finn was still denied medication. *Id.* at ¶
2 14.

3 Other detainees suffered even more severe consequences. Jason Burt Taylor
4 became completely blind after nurses failed to give him medication for glaucoma that
5 doctors told him he needed three times a day to avoid losing his sight. Decl. of Jason
6 Burt Taylor ¶¶ 2-5. Christopher Bingley was denied seizure medication for two days
7 and, on the second night, had a severe seizure and was injured. Decl. of Christopher
8 Bingley ¶¶ 4-5.

9 Defendants also deny detainees with disabilities medical supplies and physical
10 therapy that are essential to managing their conditions. Christian Reyes and Donald
11 Peterson have been denied clean catheters they need to empty their bladders. C.
12 Reyes Decl. ¶ 11; Peterson Decl. ¶ 8. As a result, they either risk infection from re-
13 use of used catheters or suffer the indignity of fouling themselves. C. Reyes Decl.
14 ¶ 11. Michael Curfman’s disabilities often cause loss of bladder control at night, yet
15 deputies refuse to allow him clean sheets and clothing when this occurs. Curfman
16 Decl. ¶ 17-18.

17 The lack of any physical therapy in the jail likewise results in multiple
18 problems. Michael Curfman and Christian Reyes have been denied critical physical
19 therapy, which has led to the deterioration of their physical conditions. *See* Curfman
20 Decl. ¶ 23; C. Reyes Decl., ¶ 10; Luz Reyes Decl., ¶ 20. In addition, without the
21 assistance of a physical therapist who can help them exercise, many people with
22 disabilities are effectively excluded from participation in the Jail's recreation
23 program, even assuming they are allowed “roof time.”

24 **C. Detainees With Disabilities Are Completely Excluded From Many**
25 **Programs Available To The General Jail Population.**

26 Those whom the Sheriff’s Department recognizes as people with disabilities
27 are almost exclusively segregated in certain sections of MCJ, away from the rest of
28 the inmate population. Hopper Decl., Exh. B at 8. Not only are detainees with

1 disabilities thus forced into “some of the worst [facilities] in the entire L.A. County
2 Jail system,” *id.* at 19-20, their segregation in MCJ results in their exclusion from the
3 far superior educational , vocational training, work/study, and treatment programs
4 available at other jail facilities. *Id.* at 9; *see* Peterson Decl. ¶ 4; Ceballos Decl. ¶ 18;
5 Curfman Decl. ¶ 23; C. Reyes Decl. ¶ 12. This occurs in part because the LASD has
6 made no effort to make these other facilities accessible. Hopper Decl., Exh. B at 6
7 (“it appears that the . . . need to provide equal access to programs for those
8 individuals is almost entirely unknown”).

9 Perhaps most notably, although regular physical exercise obviously “is crucial
10 for the health and stabilizing health of many persons with disabilities, usually to a
11 greater extent than would be required for the non-disabled population,” *id.* at 21,
12 people with disabilities are given little or no opportunity for exercise, either indoor or
13 outside on the roof of MCJ. *See* P. Johnson Decl. ¶ 8 (in almost seven months, only
14 allowed to exercise on two occasions); Decl. of Jerry Anthony ¶ 12 (only allowed on
15 the roof twice in six months); R. Johnson Decl. ¶ 5 (no exercise in almost two months
16 at MCJ); C. Reyes Decl. ¶ 12 (no roof access his entire time in jail). They also are
17 denied access to the commissary to buy food and drinks to supplement their jail food,
18 as other detainees are allowed to do, P. Johnson Decl. ¶ 14; Tribble Decl. ¶ 18;
19 Gomez Decl. ¶ 5. Detainees with disabilities frequently spend 24 hours a day, 7 days
20 a week confined to their cells, leaving only for court appearances, religious services,
21 or pill call. *See* P. Johnson Decl. ¶ 9 (spends 24 hours a day in his cell, except to
22 attend chapel on Sundays); Gomez Decl. ¶ 5 (only leaves his cell for medication.);
23 Welch Decl. ¶ 2 (spends the entire day in his cell, except to get medications).

24 “[N]owhere were the segregation policies [of the Los Angeles County Jails]
25 more profound than in the context of the extreme disparity of program and service
26 availability between disabled and non-disabled [detainees],” Hopper Decl., Exh. B at
27 9 – a result that is particularly unforgivable given that “minor, cost-effective, and
28 well-placed physical improvements” could allow detainees with disabilities to

1 participate in these programs on the same basis as the general population. *Id.* at 30.

2 **D. Defendants Still Have Not Completed A Comprehensive Evaluation**
3 **And Transition Plan As Required By The ADA.**

4 The ADA requires Defendants to complete a self-evaluation and transition plan
5 that evaluate the Los Angeles County Jails' facilities, services, policies, and practices
6 for ADA compliance, to recommend necessary modifications, and to proceed with
7 such modifications. 28 C.F.R. §35.150(d). Defendants' first effort at a transition
8 plan was published in 1998 and an apparent attempt at a self-evaluation followed two
9 years later. Both documents are dated and deficient. *See* Logan Decl., Exh. C at 217
10 ("The TP [transition plan] developed by the Sheriff's Department is lacking in its
11 thoroughness and is not in compliance with the implementation goals of removing
12 identified barriers by 1995, as required by the ADA."). The transition plan, dated
13 July 30, 1998, "contains information only for public areas, and does not consider
14 inmate areas," Hopper Decl., Exh. B at 30, which obviously must also be compliant.
15 What appears to be the self-evaluation, dated 2000, "is not as comprehensive as one
16 would normally expect, given the size and complexity of the county jail system." *Id.*
17 at 9. Moreover, "the majority of the barrier removal items" proposed in these
18 documents still have not been completed – *ten years later*. *Id.* at 31. At MCJ, for
19 example, only 7 of the 19 originally identified barriers have been removed, not to
20 mention the additional barriers not even included in the original transition plan. *Id.*

21 More recently, Gordon Anthony of the County's ADA Compliance Section,
22 prepared an "ADA Compliance Review" for the County jails in October 2005 that
23 identified numerous non-compliant conditions at Men's Central Jail, although it did
24 not include an evaluation of the detention facilities. Mr. Anthony did conclude, as
25 suggested above, that the County lacked a mechanism "to ensure the modification of
26 policy, practice or procedures to ensure program access." *Id.* at 212.

27 Less than two years after Mr. Anthony issued his report, Plaintiffs' counsel
28 contacted LASD to identify the ADA compliance issues raised in this motion and to

1 demand that the Department take appropriate corrective measures. Decl. of Shawna
2 Parks ¶ 18, Exhs. D and E. While the County expressed willingness to take action,
3 over a year later nothing has been done. Even after plaintiffs’ counsel shared the
4 comprehensive report of Logan Hopper who concluded that the Los Angeles County
5 Jails have some of the most egregious ADA compliance problems in the country, the
6 County’s inaction continued. *Id.* at ¶ 25, Exh. I. Even in the face of this lawsuit,
7 Defendants have yet to install an accessible toilet in IRC or to provide for adapted
8 exercise and physical therapy for detainees with disabilities. Plaintiffs went so far as
9 to offer the County the chance to take corrective measures and avoid the filing of this
10 motion, so long as it was secured by an enforceable court order that would assure
11 compliance. *Id.*, Exh. J. At this point, however, after over a year of fruitless
12 discussions, Plaintiffs are left with no choice but to seek preliminary injunctive relief
13 to safeguard the rights of detainees with disabilities.

14 **III. ARGUMENT**

15 **A. Standard Pursuant To Which The Court Should Issue A** 16 **Preliminary Injunction**

17 A preliminary injunction is appropriate where plaintiffs demonstrate “either:
18 (1) a likelihood of success on the merits and the possibility of irreparable injury; or
19 (2) that serious questions going to the merits [are] raised and the balance of hardships
20 tips sharply in [their] favor.” *Clear Channel Outdoor Inc. v. City of Los Angeles*,
21 340 F.3d 810, 813 (9th Cir. 2003) (quoting *Walczak v. EPL Prolong, Inc.*, 198 F.3d
22 725 (9th Cir. 1999)). “These two alternatives represent extremes of a single
23 continuum, rather than two separate tests. . . .” *Id.* In cases where the public interest
24 is involved, the district court must also consider whether the public interest favors
25 issuance of the injunction. *Rodde v. Bonta*, 357 F.3d 988, 994 (9th Cir. 2004).

26 **B. Plaintiffs Are Likely To Succeed On The Merits Of Their ADA And** 27 **Rehabilitation Act Claims**

28 Congress enacted the Americans with Disabilities Act (“ADA”) “to provide a

1 clear and comprehensive national mandate for the elimination of discrimination
2 against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). Title II of the ADA
3 states in pertinent part: “[N]o qualified individual with a disability shall, by reason of
4 such disability, be excluded from participation in or be denied the benefits of the
5 services, programs, or activities of a public entity, or be subjected to discrimination
6 by such entity. 42 U.S.C. § 12132.⁴

7 **1. Elements Of Plaintiffs’ Title II and Rehabilitation Act Claims**

8 Plaintiffs asserting a claim of discrimination by a public entity must establish

9 (1) That they are qualified individuals with disabilities;

10 (2) That they were either excluded from participation in or denied the benefits
11 of some public entity's services, programs, or activities or otherwise
discriminated against;

12 (3) That such exclusion, denial of benefits, or discrimination was by reason of
13 their disability; and

14 (4) The entity receives federal financial assistance (for the Rehab Act claim),
or is a public entity (for the ADA claim).

15 *See* 42 U.S.C. § 12132; *Zukle v. Regents of University of California*, 166 F.3d 1041
16 (9th Cir. 1999); *Weinreich v. Los Angeles County Metropolitan Transp. Authority*,
17 114 F.3d 976 (9th Cir. 1997).

18 **2. Plaintiffs Are Qualified Individuals With Disabilities**

19 The term “qualified individual with a disability” means an individual with a
20 disability who, with or without reasonable modifications to rules, policies, or
21

22 ⁴ Similarly Section 504 of the Rehabilitation Act (“Rehab Act”) provides: “No
23 otherwise qualified individual with a disability . . . shall, solely by reason of her or
24 his disability, be excluded from the participation in, be denied the benefits of, or be
25 subjected to discrimination under any program or activity receiving Federal financial
26 assistance.” 29 U.S.C. § 794(a). The Ninth Circuit’s “interpretation of Title II of the
27 ADA applies equally to § 504 of the Rehabilitation Act.” *Bay Area Addiction*
28 *Research and Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 730 (9th Cir.1999).
The language of the two statutes is “similarly expansive” and “Congress has directed
that the ADA and RA [Rehabilitation Act] be construed consistently.” *Armstrong v.*
Wilson, 124 F.3d 1019 (9th Cir. 1997).

1 practices, the removal of architectural, communication, or transportation barriers, or
2 the provision of auxiliary aids and services, meets the essential eligibility
3 requirements for the receipt of services or the participation in programs or activities
4 provided by a public entity.⁵ 42 U.S.C. § 12131(2). Each of the named plaintiffs
5 meets this definition. Peter Johnson is paralyzed from the waist down and requires a
6 wheelchair for mobility. Johnson Decl. ¶ 2. Michael Curfman requires mobility
7 assistance as a result of paralysis on his left side and has suffered a traumatic brain
8 injury. Curfman Decl. ¶ 3. Donald Peterson requires crutches or a wheelchair to get
9 around because he has lost the use of his right leg, and also has diabetes. Peterson
10 Decl. ¶¶ 3. *See Tyler v. City of Manhattan*, 857 F. Supp. 800, 803-04, 812 (D.
11 Kansas 1994) (person using wheelchair due to partial paralysis is a qualified
12 individual with a disability within the meaning of the ADA); *Lawson v. CSX Transp.,*
13 *Inc.*, 245 F.3d 916, 924 (7th Cir. 2001) (same for person with diabetes). Other class
14 members with similar disabilities are likewise qualified individuals under the ADA.

15 3. The Los Angeles County Jails Are A Public Entity Subject To 16 The Title II Of The ADA And The Rehabilitation Act

17 It is also beyond dispute that the Los Angeles County Jails are a “public entity”
18 whose facilities, services, and programs are subject to the mandates of the ADA and
19 the Rehabilitation Act. *See Pierce v. County of Orange*, --- F.3d ----, 2008 WL
20 2052408, *19 (9th Cir. May 15, 2008) (ADA applies to Orange County Jail system);
21 *Robertson v. Las Animas County Sheriff’s Dept.*, 500 F.3d 1185, 1193 (10th Cir.
22 2007); *Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998) (ADA
23 applies to state prisons).

24
25 ⁵ Disability is defined as a physical or mental impairment that substantially
26 limits a major life activity, a record of such an impairment, or being regarded as
27 having such an impairment. 42 U.S.C. §12102(2). The definition under the
28 Rehabilitation Act is the same. *Collings v. Longview Fibre Co.*, 63 F.3d 828, 832 n. 3
(9th Cir. 1995).

1 **4. Plaintiffs Are Being Excluded From Participation In, And**
2 **Denied The Benefits Of, Jail Services And Programs, And Are**
3 **Suffering Discrimination, Because Of Their Disabilities**

4 “The ADA and Rehabilitation Act, as enforced through the Attorney General's
5 regulations promulgated under the ADA, *see* 42 U.S.C. § 12134(a), require more than
6 compliance with due process requirements: they require that a disabled individual be
7 provided with “meaningful access” to state provided services and set forth a number
8 of detailed requirements that must be met.” *Armstrong v. Davis*, 275 F.3d 849 (9th
9 Cir. 2001); *see also Crowder v. Kitagawa*, 81 F.3d 1480 (9th Cir. 1996).

10 Under the broad mandates of the ADA, Defendants have obligations to
11 Plaintiffs to ensure that they do not deny them services and benefits on the basis of
12 their disabilities, 28 C.F.R. § 35.130(b)(1)(i), or provide services or benefits that are
13 not equal to those afforded detainees without disabilities, *id.* §§ 35.130(b)(1)(ii)-(iii).
14 In addition, Defendants may not select a site or location for housing Plaintiffs that
15 has “the effect of excluding [them] from, denying them the benefits of, [public
16 services or facilities] or otherwise subjecting them to discrimination.” *Id.*
17 § 35.130(b)(4)(i). They must also “make [such] reasonable modifications in policies,
18 practices, or procedures . . . [as] are necessary to avoid discrimination [against
19 Plaintiffs] on the basis of disability.” *Id.* § 35.130(b)(7), and ensure that physical
20 barriers do not deny people with disabilities access to programs and services. *Id.*
21 §§ 35.149-150. Defendants are failing in all of these obligations.

22 **a. Defendants Failure To Remove Architectural Barriers**
23 **At The County Jails Violates The ADA**

24 Under the ADA, “no qualified individual with a disability shall, because a
25 public entity's facilities are inaccessible to or unusable by individuals with
26 disabilities, be excluded from participation in, or be denied the benefits of the
27 services, programs, or activities of a public entity, or be subjected to discrimination
28 by any public entity.” 28 C.F.R. § 35.149. A public entity must operate each service
so it “is readily accessible to and usable by individuals with disabilities,” 28 C.F.R

1 § 35.150(a), including by removing barriers to access as necessary. *See also Barden*
2 *v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002); *Parker v. Universidad de*
3 *Puerto Rico*, 225 F.3d 1, 5 (1st Cir. 2000).

4 The ADA plainly requires the most basic facilities or services in jails, such as
5 toilets, sinks, showers, and drinking fountains to be safely accessible to detainees
6 with disabilities. *See Pierce*, 2008 WL 2052408 at *21 & *30 n.44 (adequate
7 bathroom facilities are “services” of the jail within the meaning of the ADA).
8 Moreover, barriers must be removed when necessary to avoid unlawful
9 discrimination. 28 C.F.R. § 35.150.

10 The architectural barriers identified in Plaintiffs’ expert’s ADA Compliance
11 Report on the Los Angeles County Jails include, without limitation: (1) toilets
12 without grab bars necessary for inmates with mobility disabilities, Hopper Decl.,
13 Exh. B at 18; (2) showers with a six inch curb that preclude entry, and no grab bars or
14 fixed wall seats, which make them “unusable by the vast majority of inmates with
15 disabilities” *id.*; (3) bathroom sinks without the necessary knee clearance for people
16 in wheelchairs, *id.*; (4) inaccessible bathroom facilities in common areas such as the
17 rooftop, classrooms, and law libraries, *id.* at 21; and (5) the lack of a single accessible
18 bathroom, shower or water fountain in the Inmate Reception Center, which processes
19 600-1200 inmates at any given time, *id.* at 25.

20 Each of these structural violations individually leads to daily struggles for
21 detainees with disabilities, including rendering them unable to use the toilet without
22 help, Gomez Decl. ¶ 3; causing them to fall while trying to maneuver over the
23 shower curb, P. Johnson Decl. ¶ 11; and leaving them with no access to drinking
24 water because drinking fountains are not accessible, *id.* ¶ 4. They also lead to even
25 more inhumane consequences, such as inmates with disabilities having to crawl and
26 drag themselves on the ground to reach the toilet, Tribble Decl. ¶ 4, or being left
27 sitting in their own urine or feces for hours, or even days, because of inaccessible
28 bathrooms. P. Johnson Decl. ¶ 3; C. Reyes Decl. ¶ 6.

1 Collectively, these violations combine with Defendants’ denial of basic
2 accommodations and services necessary for Plaintiffs to manage their disabilities
3 (like bottom bunk sleeping assignments, medication and medical equipment, physical
4 therapy and proper medical treatment and safe transportation), and access to
5 programs that are available to other detainees (like roof time, exercise, recreational,
6 educational and vocational programs) to “add up to a wholesale exclusion” of
7 individuals with disabilities from the programs and services of the Los Angeles
8 County Jails. *See Chaffin v. Kansas State Fair Board*, 348 F.3d 850, 861 (10th Cir.
9 2003). Any way you slice it, these structural barriers violate the ADA.

10 **b. Defendants’ Failure To Make Reasonable Modifications**
11 **To Policies And Procedures To Avoid Discrimination**
12 **Against People With Disabilities Violates The ADA**

13 Defendants are also violating the ADA by failing to modify procedures in the
14 jails to avoid discrimination against detainees with disabilities where possible. *See*
15 28 C.F.R. § 35.130(b)(7), and *generally* 28 C.F.R. § 35.130. For example, LASD
16 staff fails to ensure that people with disabilities are assigned to sleep in bottom
17 bunks, even when they cannot physically climb up to a top bunk or do so only with
18 great pain. Of course, the general jail population is not typically assigned to
19 functionally inaccessible beds. Moreover, LASD could readily develop a system to
20 ensure that people with physical disabilities and disabling medical conditions have
21 lower bunks, but it has chosen not to do so.

22 Similarly, Defendants have failed repeatedly to provide necessary medication
23 (including pain medication, injections for diabetics, and other prescription
24 medications), medical equipment (including wheelchairs, mobility aids, and catheters
25 for those suffering bladder control problems) and medical services (including nurses’
26 and doctors’ visits) to detainees with disabilities. The lack of appropriate medical
27 accommodations for inmates with disabilities, in itself, violates their rights under the
28 ADA. *See* 28 C.F.R. § 35.130(b)(1)(vii) (public entity may not limit an individual

1 with a disability “in the enjoyment of any right, privilege, advantage, or opportunity
2 enjoyed by others receiving the aid, benefit, or service”); *Kiman v. New Hampshire*
3 *Dep’t of Corr.*, 451 F.3d 274, 286-87 (1st Cir. 2006) (access to medication is part of
4 the prison’s medical services and thus, one of the “services, programs, or activities”
5 covered by the ADA) (citing *U.S. v. Georgia*, 546 U.S. 151, 157 (2006)). Moreover,
6 because the denial of adequate medical services also impairs the abilities of detainees
7 with disabilities to participate in other programs, services and activities that are
8 accessible by the general jail population, and thus contributes to a “wholesale” denial
9 of program access, in violation of the ADA. *See Chaffin*, 348 F.3d at 861.

10 **c. Defendants Deny Detainees With Disabilities Access To**
11 **Programs Available To The General Jail Population In**
12 **Violation Of The ADA**

13 The Ninth Circuit recently made crystal clear that, “[a]ny type of educational,
14 vocational, rehabilitative, or recreational program, service, or activity offered [by a
15 jail system] to nondisabled detainees should, when viewed in its entirety, be similarly
16 available to disabled detainees who, with or without reasonable accommodations,
17 meet the essential eligibility requirements to participate.” *Pierce*, 2008 WL 2052408
18 at *24; *see Yeskey*, 524 U.S. at 210 (inmate cannot be categorically excluded from a
19 program based solely on disability). The *Pierce* decision emphatically resolves the
20 question of whether Defendants’ denial of beneficial programs to people with
21 disabilities in the Los Angeles County Jails violates the ADA. It does.

22 In *Pierce*, a class action suit brought by inmates with disabilities against the
23 Orange County Jail system, plaintiffs argued that, by virtue of being housed
24 exclusively in that county’s MCJ, they were categorically denied access to a variety
25 of programs, such as agricultural training, woodworking, and welding, that were
26 available in the other county jail facilities. *Id.* at 2008 WL 2052408 at *24. The
27 Ninth Circuit held that ADA regulations contemplate “reassignment of services to
28 accessible buildings,” as a permissible means of accommodation,” *id.* (quoting 28

1 C.F.R. § 35.150(b)(1)), and that the “County may not shunt the disabled into facilities
2 where there is no possibility of access to those programs.” *Id.*⁶

3 LASD’s practice of segregating detainees with disabilities in areas of MCJ
4 where they are denied access to a variety of programs that are available to the general
5 jail population is precisely the practice the Ninth Circuit declared unlawful in
6 *Pierce*.⁷ Indeed, the consequences of such segregation in Los Angeles County MCJ
7 are more severe than they were in Orange County. As Logan Hopper noted, although
8 the large number of vocational and educational programs offered at certain facilities
9 “was quite impressive,” (Hoppe Decl., Exh. B at 8), these programs and services are
10 not available to the inmates with disabilities in MCJ. *Id.* at 9; *see, e.g.*, Peterson
11 Decl. ¶ 4; Ceballos Decl. ¶ 18; Curfman Decl. ¶ 12; C. Reyes Decl. ¶ 12. Moreover,
12 the disparity between the level of programs and services available to the general
13 inmate population, as compared to inmates with disabilities, is particularly egregious
14 in light of the fact that “minor, cost-effective, and well-placed physical
15 improvements” could accommodate inmates with disabilities, allowing them to
16 participate in the programs and services that they are currently excluded from. *Id.* at
17 30. “Little thought seems to have been given to how inmates could or would be
18 accommodated within all of the programs that are offered to the general inmate
19

20 ⁶ *See also Love v. Westville Corr. Ctr.*, 103 F.3d 558, 558-61 (7th Cir. 1996)
21 (segregation of quadriplegic inmate in the infirmary, which resulted in exclusion
22 from recreational facilities, dining hall, visitation facilities, substance abuse
23 programs, education, church, work, and other programs available to the general
24 population violated the ADA); *Clarkson v. Coughlin*, 898 F.Supp. 1019, 1047, 52
25 (S.D.N.Y. 1995) (exclusion of inmates with disabilities from prison programs
26 violated the ADA).

27 ⁷ In addition to the effect of the segregation, *i.e.*, denial of programs and
28 services available to other inmates, the act of segregation itself is prohibited under
the ADA and accompanying regulations. *See* 28 C.F.R. § 35.130(d) (public entity
must administer services, programs, and activities “in the most integrated setting
appropriate to the needs of qualified individuals with disabilities.”)

1 population...and the need to provide equal access to programs for those individuals
2 [with disabilities] is almost entirely unknown.” *Id.* at 6. Such categorical
3 segregation of people with disabilities in MCJ, and the resulting denial of programs
4 and services, solely by reason of their disabilities, is an indisputable ADA violation.

5 **5. Section 504 Of The Rehabilitation Act Similarly Prohibits**
6 **Discrimination Against Inmates With Disabilities**

7 Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, similarly prohibits
8 discrimination against individuals with disabilities, by reason of the disability. The
9 substantive standards for determining liability under Section 504 and the ADA “are
10 the same.” *McDonald v. Penn. Dept. of Public Welfare*, 62 F.3d 92, 95 (3d Cir.
11 1995) (*citing Myers v. Hose*, 50 F.3d 278, 281 (4th Cir. 1995)); *see Collings*, 63 F.3d
12 at 832 n.3. The only additional requirement of Section 504 is that it is limited to
13 programs and activities that receive federal financial assistance. 29 U.S.C. § 794.
14 “Program or activity” under Section 504 covers all operations of the government
15 department or agency, “any part of which is extended Federal financial assistance.
16 29 U.S.C. § 794(b). Accordingly, because Defendants receive federal funding for
17 their programs, they violate Section 504 of the Rehabilitation Act for the same
18 reasons that they violate the ADA. *See* Request for Judicial Notice, Exhs. A through
19 D (requests from the Los Angeles County Sheriff’s Department to the County Board
20 of Supervisors for authorization to receive various federal grant awards).⁸

21 **C. Plaintiffs Will Continue To Suffer Irreparable Injury Without A**
22 **Preliminary Injunction**

23 Having established a likelihood of success on the merits of its state and federal
24 statutory nondiscrimination claims, Plaintiffs are entitled to a preliminary injunction

25 ⁸ Defendants’ violation of the ADA similarly establishes violations of several
26 analogous California disability rights statutes that form the basis of other claims in
27 the Complaint. *See* Cal. Govt. Code § 11135(b) (ADA violation also constitutes
28 violation of Cal. Govt. Code § 11135); Cal. Civ. Code § 51(f) (same for Cal. Civ.
Code § 51, *et seq.*); Cal. Civ. Code § 54(c) (same for Cal. Civ. Code § 54, *et seq.*);
Cal. Govt. Code § 4450(c) (same for Cal. Govt. Code § 4450).

1 upon a showing that they will continue to suffer irreparable injury if an injunction
2 does not issue. *See Clear Channel*, 340 F.3d at 813; *Rodde*, 357 F.3d at 998-99.
3 Plaintiffs readily meet this standard for a number of reasons. *First*, bodily harm such
4 as Plaintiffs allege and have demonstrated in this motion, including pain, infection,
5 and medical complications due to delayed or inadequate treatment constitutes
6 irreparable injury. *See Harris v. Board of Supervisors*, 366 F.3d 754, 758, 66 (9th
7 Cir. 2004). Similarly, injuries to individual dignity resulting from ADA violations, in
8 themselves, constitute irreparable injury. *Save Our Summers v. Wash. State Dept. of*
9 *Ecology*, 132 F. Supp. 2d 896, 906 (E.D. Wash. 1999) (*citing Cupulo v. Bay Area*
10 *Rapid Transit*, 5 F. Supp. 2d 1078, 1084 (N.D. Cal. 1997)); *Sullivan v. Vallejo City*
11 *Unified School Dist.*, 5 F. Supp. 947, 961 (E.D. Cal. 1990) (harm to ability to
12 function as independent person constitutes irreparable injury). Finally, “[a]n alleged
13 constitutional infringement will often alone constitute irreparable harm.”
14 *Associated General Contractors of Cal. v. Coalition for Econ. Equity*, 950 F.2d 1401,
15 1412 (9th Cir. 1991) (*quoting Goldie’s Bookstore, Inc. v. Superior Ct.*, 739 F.2d 466,
16 472 (9th Cir. 1984)).⁹ Indeed, far less severe harms that result from ADA violations

18 ⁹ Plaintiff’s Complaint in this action includes claims under 42 U.S.C. § 1983
19 for violations of the Eighth and Fourteenth Amendments. *See Revere v. Mass. Gen.*
20 *Hosp.*, 463 U.S. 239, 244 (1983) (Fourteenth Amendment affords pretrial detainees
21 protections “at least as great as the Eighth Amendment protections available to a
22 convicted prisoner”). Plaintiffs allege that the same practices that violate their rights
23 under state and federal nondiscrimination laws likewise infringe their constitutional
24 rights. Courts have held that the constitutional claims Plaintiffs assert here can be
25 based on facts similar to those found in the declarations that support this motion,
26 such as jail or prison officials’ denial of wheelchairs to detainees who are paralyzed
27 from the waist down, *see Weeks v. Chaboudy*, 984 F.2d 185, 187 (6th Cir. 1993) –
28 especially when the detainee must then crawl on the floor and officials refuse him the
help needed to clean his person, *see Cummings v. Roberts*, 628 F.2d 1065, 1068 (8th
Cir. 1980); ignoring a paraplegic detainee’s needs during his first ten days of
incarceration, *Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1244 (6th Cir. 1989);
failing to provide adequate medication and treatment for serious medical conditions,
see Natale v. Camden County Correctional Facility, 318 F.3d 575, 582 (3d Cir.

1 have been found “irreparable” for purposes of injunctive relief. *See Cupulo*, 5 F.
2 Supp. 2d at 1084 (indignity resulting from non-functioning elevators at transit stations
3 deemed irreparable harm). If inconvenience and indignity caused by non-functioning
4 elevators constitute irreparable harm, Plaintiffs here have far exceeded that standard.
5 Because Plaintiffs’ declarations demonstrate a likelihood of bodily injuries to inmates
6 with disabilities, harm to their personal dignity arising from the County’s gross
7 disregard for its obligations under the ADA, and harms with constitutional
8 dimension, they have demonstrated a sufficient risk of irreparable harm to justify a
9 preliminary injunction.

10 **D. The Balance of Hardships Plainly Favors Plaintiffs**

11 In a case like this one, where the party seeking a preliminary injunction has
12 demonstrated likelihood of success on the merits and irreparable harm, a court has
13 little need to balance the equities to determine whether an injunction is appropriate.
14 *Clear Channel Outdoor Inc.* 340 F.3d at 813. Plaintiffs have already demonstrated
15 both here and balancing is therefore unnecessary. Moreover, Defendants will suffer
16 little from issuance of the requested injunction, which will merely accelerate the pace
17 at which they come into compliance with statutes with which they are bound to
18 comply in any event. The balance therefore favors issuance of an injunction.

19 Defendants may contend that a preliminary injunction would harm the County
20 because it is already financially challenged and compliance would be costly. The
21 argument should be rejected out of hand. Some changes that Plaintiffs seek would
22 cost little to implement, such as creating systems and protocols regarding access to
23 wheelchairs and other medical equipment, and monitoring needed medications so
24 they do not run out without being renewed.

25 2003); depriving detainees of access to toilet facilities, *see Palmer v. Johnson*, 193
26 F.3d 346, 352 (5th Cir. 1999); or denying them any opportunity for physical exercise,
27 *see Ruiz v. Estelle*, 679 F.2d 1115, 1152 (5th Cir. 1982). Plaintiff’s claims and
28 alleged harms thus have a constitutional dimension that only underscores the need for
immediate relief from such serious and irreparable harm.

1 Other changes will save the County money in the long run by maintaining the
2 health and well-being of thousands of County residents who have been and will again
3 be the County’s responsibility when they return to the community. For example,
4 Christian Reyes was treated at another County institution – Rancho Los Amigos
5 Rehabilitation Hospital – after his initial injury earlier this year. L. Reyes Decl., ¶ 3.
6 After thousands of dollars in county funds were expended to treat and improve his
7 condition, another county institution – the Jail – then neglected his care, failed to
8 continue his physical therapy, and subjected him to additional injury, so that all the
9 improvements achieved at Rancho are now lost. Whenever Christian Reyes returns
10 to the community, he will require more care, and more expensive care, as a result of
11 his mis-treatment in the jail. His chances of becoming a productive citizen are also
12 significantly diminished. Because the County itself funds and operates the hospitals
13 that will treat these individuals with disabilities after their release, it is in the
14 County’s interest to accommodate and not exacerbate, their disabilities. The County
15 could also realize cost-avoidance benefits by reducing its risk of multi-million dollar
16 damages lawsuits for the mistreatment of detainees with disabilities.

17 The relief requested here can also be a “win-win” for the County by ultimately
18 saving county funds. The prohibitory injunction requested would forbid LASD from
19 holding people with disabilities unless it can meet their needs. One way to comply is
20 to develop alternatives to incarceration and pre-trial release programs for this
21 population. When this suit was filed, Sheriff Lee Baca stated publicly that the County
22 spends \$700-\$800 per day to house detainees with disabilities in their current
23 conditions, and suggested selective home detention as a cost-saving alternative. *See*
24 *Decl. of Helen Eckert, Exh. A: Richard Winton, Disabled Inmates Subjected To*
25 *Shocking Conditions In Los Angeles County Jails*, Los Angeles Times (May 29,
26 2008) (quoting Sheriff Baca). Plaintiffs welcome such a solution.

27 Ultimately, even if compliance will be costly, however, when faced with a
28 balancing of hardships between preventable human suffering and financial

1 constraints, courts have “little difficulty concluding that the balance of hardships tips
2 decidedly in plaintiff’s favor.” *Harris v. Bd of Supervisors, Los Angeles*, 366 F.3d
3 754, 766 (9th Cir. 2004) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir.
4 1983)). As Judge Gray explained 30 years ago, although an injunction may pose
5 difficulties for LASD, considerations of statutory and constitutional “rights and basic
6 decency” require the injunction to correct inhuman conditions in L.A. County Jails.¹⁰
7 *Rutherford v. Pitchess*, 457 F.Supp. 104, 114 (C.D. Cal. 1978), *re’vd in part on other*
8 *grounds sub nom., Block v. Rutherford*, 468 U.S. 576 (1984).

9 **E. A Preliminary Injunction Would Advance The Public Interest**

10 The Ninth Circuit has cautioned that “government must be concerned not only
11 with the public fisc but also with the public weal,” adding that “[o]ur society as a
12 whole suffers when we neglect the poor, the hungry, the disabled, or when we
13 deprive them of their rights or privileges.” *Lopez*, 713 F.2d at 1437. It is always in
14 the public interest to protect constitutional and statutory rights, especially with
15 respect to ensuring that individuals with disabilities are free from unlawful
16 discrimination. *See Warshak v. U.S.*, 490 F.3d 455, 481-82 (6th Cir. 2007) (it is
17 always in the public interest to prevent violations of constitutional rights); 42 U.S.C.
18 § 12101 (purpose of the ADA is to remedy discrimination against individuals with
19 disabilities, who occupy an inferior status in society). Nothing about this calculus
20 changes because Plaintiffs are inmates. *See Crawford v. Indiana Dept. of*
21 *Corrections*, 115 F.3d 481, 486 (7th Cir. 1997) (“Rights against discrimination are
22 among the few rights that prisoners do not park at the prison gates.”). An injunction
23 would plainly serve the public interest.

24
25
26 ¹⁰ Of course, denial of an injunction would likely only perpetuate the
27 unspeakable conditions that Plaintiffs are forced to tolerate, while the County
28 continues its decade long pattern of delay in coming to terms with its obligations
under the ADA.

1 **F. The Preliminary Injunction Complies With the Prison Reform**
2 **Litigation Act**

3 As required by the Prison Litigation Reform Act of 1995 (“PLRA”), 18 U.S.C.
4 § 3626(a)(2), Plaintiffs seek a preliminary injunction that would be narrowly drawn
5 to extend no further than necessary to redress the County’s violations of the ADA
6 and Rehabilitation Act and to prevent them from recurring. *See Armstrong v. Davis*,
7 275 F.3d 849, 872-73 (9th Cir. 2001).

8 **IV. CONCLUSION**

9 Plaintiffs are likely to prevail on the merits of their ADA and Rehabilitation
10 Act claims and, if the County’s violations of those statutes are not enjoined, will
11 continue to suffer irreparable harm as they are subjected to the unspeakable
12 conditions detailed above that are imposed uniquely on people with disabilities in the
13 Los Angeles County Jails.¹¹ For these reasons, and because an injunction plainly
14 serves the public interest, Plaintiffs’ motion for preliminary injunction should be
15 granted and the Court should issue an order requiring that they be afforded treatment
16 that comports with basic standards of human decency.

17 Dated: June 9, 2008

Respectfully submitted,

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By: /s/ John C. Ulin
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23 _____
24 ¹¹ The Court has the discretion to issue a preliminary injunction without
25 requiring Plaintiffs to post a bond. *People ex rel Van de Kamp v. Tahoe Regional*
26 *Planning Agency*, 766 F.2d 1319, 1325-26 (9th Cir.1985), *modified on other*
27 *grounds*, 775 F.2d 998 (9th Cir. 1985). Exercise of that discretion is particularly
28 appropriate where an action is brought by a class of indigent plaintiffs. *Orantes-*
Hernandez v. Smith, 541 F.Supp. 351, 386 n. 42 (C.D. Cal. 1982). Here, too, no
bond should be required as this case has been brought by a class of indigent
plaintiffs.